

## **Bougainville Peace Process: Development of Constitutional Changes Needed to Give Effect to the Peace Agreement November 2001**

**By Anthony Regan**

The Bougainville Peace Agreement, signed on 30 August 2001, provided that the core elements of the Agreement should be given effect by changes to the Papua New Guinea constitutional laws. This could involve both amendments to the PNG Constitution, and the making of an “organic law”. Under the PNG Constitution, organic laws provide for the details of matters authorised by the Constitution (“organic” in the sense that they are organically connected to the Constitution), and are in general as difficult to make and to change as the Constitution itself.

From late September 2001, a small technical team of a few advisers from the parties to the Bougainville Peace Agreement assisted the two drafters of the constitutional changes. The main drafter was Sir James Fraser, First Legislative Counsel in PNG from 1978 to 2000, and now a consultant to the PNG Office of First Legislative Counsel. He was assisted for about one month by an Australian drafter provided under AusAID assistance arrangements.

The technical committee met with the Sir James Fraser once in late September, a second time on 19 October, and then worked continuously with the two drafters for two weeks from Monday 29 October to Monday 12 November.

This work resulted in a set of long and detailed draft amendments to the PNG Constitution (over 40 pages), and a supporting Organic Law (of almost 100 pages). The two draft laws were considered and approved by the PNG National Cabinet on Tuesday 13 November, and were published in the PNG National Gazette the same day (Tuesday 13 November 2001).

The work of the technical committee involved a great deal of complex work that involved a number of facets, including:

- discussion of conceptual issues (including the overall 'design' of the proposed constitutional framework);
- what has amounted to negotiation of some issues, including:
  - some that the Peace Agreement left to be resolved during the drafting process;
  - others that arose unexpectedly during the drafting process, some due to differing perceptions of what had been agreed, and
  - others resulting from developments during the period in which the drafting was being undertaken (for example, a court ruling on proposed legal arrangements for immunity for prosecution for ex-combatants expected before drafting was completed was not able to be

obtained, and as a result provision on that subject had to be included in the draft laws);

- commenting on successive drafts of the proposed constitutional amendments and the organic law on autonomy and referendum as they were produced.

The complexity and technical difficulty of the entire exercise has been in no small degree related to the length and complexity of the Constitution we have been working with. In word length (it occupies over 150 pages), the PNG Constitution is one of the longest in the world. (Some years ago a comparison by academics put it at the third longest, behind Yugoslavia and India.) The changes proposed by the Peace Agreement cut across most aspects of the existing Constitution. Such fundamental change to a long and detailed law almost inevitably resulted in long and detailed amendments.

Publication of the proposed changes in the Gazette has cleared the way for the first of two necessary votes in the National Parliament. Each of the two votes requires significant majorities. The PNG Constitution prescribes three distinct majorities for amendments to different sections of the Constitution. Most require a two thirds absolute majority, but some require an absolute majority - that is, more than 50 per cent of members, while 21 sections require a three quarters absolute majority. The first of the two votes needed if amendments are to become law cannot occur until at least one month after the date of gazettal – that is, no earlier than Thursday 13 December. The second vote cannot occur until at least two months after the date of the first.

To have achieved completion of the complex drafting work with 10 weeks of the signing of the Peace Agreement was quite an achievement for all involved. But in addition, there have been some unexpected developments which have contributed to a much more positive assessment being possible now than could previously have been expected in relation to one of the two main sets of potential difficulties in the way of achieving the necessary levels of support in the National Parliament by the time the first vote can be held.

The two sets of difficulties involve, first, ensuring that there will be sufficient of the 109 MPs present for the vote to be taken (a two-thirds absolute majority vote requires the support of 73 of the 109 MPS), and second, ensuring that enough of those present and voting actually support the proposed constitutional amendments and the proposed organic law.

The first of those difficulties looked like being very difficult to deal with when the process of finalising the amendments etc was coming close to the end of the year. In the PNG parliamentary system, where political parties are very weak, and where 50 to 60 per cent of MPs lose their seats every general election, not only is it seldom that more than 80 of the 109 MPs are present in the House, but as the date for a general election approaches, it becomes increasingly difficult to encourage MPs to leave their electorates for meetings of the Parliament. With a general election due in mid-2002, it has been difficult to muster large attendances in Parliament in the second half of 2001.

Of even greater immediate concern more recently has been the fact that as the first possible date for the first vote has moved closer to Christmas, the more doubt there has been about the necessary numbers of MPs being present for the vote. While at the time of the signing of the Peace Agreement on 30th August it had been expected that the drafting of the necessary constitutional amendments would be completed by beginning of November, permitting a first vote by beginning of December, it took far longer than the Bougainville parties had expected for the PNG authorities to begin work on the drafting. As a result, it was only on the morning of Monday 12 November that the drafting was completed.

As already noted, the first opportunity for debate and vote in the Parliament cannot occur until the elapsing of one calendar month after gazettal - Thursday 13 November – a date towards the end of the third week of what is already a much delayed budget session of the Parliament.

Until recently there was concern that with the approach of Christmas and the concomitant closing of schools, combined with growing pressures on MPs associated with approaching elections, there would be grave problems with ensuring the necessary numbers of MPs would be present in the Parliament by mid-December. Several factors have combined to offer the prospect of a change to this potentially gloomy picture.

Perhaps the most important change (from the Bougainville perspective) is that it has become clear that the PNG Government seems serious about getting the proposed laws passed. Not only have the key PNG officials worked hard and made valuable contributions in the technical committee over recent weeks, but there have also been various things done by the Government to make it more likely than might have been expected that the necessary numbers will be present in the Parliament. Much of what has been done is not solely related to Bougainville - rather there has been a conjunction of developments that have together resulted in a changed picture in this regard.

While the annual budget session of the Parliament usually starts around the second week of November, when the most recent session of the Parliament (in October) concluded, the date for resumption for the budget session was set at 26 November. Among the reasons for setting this later than expected date were two of particular relevance. There have been severe difficulties in completing the budget preparation. Further, a debate on the Bougainville Peace Agreement expected to be held in the October session of the Parliament was cut short, and is now planned for the first week of the session beginning 26th November. We understand that since the date for the budget session was set (back in October) the problems in framing the budget have got even worse, and so it may not be ready for tabling until perhaps the second week of the budget session, which would normally mean it could not readily be voted on until the third week (given the need for various steps in the Parliament, including the time needed for the Opposition reply to the budget). There is even discussion that the vote on the budget might not be taken until after the vote on the Bougainville amendments. That would itself contribute to pressure on MPs to remain in Port Moresby longer than could normally be expected. In addition, there was some discussion early in November that the Speaker of the Parliament (Bernard

Narokobi) was also trying to have a then as yet un-gazetted constitutional amendment (concerning the Salaries and Remuneration Commission) introduced in the December session. The Speaker is already a sympathiser to the Bougainville position, the need to have MPs present for a vote on 'his' amendment would add some personal interest to any pressure that might be brought to bear on the Speaker to organise the work of the budget session in such a way as to encourage MPs to remain in Port Moresby.

Of course, none of these developments can be expected to have much impact on the second major set of difficulties - involving obtaining the necessary support from however many MPs are present to ensure the two thirds support level is achieved. Without 'disciplined' political parties, and in a very volatile pre-election situation, with a reformist government in power that is experiencing some significant instability, it is far from clear if the necessary numbers of 'yes' votes can be mustered.

In this regard, it is going to be essential that Bougainville leaders (and non-Bougainvillean supporters of the Bougainville position) lobby hard for the necessary votes. For such lobbying to succeed in convincing some key MPs, it will be crucial that there is immediate progress 'on the ground' in Bougainville in relation to implementation of the weapons disposal plan agreed earlier this year between the PNG government and the ex-combatant organisations (a plan included in full in the Peace Agreement). There are, however, hopeful signs in relation to movement in relation to weapons disposal.

An additional, and extremely significant, development occurred in the final stages of drafting - a development which reduces the potential intensity of both sets of difficulties just discussed. This involves the parliamentary majority needed to support the votes for the constitutional changes. Until recently it had tended to be accepted that a three quarters absolute majority vote was required (82 of the 109 members). But as of the last week of the work of the technical committee, it was agreed that in fact only a two thirds absolute majority vote will be needed.

Of course, significant potential problems and possible hurdles remain. There are various uncertainties to deal with in Bougainville - uncertainties additional to those involved in the implementation of the weapons disposal process. While the core leaders of the Bougainville factions - who travelled to Port Moresby on Friday 9 November) were briefed on the proposed laws on Sunday 11 November and expressed their general approval, there will be a further necessity of satisfying leaders of the other Bougainville factions who were not able to go to Port Moresby. Further, there is always the imponderable element in the peace process represented by original Panguna landowner (new PLA) and BRA leader, Francis Ona, who remains outside the process, and who might attempt to mobilise support against the amendments.

These and other uncertainties mean that it is necessary to be cautious in predicting outcomes - but developments in the last few weeks certainly provide the basis for cautious optimism that key initial outcomes envisaged by the Peace Agreement can be achieved.