

# **BOUGAINVILLE PEACE AGREEMENT**

## **ANALYSIS FOR USE IN AN AWARENESS CAMPAIGN**

### **1. PEACE AGREEMENT APPROVED**

A draft peace agreement between the Papua New Guinea National Government and Bougainville was agreed on 22<sup>nd</sup> June 2001.

Before the document could be finalised and formally signed it had to be approved by both the National Government and Bougainville parties. The combined assemblies of the Bougainville Interim Provincial Government and the Bougainville People's Congress approved the draft agreement in a meeting at Hutjena High School on 4<sup>th</sup> July. The National Government approved the document through the National Executive Council (NEC) on 6<sup>th</sup> August 2001. The NEC wanted some changes. As a result there were some final negotiations with Bougainville leaders in July and in August.

The signing ceremony for the final agreement – called the *Bougainville Peace Agreement* - is planned for Arawa for 30<sup>th</sup> August 2001.

### **2. MAIN AIMS OF THE PEACE AGREEMENT**

The main aim of the *Peace Agreement* is to end the Bougainville conflict. The *Agreement* is made up of new political arrangements for Bougainville (referendum on independence and autonomy arrangements), and also other arrangements (such as weapons disposal and phased withdrawal of security forces), all intended to assist in removing sources of conflict.

But to design arrangements intended to end the conflict, it was first necessary:

- first to identify the causes of conflict; and
- second to identify things that can be done to deal with those causes so that they no longer result in conflict.

Most people in Bougainville are aware that the causes of conflict in Bougainville include both:

- Concerns, problems and grievances that contributed to the origins of the fighting; and

- Concerns, problems and grievances that developed because of the fighting.

In the early stages of the negotiations with the National Government about Bougainville's political future, the Bougainville leaders identified the concerns, problems and grievances that had to be addressed if the conflict was to end for good. In May and June 1999, the Bougainville People's Congress had to prepare for the first negotiations with the National Government on the future political status of Bougainville. The BPC identified *basic issues* that needed to be taken account of in choosing the future political arrangements most likely to end the conflict. The next three pages and the Table that follows them are all taken from the document that the BPC considered in June 1999:

"The key *basic issues* for Bougainville which any option for future political arrangements must take account of include:

- the factors that contributed to the civil war;
- tensions and possible new sources of conflict emerging from the war;
- the special needs of Bougainville arising from impacts of nine years of war;
- the emergence of consensus (*among Bougainvilleans*) on ways ahead;
- major constraints *facing Bougainville* (administrative, financial and others).

Having identified the basic issues facing Bougainville, it is possible to identify requirements that will need to be met by any option for the future political arrangements if that option is to be likely to contribute to the outcomes expected of a political settlement. **Those requirements must flow from, or take account of, the basic issues.**

### 3. The basic issues

#### a. Factors contributing to the civil war

- ***Movement for independence of long-standing:*** For some decades there has been a movement in Bougainville in support of independence for Bougainville. It is based on such factors as:
  - a sense of distinct Bougainvillean identity;
  - belief in basic grievances (below); and
  - widespread belief in a right to self-determination for the Bougainville people.
- ***Basic grievances:*** Even before the war Bougainvilleans shared a number of basic grievances arising from (among other things):
  - Bougainville's history,
  - its culture;
  - its isolation from the rest of PNG;
  - its proximity to and cultural links with Solomon Islands;
  - the imposition by the colonial administration of the Panguna mine;
  - the impacts of the mine on Bougainville's cultural and physical environment;
  - the distribution of mining revenue,

and key aspects are sometimes summarised as land, environment and culture.

b. **New sources of tension**

- ***Human rights abuses:*** During the war widespread human rights abuses were committed on all sides, leaving many people with deep-felt grievances and with concerns about their future security.
- ***Deep divisions:*** The war has contributed to deep divisions both among Bougainvilleans and between Bougainville and Papua New Guinea.
- ***Divided opinion on political future:*** Among the bases for division are conflicting views on the desired future political status of Bougainville:
  - Some Bougainvilleans are committed to independence;
  - Some oppose independence .....

c. **Special needs resulting from war**

- ***Special needs:*** The war has created many problems and needs unique to Bougainville (compared to the rest of PNG), including:
  - deeply traumatised people;
  - loss or deterioration of government services (including a 'lost generation' in terms of education);
  - economic base destroyed;
  - infrastructure destroyed, etc.

Most seek a return to normal conditions of life in Bougainville – including effective restoration of infrastructure and services - through people-based development.

d. **Areas of consensus on ways ahead**

- ***Consensus on peace and the peace process:*** There were many elements to the war. Central were the conflict between Bougainville and PNG, and the conflicts between Bougainvillean groups. The experience of both war and the subsequent peace process has built consensus among virtually all parties:
  - on the need to end fighting and return to peace;
  - that the present peace process has achieved a great deal in a short time, by ending fighting and beginning the process of reconciliation, reconstruction and a return to normalcy; and
  - that progress towards final resolution of the conflict must be maintained.
- ***Empowerment a long-standing demand:*** For several decades Bougainvilleans have consistently demanded empowerment for themselves in decision-making on matters most affecting them, convinced that this will lead to better outcomes because of their understanding of their own needs. Empowerment involves at least a high degree of power for local communities to run their own affairs, and democratic participation in decision-making about Bougainville's government and future.
- ***High level of self-government as a minimum:*** Even those who oppose or fear independence support Bougainville having far more autonomy than was available under the 1976 *Bougainville Agreement*.

e. **Constraints**

- **Limited government capacity at present:** Any Bougainville government will have limited capacity for some time due to limited infrastructure, restricted financial resources and weak administrative capacity.
- **Weak economic base:** The closure of the Panguna mine and loss of associated businesses, and destruction caused by the war, have all severely weakened Bougainville's once strong economic base.
- **No mining revenue:** Because there is little chance of the Panguna mine or other large-scale mining operations opening for the foreseeable future, Bougainville's government revenue sources are likely to be limited.
- **PNG policy - independence non-negotiable:** PNG policy that independence is non-negotiable is based on considerations such as:
  - concern about undermining sovereignty;
  - fears of fragmentation (that other parts of PNG may follow the Bougainville example);
  - loss of the economic potential of Bougainville;
  - that secession of parts of PNG is not provided for in the PNG Constitution;
  - regional interests in stability.

This policy limits the possibility of movement towards independence both because of the possibility of renewed conflict if such a move were made and because international support for independence would be difficult to gain if PNG opposes independence. It is possible, however, that the PNG government may agree to a referendum to assess the views of the people of Bougainville on future political arrangements for Bougainville and may accept the outcome of such a referendum;

- **Need for international support:** International support for the peace process is essential because:
  - it puts pressure on all parties to adhere to the cease-fire and all other commitments made as part of the peace process;
  - it translates into resources for the peace process and for Bougainville reconstruction; and
  - it may be necessary if Bougainville were ever to decide to move towards independence without support from PNG.

The requirements that will need to be met by any option for the future political arrangements should flow from and take account of all the basic issues (above).

The following table provides brief statements of the requirements that should be met by an option on political arrangements that takes account of each basic issue. It will be seen that for some basic issues there are two separate requirements. The reason is that for those issues, there will be a requirement for not only wide powers to enable Bougainville to deal with the issue, but also a requirement for improved capacity in Bougainville if such powers are to be used effectively.”

**Basic Issues****Consequential Requirements for Options For Future Political Arrangements**

Basic grievances	1. Provides the powers needed to address basic grievances 2. Allows capacity to address basic grievances to develop
Movement for independence of long-standing	3. Maintains possibility of independence
Human rights abuses	4. Provides the powers needed to facilitates redress of past abuses and protects from future abuses 5. Allows the capacity to address human rights abuses to develop
Deep divisions	6. Promotes reconciliation between PNG and Bougainville 7. Promotes reconciliation in Bougainville
Divided opinion in Bougainville on political future	8. Builds consensus in Bougainville on the political future of Bougainville
Special needs in Bougainville resulting from the war and desire for normalcy through people-based development	9. Provides the powers to allow Bougainville's special needs to be met, and promotes return to normalcy through people-based development 10. Allows capacity in Bougainville to develop to enable meeting of special needs and promotion of a return to normalcy through people-based development
Consensus on peace and peace process	11. Protects the peace between Bougainville and PNG 12. Protects the peace between Bougainvillean parties
Empowerment a long-standing demand	13. Provides power at the community level 14. Provides democratic participation in decision-making
High level of self-government as a minimum	15. Provides, at least, a high level of self-government
Limited government capacity	16. Takes account of current government capacity limits and allows time for strengthening to occur
Weak economic base	17. Takes account of current weak economic base and allows time for strengthening
No mining revenue	18. Takes account of restricted revenue base
PNG policy on independence	19. Promotes agreement with PNG on future political status of Bougainville
Need for international support	20. Maintains international support

In June 1999, the BPC members assessed a wide range of possible political arrangements for Bougainville by judging how well they could be expected to account of the *basic issues*. They looked at nine main options, which ranged from immediate independence, through to the possibility of Bougainville coming under the same provincial government system as the other provinces.

The BPC assessment was that the arrangements most likely to take full account of the basic issues and therefore contribute to lasting peace would be a combination of:

- a deferred referendum on independence for Bougainville; and
- highest possible autonomy to operate until the referendum was held.

As a result of this careful assessment, the Common Bougainville Negotiating Position was decided.

During the second half of 1999 there was close consultation among the Bougainville leaders. By the end of that year almost all leaders had agreed to the Common Negotiating Position. Reaching that agreement helped to reconcile and unite the previously divided Bougainville groups and their leadership.

Those groups supporting independence agreed to support autonomy, provided that those opposed to independence agreed to support a referendum. Those opposed to independence agreed to support a referendum agreed to support a deferred referendum, provided that opponents of the referendum supported high autonomy for the period until the referendum was held. As a result, the Bougainville groups agreed that the two issues – referendum and autonomy – could not be separated.

The Bougainville leaders have pursued these two issues in a united manner. They have done this in the 23 rounds of political talks with the National Government held from June 1999 to August 2001.

In the negotiating process, it was necessary for both PNG and Bougainville to make compromises. But even so, the two key issues identified by the Bougainville leaders back in 1999 have remained the main foundations for the *Bougainville Peace Agreement*.

The next sections of this paper discuss the contents of the *Agreement*. This discussion also tries to assess whether the *basic issues* have been taken fully into account by the *Agreement*.

#### **4. MAIN SUBJECTS COVERED BY THE PEACE AGREEMENT**

The Peace Agreement covers the following main subjects:

- (a) A referendum for Bougainvilleans on independence for Bougainville;
- (b) A high level of autonomy for Bougainville;
- (c) Demilitarisation of Bougainville;
- (d) Reconciliation of those divided by the Bougainville conflict;
- (e) Restoration and development of Bougainville;
- (f) Continuing roles for the Peace Monitoring Group (PMG) and the United Nations Observer Mission on Bougainville (UNOMB);
- (g) Implementation of the agreed referendum and autonomy arrangements by changes to the Papua New Guinea *Constitution*;
- (h) Protection of the constitutional arrangements (on autonomy and referendum) from change by National Parliament.

The different parts of the *Agreement* fit together and support one another. It is not possible to change one part without also damaging other parts of the *Agreement*.

#### **5. REFERENDUM ON INDEPENDENCE**

A referendum is like an election. But in a referendum, instead of voting for candidates to hold office, people vote to give their opinions on questions put before them.

The *Peace Agreement* says there will be a referendum among the people of Bougainville to decide if a majority of them support independence for Bougainville.

The referendum will be held no earlier than 10 years and no later than 15 years after the setting up of an autonomous Bougainville Government. The reasons the referendum is being delayed is to allow Bougainvilleans to first reconcile, get rid of weapons, and to allow development to happen. Until those things happen, it might be hard for some people to choose freely between whether Bougainville should stay as a part of Papua New Guinea or become an independent country.

The result of the referendum will not be binding on the National Government – the final decision will be left to the PNG Parliament. This means that even if a majority of people vote for independence, Bougainville will not automatically become independent. That is the same situation as in Timor – there was nothing in the Indonesian Constitution that made the result of the Timor referendum binding on the Indonesian Government. But there was strong internal political pressure and strong international pressure on Indonesia to accept and implement the result of the referendum.

Whatever the outcome of the referendum – a majority vote in favour of independence or a majority vote against - there will then be consultation between PNG and Bougainville about what should happen next. The implementation of the outcome of the referendum – either for or against independence – will be decided by consultation, and probably also by political factors, similar to the situation in relation to the referendum in Timor.

## **6. AUTONOMY**

Autonomy of a government can mean many things. In relation to government, the basic meaning concerns the right to self-government. Among the ways of measuring autonomy of a government below the national level is to look at the extent to which the government:

- can choose its own structures and institutions to ensure that they meet local needs;
- has the powers and the resources (money and people) needed to provide services and organise development according to its own priorities;
- is free from being directed and controlled by the national government.

Under the autonomy arrangements in the *Agreement*, Bougainville will have a high level of autonomy in all three of these important ways. First, Bougainvilleans will be free to choose structures for an autonomous Bougainville Government. Second, most of the powers of government will be available to the autonomous Bougainville Government. As a result, that Government will be able to shape development in Bougainville according to Bougainville priorities. Third the National Government will have very limited power to direct or control the autonomous Government.

But in another way, the autonomy for Bougainville will not be as strong as many Bougainvilleans would like – at least in the early years of autonomy.

That is because the money available for the autonomous Government to use to carry out its work will be limited - especially while there is not very much economic activity in Bougainville.

The following points give an overview of some of the main things in the agreed autonomy arrangements.

**(a) Bougainville Constitution**

Bougainville will be free to make its own Constitution. That law will establish the structures and institutions of the autonomous Bougainville Government and regulate the way they operate. The Bougainville Constitution will get its authority from the National *Constitution*, which will provide a very broad and general guide to the Bougainville Constitution by listing the main things to be covered by it. For example, the National *Constitution* will say that there must be a government body made up mainly of elected members, that there must be an elected head of that government, that there may be Bougainville courts, and so on.

But the National *Constitution* will not give any detail on these matters – the detail will be provided in the Bougainville Constitution. For example, Bougainville will decide how many members should be elected to the government body, and how many nominated. The Bougainville Constitution will decide how the members and the head of the government are elected. It will decide whether or not there should be Bougainville courts, and if there are courts, what kinds and levels of courts there should be.

It will be the people of Bougainville that choose what the Bougainville Constitution says on each of the subjects that it will be able to cover. The people will be involved in making these choices in two main ways. First, a representative Constitutional Commission will consult the people and will prepare a draft of the Constitution. Then the draft will be debated by a representative constituent assembly that will have power to amend the draft and adopt the final Constitution.

The National Government will have a limited role in the approval of the Bougainville Constitution. It will be consulted on the contents as they are developed and after the draft Constitution is finalised. It will have to endorse the Constitution once satisfied that it meets the requirements of the PNG *Constitution*.

### **(b) Choosing Names for Bougainville and its Government**

In making the Bougainville Constitution, the people will also be able to decide the name of Bougainville. For example, it could be called the Province of Bougainville, or the Autonomous Region of Bougainville, or simply Bougainville.

The Bougainville Constitution will also provide for the name of the government of Bougainville to be set up under the autonomy arrangements. For example, the name might be the Autonomous Bougainville Government, or the Government of the Autonomous Region of Bougainville, or simply the Bougainville Government.

### **(c) Boundaries of Bougainville**

The coastal and island provinces in PNG do not have any clear powers over the seawaters around their coasts. The *Agreement* provides that Bougainville will have power over the sea within three nautical miles of its land area. It will also share in revenue the National Government receives from fisheries and other economic developments in a very much greater area of ocean waters associated with Bougainville.

### **(d) Structures of the Government for Bougainville**

The structures of the Bougainville Government that the PNG *Constitution* will require to be included will be:

- an elected government body that makes laws (often called the ‘legislature’, or the Parliament),
- an executive government body – the one that will make the day to day decisions, organise the work of government, and make the plans for development of Bougainville for consideration by the legislature. Such a body is sometimes called the ‘executive’, or the ‘cabinet’;
- the head of the executive – a position with the same work as the Premier of the North Solomons Provincial Government, or the present Governor of the Bougainville Interim Provincial Government, or the President of the Bougainville People’s Congress.

There will also be the possibility of other institutions being provided for in the Bougainville Constitution. They might include:

- a Bougainville judiciary (courts);
- a Bougainville public service;
- a Bougainville police force; and

- a body doing the same as the National Correctional Institutional Service (CIS) – running gaols.

All of these bodies can also be separate from the equivalent national bodies. Some funding for such bodies will be available through grants from the National Government. But where the costs of having separate bodies for Bougainville is higher than what the National Government has been spending on such things in Bougainville up to the point where Bougainville establishes its own body, the extra costs will in some cases be met by Bougainville, and in others shared between Bougainville and the National Government.

The autonomous Government will also be able to establish other institutions like an ombudsman or a human rights commission (sometimes referred to under the PNG *Constitution* as ‘constitutional office-holders’). But costs of all such institutions will have to be met by Bougainville. As a result, decisions about setting them up will depend not only on whether they are regarded as important, but also whether there is enough money available.

#### **(e) Dividing Powers and Functions between the Autonomous Bougainville Government and the National Government**

The National *Constitution* will list the powers and functions that the National Government can continue to carry out in Bougainville. The main ones will be:

- Defence;
- Foreign relations;
- Quarantine;
- Fisheries, but only in relation to fish stocks that migrate long distances or which occupy ocean across international bodies;
- Currency;
- Regulation of money and banks;
- International civil aviation, international shipping, international trade, and postal services;
- Telecommunications;
- Police, but if Bougainville exercises its right to set up its own Police, then the work of the National Police in Bougainville will be restricted to enforcing national criminal laws, and even that work could be carried out by the Bougainville Police;

- Subjects where the National *Constitution* requires direct implementation by National Parliament (for example, through laws on national citizenship, or national elections);
- Other subjects where specific provisions of the *Agreement* give powers to the National Government.

The *Agreement* also provides for Bougainville to have some important powers and roles in relation to some aspects of the National Government powers and functions. These are aspects that are likely to be of special interest to Bougainville. For example, there will be limits on the National Government powers on defence in Bougainville, including restrictions on PNGDF deployment to Bougainville, and a role for Bougainville in PNGDF fisheries and border surveillance patrols. Bougainville will also have some important foreign relations powers. It will even be able to enter into international agreements in some cases. Bougainville will have a right to set up its own commercial bank if it has the resources to do so.

It will also have some important abilities to enter into foreign relations. For example, the Bougainville Government will be able to enter into agreements with foreign countries (but under the authority of the PNG Government). It will be represented in any border negotiations between Solomon Islands and PNG. It will be able to negotiate for aid from foreign donors, though in cooperation with the PNG Government.

Bougainville will be able to make laws on all other powers and functions known to government. The powers that will be available to the autonomous Government will include:

- Land;
- Mining;
- Forestry;
- Agriculture;
- Environment;
- Most fisheries;
- Foreign investment;
- Local-level government
- Culture;
- Education;
- Health;
- Town and rural planning;

- Roads and bridges;
- Police;
- Public service;
- Courts;
- Criminal law (with some limits);
- Important areas of taxation;
- Etc.

There will be some limits on the extent of some of the powers available to Bougainville. For example, the power to set up Bougainville courts will not extend to setting up a court with powers the same as the Supreme Court - the highest court in PNG. Similarly, powers over Police, Public Service and CIS will have to be exercised in accordance with specific cooperative arrangements involving the National Government, as outlined below.

The Bougainville list has not been set out in the *Agreement*. Instead, the list will be developed while the constitutional amendments needed to prepare the *Agreement* are being prepared. The main agreed principle to be followed in preparing the Bougainville list is that it should include all known and identifiable powers at present known to government other than those already agreed to be on the National Government list.

The *Agreement* also allows for the possibility that at some time in the future there may be government powers identified that are not now known or identified. Such powers will initially be vested with the National Government, but will ultimately be divided between the two Governments.

**(f) Powers to be taken over gradually**

The powers available to the autonomous Bougainville Government under its list will not be handed over on the first day of autonomy. Instead, they will be taken over gradually. Until Bougainville passes its own laws on a subject available to it, laws of the National Government will continue to apply in Bougainville.

Bougainville will be able to take over new subjects when it wishes to do so. It will do that by giving 12 months notice to the National Government. Where necessary, the autonomous Government will then pass and bring into operation its own laws making the provision it wants to make in relation to the subject in question. Where the National Government has previously been allocating funds and staff in order to carry out such a power or function, then

usually those funds and staff would be expected to be transferred to Bougainville at the same time as the responsibility for the power or function is taken over by Bougainville.

In practice, especially in cases of powers and functions where the National Government has previously had its staff involved in carrying out the power or function in Bougainville, it can be expected that there will be lots of detailed arrangements that will need to be made about transfer of funding and staff and other resources before the autonomous Government can take over major new powers and functions. As a result, it has been agreed that Bougainville will consult and cooperate with the National Government about staff and funding and other practical issues that might affect its ability to take over new powers and functions. Together the two Governments will develop agreed implementation plans, setting out the practical steps that will be needed before a new power or function can be taken over.

These practical issues are made more complex and difficult in the post-conflict situation in Bougainville, where government services and infrastructure have been destroyed or run down. In many instances, the National Government has stopped carrying out functions in Bougainville since 1990. In other cases, they are providing a service with very much reduced resources compared to the situation before the conflict. These problems will have to be taken account of in the transfer arrangements.

To understand the arrangements for taking over powers and functions, it is helpful to consider an example of a major area of powers and functions that Bougainville might wish to take over.

If Bougainville were to want to establish a Bougainville Police Force, it would first need to give at least 12 months notice to the National Government. Then together, Bougainville and the National Government would agree an implementation plan. The plan would spell out steps and resources needed to ensure that Bougainville was able to take over police powers and functions in an effective way. Such steps might include:

- Having an agreed number of police stations operational;
- Having sufficient police equipment (cars, radios, finger-print equipment etc.) in place and able to be maintained;
- Having agreed numbers of trained regular and community police in place;

- Having adequate training arrangements in place to handle future police recruits;
- Having a Bougainville Police command system and structure in place;
- Having a police payroll system in place in Bougainville;
- Passing a Bougainville Police law;
- And so on.

The National Government would then cooperate with the autonomous Government (and, in some cases, donors) in order to carry out all these practical steps according to an agreed timetable.

To take all such steps and locate the necessary funding and staff needed to help Bougainville carry out major new functions may take quite some time – in some cases perhaps even longer than the basic 12 months notice period provided for in the *Agreement*.

#### **(g) Funding Arrangements**

*The Importance of Finance:* A government needs money in order to use its powers, and provide services and to build infrastructure (roads and bridges, schools and health centres). To a large degree, the ability of our autonomous Government to use the powers that are available to it will depend on the amount of money it has available.

*Importance of Level of Economic Activity:* Up until 1989, before the conflict, there was a high level of economic activity in Bougainville. The National Government collected large amounts of tax from BCL, companies associated with BCL, plantations, and workers employed in Bougainville. The North Solomons Provincial Government collected sales tax and other taxes from the people. This tax money paid for the activities of the North Solomons Provincial Government and made a big contribution to the costs of running the National Government.

After the conflict there is not yet very much economic activity in Bougainville. As a result, there is less than K5 million a year in taxes collected in Bougainville. But the cost of the present provincial government budget is about K35 million per year. As a result, Bougainville depends on the National Government to fund most government services. Donors also provide a lot of help, mainly through development projects intended to restore infrastructure and encourage economic activity.

Because tax revenue available in Bougainville is going to remain low until the level of economic activity increases a great deal, Bougainville will continue to depend on outside funding for a long time.

*Principles Underlying Financial Arrangements:* The funding arrangements in the **Agreement** are based on three main important principles.

- The first is that the key goal is that Bougainville should become self-reliant in funding.
- The second is that all tax revenue collected in Bougainville from all sources will be paid to the autonomous Bougainville Government, and as the amount of tax revenue increases, Bougainville will get closer to self-reliance in funding.
- The third is that until self-reliance is achieved, the National Government will help the autonomous Government with grants.

*The Recurrent Grant:* This will be the name of the main grant to be paid to the autonomous Government. This grant will be paid every year. It will be calculated on the basis of the costs of the main activities that the autonomous government carries out. In the first year of autonomy, the base amount of the grant will be the costs of the existing services carried out by the Bougainville Interim Provincial Government. Then as Bougainville takes over new powers and functions, the amount of the recurrent grant will be increased. The amount the national government was spending in Bougainville on each new power or function before the transfer to the autonomous Bougainville Government will be added to the recurrent grant. The amount paid will be adjusted from year to year by either the percentage national change in cost of living or percentage change in payments into the National Government revenue fund (mainly payments from tax collections).

The recurrent grant will be funded by the amounts the National Government collects in Bougainville from Company Tax, 70 per cent of Value Added Tax and Customs Duties. Because the revenue from those taxes in Bougainville is so low at present, the amount of the grant will be topped up by the National Government from its revenues from other sources.

*Limited Guarantee re Payment of Recurrent Grant:* The **Agreement** guarantees payment of the grant every year. But it also allows the amount payable to be cut if there are serious economic problems that result in “across the board” cuts to the National Budget. In later years, when national

revenue increases, the National Government will be required to “do its best” to repay the amount of any cut.

*Fiscal self-reliance:* This important goal will be achieved when the amount collected in Bougainville from the same three taxes used to fund the Recurrent Grant (Company Tax, 70 per cent of Value Added Tax and Customs Duties) is more than the amount of the recurrent grant. After that, the additional amount collected – above the cost of the recurrent grant – will be shared between Bougainville and the National Government. The reason for sharing the revenue is that Bougainville will still be sharing in a lot of national Government services – for example, Bougainville students will be attending universities in Port Moresby, Lae and elsewhere. So it will be fair that Bougainville contributes to the costs of the National Government.

No one knows how long it will take to reach fiscal self-reliance. It will depend on how long it takes for economic activity in Bougainville to increase sufficiently to provide enough tax revenue to fund the grant in full.

*Other Grants:* There will also be other grants paid to the autonomous Government. There will be a single year ‘Establishment Grant’ paid to help set up the autonomous government. There will also be Restoration and Development Grants paid to help with restoration in Bougainville. Other conditional grants may also be paid by the National Government to fund particular activities.

*Tax Revenue to Autonomous Government:* The revenue from all other taxes collected in Bougainville - apart from Company Tax, 70 per cent of VAT, and from customs duties – will be collected by the National Government’s Internal Revenue Commission, and paid direct to the autonomous Bougainville Government. This will include revenue from Personal Income Tax collected in Bougainville, in addition to the taxes available to provincial governments (land taxes, liquor licensing fees, gambling fees, head tax etc.). As a result, Bougainville will receive tax revenue from many more sources than do provincial governments established under the *Organic Law on Provincial Governments and Local-level Governments*.

Bougainville will also have the power to impose and collect many present National Government taxes. But the very high administrative costs of establishing an effective tax office mean that it is unlikely this power will be

exercised for some years. Rather, the Internal Revenue Commission will collect on behalf of the Bougainville Government.

**(h) Personnel**

It is the staff – the personnel – that work for a government who carry out most of the day to day work of government. They plan government activities and deliver services to the people.

*Interim Arrangements for Public Service, Police and CIS:* When the autonomous Bougainville Government is established, it will take over the existing public servants and other staff of the Bougainville Interim Provincial Government. Most of the powers of the National Government's Department of Personnel Management and the national Public Services Commission will be delegated to Bougainville, so that the autonomous Government will have much greater control over the public service than it does at the moment.

In relation to Police, similar arrangements will be made. Powers for the Interim Provincial Government, and – later – the autonomous Bougainville Government – to direct and control police serving in Bougainville will be delegated by the National Government. The Police Commander for Bougainville will be appointed by the National Government Police Commissioner, on the nomination of the autonomous Government. This means that for the first time ever, a Bougainville government will be in control of police serving in Bougainville.

The arrangements in relation to the CIS will be generally the same as for Police.

*Long-term Arrangements for Public Service, Police and CIS:* When Bougainville is ready, it will be able to give the National Government notice of its intention to set up its own separate public service and its own police force. Bougainville can also establish its own correctional institution service to run any gaols for criminals that are set up in Bougainville.

Bougainville will not be completely free to do everything it wants in relation to public service, police and CIS. Cooperative and consultative arrangements have been agreed with the National Government so that such things as basic training and structures will be similar. However, in most aspects Bougainville will be free to structure these bodies as it wishes. Most

important is the simple fact that these bodies will then be creations of Bougainville law, and answerable to direction from the Bougainville Government.

**(i) Courts**

Bougainville will have power to establish its own system of courts. They can be courts from the village or community level, up to a court almost equal in power to the National Court. The PNG Supreme Court will be the court that deals with appeals from the highest Bougainville court. The costs of setting up courts above the level of district courts will have to be met by Bougainville.

**(j) Powers Over Criminal Law**

The autonomous Government will have power to make laws on the criminal law. In other words, its laws will be able to decide what things are criminal actions in Bougainville and what penalties should apply when criminal actions are committed. However, this will be a limited power. It will apply to everything except the Papua New Guinea *Criminal Code*. That important law on criminal matters will continue to apply in Bougainville. The autonomous Government will have limited ability to change it.

**(k) Human rights**

Bougainville will have similar powers to those of the national Parliament to regulate and restrict human rights. This means that the rights set out in the PNG *Constitution* will apply in Bougainville. So, for example, the right to freedom of movement in PNG will continue to apply to Bougainville.

But the autonomous Government will be able to pass laws that regulate the way in which the rights are exercised. In relation to freedom of movement, it could do this by passing laws on such things as town planning, land, economic development, vagrancy, and so on. But any such laws would not be able to result in unfair treatment of people. Bougainville laws restricting rights could also be checked and even overruled by the Supreme Court in Port Moresby if they were unfair.

Bougainville will also have the power to establish its own institution for enforcing human rights. This could be a specialised body – such as a Bougainville Human Rights Commission. Or the powers to enforce rights could be given to the Bougainville courts. As with other possible new

institutions, the costs of establishing a human rights commission would have to be met by Bougainville.

### **(l) Relations between governments**

The autonomy arrangements also cover the relations between the autonomous Bougainville Government and the National Government.

First, it provides for a joint Bougainville/National Government body that will supervise and check on the implementation of autonomy.

Second, it provides procedures for dealing with disputes between the National Government and Bougainville.

Third, it provides for cooperation and consultation between Bougainville and the National Government in relation to the operation of many aspects of the autonomous arrangements.

### **(m) Control – No National Government Power to Suspend or Withdraw Powers of Autonomous Government**

The *Agreement* provides the National Government with very limited powers to control the autonomous Government. In particular, there will be no power to suspend the autonomous Government or to withdraw powers and functions from it. As a result Bougainville will be in a very different position to the provincial governments established under either the old or the new Organic Laws.

However, the National Government will have strictly limited power to deal with serious financial mismanagement by the autonomous Government of grant money provided from Port Moresby – if that should ever occur. In particular, if the Bougainville Government does not act to clear up the problem, auditors of the National Government and Bougainville will jointly develop recommendations to remedy the problem. If Bougainville does not implement the report of the two auditors, then the National Government would have power to withhold further funds payable to the autonomous Government.

### **(n) Regular reviews of autonomy arrangements**

The Agreement provides that the autonomy arrangements will be reviewed every five years. A joint Bougainville and National Government body will

do this. The aim of the reviews will be to check on how well the autonomy arrangements are working. The review will be able to recommend changes to the arrangements. But it will be a matter for both the National Government and Bougainville to decide whether or not to accept any changes recommended by the review.

## **7. IS THIS “HIGHEST POSSIBLE AUTONOMY”?**

It was in 1995 that the Premier of the Bougainville Transitional Government, Theodore Miriung, proposed that Bougainville should get “highest possible autonomy” as part of any peace settlement. The present Bougainville leaders made the same demand in June 1999 when they began negotiating for a political settlement with the National Government.

There is no easy way to measure the degree of autonomy in any country. One way to measure is to compare the autonomy arrangements with:

- autonomy (or decentralisation) in other parts of the country (in PNG, that means comparing with the powers and other arrangements for provincial governments in all other parts of PNG);
- arrangements in other countries.

To make such comparisons, it is helpful to first identify features of the Bougainville autonomy arrangements that involve a high degree of autonomy. In doing this, it should be remembered that autonomy of a government below the national level means that it:

- choose structures intended to meet local needs;
- has the powers and the resources needed to organise development according to local priorities;
- is free from direction and control.

The features of the Bougainville arrangements that are consistent with high autonomy include the following:

- Bougainville’s right to make its own Constitution and choose its own structures;
- The extensive powers and functions that will be available to the autonomous Bougainville Government;
- The fact that those powers and functions include even limited powers to enter into foreign relations – including a power to enter into international agreements (under the authority of the national Government);

- Bougainville’s ability to establish its own:
  - Judiciary;
  - Public service;
  - Police;
  - Constitutional Office-holders (like an ombudsman);
- The very limited control powers the National Government will have over the autonomous Government (no powers to suspend the autonomous Government or withdraw its powers);
- The fact that the constitutional arrangements for autonomy cannot be changed without agreement of the autonomous Government.

There are aspects of the arrangements that indicate the autonomy is not at the highest possible level. The most important of these is the expected heavy reliance of the autonomous Bougainville Government on the National Government for funding. But even this limit on autonomy can be reduced if the Bougainville is successful in raising enough revenue by increasing the level of economic activity in Bougainville.

Bearing in mind these features, we can say that the autonomy arrangements for Bougainville offer far more autonomy than is enjoyed by provincial governments in other parts of the country. We can also say that the autonomy is very high when compared to other autonomous regions around the world.

## **8. DEMILITARISATION OF BOUGAINVILLE**

### **(a) Demilitarisation**

Many people believe that one thing that made the conflict in Bougainville so bad was the way in which weapons and military organisations were used to resolve problems. As part of efforts to encourage Bougainvilleans to resolve problems in peaceful ways, the *Agreement aims* want to get rid of military organisations and weapons from Bougainville as much as is possible. Measures of this kind are sometimes called ‘demilitarisation’.

### **(b) Six Aspects of Demilitarisation**

The *Agreement* aims to achieve a high degree of demilitarisation of Bougainville. It does this through six main things:

- An agreed plan for disposal of weapons by the BRA and the BRF;

- Phased withdrawal from Bougainville of the PNGDF and the Police Riot Squads, in association with the agreed weapons disposal plan;
- Restrictions on future deployment to Bougainville of the PNGDF and the Police Riot Squads;
- Agreement for the disbanding of the BRA and the BRF once their roles in weapons disposal are complete;
- Agreement by Bougainville that its Police will never include anything like an armed Police Mobile Unit, and that any CIS body it sets up to run gaols will not use high-powered weapons;
- Amnesty and pardon for people charged with or convicted of offences committed in connection with the crisis. (Amnesty means immunity from prosecution for offences where no prosecution has taken place. Pardon means wiping out the penalty - especially gaol sentence - and also the criminal record of those already convicted)

But there will not be a complete demilitarisation. There will still be weapons available to police, and the PNGDF will be able to do work in Bougainville in some circumstances.

### **(c) The Weapons Disposal Plan**

The agreed weapons disposal plan will proceed in three main stages, area by area around Bougainville.

The first stage will occur when Councils of Elders and Councils of Chiefs decide that an area is ready for weapons disposal. Then BRA and BRF members will hand in weapons to their unit commanders for storage in containers. (For example, in the BRA, a 'unit' is a group of 10 to 30 men operating at a local level, and several 'units' make up a 'company' of between 80 and 150 men, operating at district level.)

The second stage will involve BRF and BRA unit commanders delivering weapons to their company commanders for storage in secure containers in a small number of central locations.

After the constitutional amendments implementing the *Peace Agreement* have been passed by the National Parliament and by the time they take legal effect, remaining Defence Force and Police Mobile Unit personnel will have been withdrawn from Bougainville and weapons will be held in secure

containers. In other words, there will be no movement to secure containment until the constitutional amendments required to implement the *Agreement* have been agreed to by the National Parliament.

The secure containers will have two locks. The key to one lock will be held by the United Nations Observer Mission on Bougainville (UNOMB). The relevant ex-combatant Commander will hold the key to the other.

The UNOMB will verify that all parties are acting in accordance with the agreed weapons disposal plan. Only then will the constitutional amendments providing for autonomy and referendum come into operation.

The third stage of the plan will require making of a decision on the final fate of the weapons. The parties will make this decision within four and a half months of the constitutional amendments coming into effect.

#### **(d) Close Relationship between Weapons Disposal and Constitutional Amendments**

The close relationship between the weapons disposal plan and the constitutional amendments needed to implement the *Agreement* needs to be emphasised. The *Agreement* should result in pressure in two directions.

First, there should be pressure on the National Government and the National Parliament to support the amendments. This pressure should flow from the fact that under the agreed disposal plan, there is no requirement for secure containment until the amendments are passed.

Second, there will be pressure on ex-combatants to implement the agreed weapons disposal plan to the point short of secure containment. That is because even after the constitutional amendments are passed, they will not begin to operate as law unless the UNOMB certifies that disposal is complete. As a result, there will be no autonomous Government and no referendum under the constitutional amendments if the weapons disposal plan is not implemented.

### **9. RECONCILIATION**

All parties agree that reconciliation of those divided by the conflict continues to be of central importance to the peace process. The *Agreement* itself is intended to contribute to:

- Continuing the reconciliation among Bougainville groups;
- Reconciliation between Bougainville and the National Government.

The *Agreement* also provides that the parties will consult from time to time about the resources that might be needed to facilitate the continuing development of reconciliation efforts.

One of the most important aspects of reconciliation provided for in the *Agreement* is the commitment of the main ex-combatant and political groups in Bougainville to work together through the new autonomous Government. This is so important because much of the internal conflict in Bougainville since 1988 was conducted through opposing Bougainville organisations – combatant groups, political groups, as well as other organisations.

Under the Agreement, the BIPG and the BTG will cease to exist when the autonomous Government is established. The BRA and the BRF will disband as fighting organisations when their roles in weapons disposal have ended.

The signing of the *Peace Agreement* is itself intended as an important symbol of reconciliation. More importantly, the arrangements for autonomy and referendum are intended to contribute to reconciliation by creating the framework for a new and much more equal relationship between Bougainville and the National Government.

## **10. RESTORATION AND DEVELOPMENT FOR BOUGAINVILLE**

Infrastructure and services in Bougainville were either destroyed or badly damaged by the conflict. All parties agree that it is necessary to commit large resources to restoring and developing infrastructure and services. The Agreement makes some important provisions to encourage and guide restoration and development.

First, it provides for the National Government to make grants to the autonomous Government for restoration and development purposes.

Second, it provides for Bougainville to have some access to aid donors.

Third, it provides for a Bougainville controlled mechanism to be established to coordinate restoration and development. That body will include National Government representation.

## **11. CONTINUING ROLES FOR PMG AND UNITED NATIONS**

Most Bougainvilleans agree that the PMG and the UNOMB have contributed greatly to the peace process. Their presence has provided security and comfort for all sides, without which it is hard to see how the peace process could ever have been firmly established.

The *Agreement* provides for existing roles of the PMG and the United Nations to continue. In addition to both bodies continuing to carry out their existing, there are new roles for them. They are being asked to assist in implementation of the agreed weapons disposal plan. The *Agreement* indicates that their roles in this regard could be expected to last until late in 2002. The proposed new roles are evidence of the high regard in which both bodies are held for the ways they have carried out existing roles.

In addition, there is provision for the National Government to table the *Peace Agreement* in the United Nations Security Council. This move, together with the continuing role for UNOMB, will help to ensure that there is international scrutiny of the implementation of the *Agreement* and of the peace process generally.

Provision is also made for the possibility that any disputes between Bougainville and the National Government that might occur about the implementation of the *Agreement* might be dealt with through the Peace Process Consultative Committee (PPCC) – to the extent that such a role would be appropriate for the PCC.

The continuing and expanded roles for these bodies should contribute to stability and certainty in the peace process.

## **12. CONSTITUTIONAL CHANGE, AND “DOUBLE ENTRENCHMENT”**

The main things in the *Agreement* dealing with autonomy and referendum arrangements will be contained in amendments to the PNG *Constitution* or in an Organic Law.

Like most national constitutions, the PNG *Constitution* is much more difficult change than an ordinary law of the Parliament. The same is true of Organic Laws.

To change an ordinary law, a single vote of the Parliament is all that is required. That vote needs the support of a majority of the members of Parliament who happen to be present and voting on the day the vote is taken – a ‘simple majority’.

But to make a change to the *Constitution* or an Organic Law, it takes two separate votes of the Parliament, separated by at least two months. Each of the votes requires special majorities of the Parliament – usually a vote of at least two thirds of all the members of the Parliament.

This special protection of constitutions is often called “entrenchment”. That word simply means “protection”. It is like a defensive trench that protects a military position from attack. The special voting requirements protect a constitution from change.

There will be two levels of “entrenchment” for the constitutional amendments for autonomy and referendum. The first level will be the usual protection from change in the national Parliament.

The second level will be a requirement that no change can be made to the Bougainville provisions of the PNG *Constitution* unless the legislature of the autonomous Bougainville Government votes to support the amendment. It will require a two-thirds majority vote of the Bougainville legislature to approve amendments to the referendum arrangements. Only a simple majority vote will be needed to approve amendments to the autonomy arrangements.

“Double entrenchment” provides special protection for Bougainville. It means that no changes to the agreed constitutional changes for Bougainville can be made unless both the National Government and the autonomous Government agree to the changes.

**13. ENDING CONFLICT: DOES THE AGREEMENT DEAL WITH GRIEVANCES, PROBLEMS & CONCERNS (THE BASIC ISSUES)?**

Having now examined what the Agreement says, we can look again at the *basic issues* identified by the leaders in 1999 and assess whether the issues have been taken account of.

<b>Requirements arising from Basic Issues</b>	<b>Assessment of Provision in Agreement</b>
<p>1. Provides the powers needed to address basic grievances</p> <p>2. Allows capacity to address basic grievances to develop</p>	<p>1. Bougainville will have powers to deal with land, mining, environment and culture, and to control the way development occurs (so as to limit impacts of migration from other parts of PNG). Most importantly, there will be no major economic development – especially mining – unless B-ville choose to have it, and unless it is done in a way that B-ville determines.</p> <p>2. At the moment, the BIPG does not have the funding and trained personnel needed to take on and utilise effectively powers on land, mining, economic development etc. The autonomy arrangements allow Bougainville the time to develop capacity.</p>
<p>3. Maintains possibility of independence</p>	<p>3. The referendum arrangements mean that the question of independence is being kept alive. It will not be put off forever – only for 10 to 15 years.</p>
<p>4. Provides the powers needed to facilitate redress of past abuses and protects from future abuses</p> <p>5. Allows the capacity to address human rights abuses to develop</p>	<p>4. The National Court can be used now to deal with rights abuses. Bougainville will be able to establish its own institution for enforcing human rights in Bougainville.</p> <p>5. Autonomy allows Bougainville the time to develop capacity needed to make a human rights body operate effectively.</p>
<p>6. Promotes reconciliation between PNG and Bougainville</p> <p>7. Promotes reconciliation in Bougainville</p>	<p>6. The process of negotiating the Agreement has promoted reconciliation. Signing and implementing the Agreement should make further contributions to reconciliation.</p> <p>7. The process of developing and negotiating a common position has assisted reconciliation of leaders and factions, and contributed to the process of local-level reconciliation. Almost all factions have</p>

	agreed to work through the autonomous Bougainville Government in future.
8. Builds consensus in Bougainville on the political future of Bougainville	8. Developing a common negotiating position and negotiating with the National Government has already contributed to building this consensus. The autonomous Bougainville Government provides the basis for continued development in this regard. It is hoped the deferred referendum will also contribute.
9. Provides the powers to allow Bougainville's special needs to be met, and promotes return to normalcy through people-based development 10. Allows capacity in Bougainville to develop to enable meeting of special needs and promotion of a return to normalcy through people-based development	9. The Bougainville government will have very extensive powers. It will be able to plan and promote the pattern of development that best suits Bougainville. 10. Autonomy allows Bougainville the time to develop the capacity needed to plan and implement development in ways that meet needs through people-based development
11. Protects the peace between Bougainville and PNG  12. Protects the peace between Bougainvillean parties	11. The Agreement provides a framework for peaceful relations – through things such as weapons disposal and phased withdrawal, and through a new political relationship between PNG and Bougainville, based on cooperation and consultation. 12. The Agreement has helped reconciliation in Bougainville. It provides a balance between those who want independence and those who want to stay in PNG
13. Provides power at the community level  14. Provides democratic participation in decision-making	13. The Bougainville government will have power over local-level government, culture and development. It will be able to base government and development around local-level and customary forms of organisation, empowering local communities to plan and manage their own development. 14. The Agreement provides for Bougainvilleans to participate in choosing their own Constitution. Through that process, they will also choose how they participate in decision-making of the autonomous Government
15. Provides, at least, a high level of self-government	15. The autonomy arrangements provide for a very high level of self-government

16. Takes account of current government capacity limits and allows time for strengthening to occur	16. The autonomy arrangements provide for gradual take over of powers with priorities set by Bougainville. This will allow Bougainville to develop capacity needed to use powers available to it effectively.
17. Takes account of current weak economic base and allows time for strengthening	17. The weak economic base will limit internal revenue of the autonomous Government in early years. The autonomy arrangements provide powers to plan development so as to increase revenue.
18. Takes account of restricted revenue base	18. There will be grants from the National Government in the early years.
19. Promotes agreement with PNG on future political status of Bougainville	19. The National Government has agreed that the democratic process provided by a referendum is a fair way of deciding what form of government Bougainvilleans want.
20. Maintains international support	20. By reaching a negotiated settlement, providing for a democratic method of resolving the question of its political future, Bougainville has not just maintained but has increased international support.

#### **14. CHANGING BOUGAINVILLE**

On the basis of this assessment, we can say that the *Bougainville Peace Agreement* does address the concerns, problems and grievances that contributed to the conflict beginning, and to the concerns, problems and grievances that resulted from the fighting and which themselves gave rise to more conflict.

The challenge for Bougainville now is for its people to take advantage of the opportunities offered by this *Agreement* which they have shaped. It is up to the people to make the *Agreement* work, and to take the chance it offers to change Bougainville.

**Bougainville Technical Team  
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