



Post-referendum Decision-making on Bougainville's Future Political Status: Two Policy Statements

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The edited keynote speeches that constitute the main part of this Discussion Paper were delivered at the 2022 Department of Pacific Affairs State of the Pacific Conference on 29 September 2022 at the Weston Theatre, J.G. Crawford Building, The Australian National University, in Canberra. As statements of policies of the Papua New Guinea government and the Autonomous Bougainville Government, the editing of the speeches is minimal. A contextual introduction that includes a brief update on developments in the post-referendum decision-making process since September 2022 is provided by Anthony Regan.

The wording of key documents emerging from the decision-making process that are referred to in the speeches is reproduced in appendices at the end of this paper in date order. These are:

1. Sharp Agreement, 13 May 2021
2. Bougainville independence timeline general framework 2021–2025, enabled in the first consultation meeting, Kokopo, 19 May 2021
3. Joint statement of first consultation meeting, Kokopo, 19 May 2021
4. Joint statement of second consultation meeting, Wabag, 5 July 2021, with Attachment A, 'Referendum results implementation road map'
5. Joint statement of third consultation meeting, Port Moresby, December 2021
6. Era Kone Covenant of April 2022.

Bougainville: The Post-Referendum Decision-making Process, 2019 – October 2023: A contextual introduction and update

Anthony Regan

The two speeches that make up most of this publication were presented as keynote statements in the opening session of the State of the Pacific Conference, conducted in Canberra, Australia, on 29 September 2022, by The Australian National University's Department of Pacific Affairs (DPA). They present the respective positions, late in 2022, of the Papua New Guinea government (Go-PNG) and the Autonomous Bougainville Government (ABG) on key issues arising in the post-referendum decision-making

process mandated by the August 2001 Bougainville Peace Agreement (BPA) and Part XIV of the Papua New Guinea (PNG) constitution which gave effect to the BPA. Those documents required that process to occur after the referendum on the future political status of Bougainville, which was held late November to early December 2019. In the referendum, with an 84 per cent turnout of Bougainvilleans registered to vote, an unexpectedly high 97.7 per cent voted for independence, rather than for the alternative option of greater autonomy for Bougainville, which was supported by only 1.7 per cent. The referendum, which independent observers evaluated as 'credible, transparent and inclusive' (BRC 2020:25), was conducted by an independent Bougainville Referendum Commission, chaired by former Irish prime minister Bertie Ahern.

While there are many published accounts of the Bougainville conflict and peace process, and some that deal with the referendum, despite the elapse of nearly four years since the referendum, there is as yet an absence of published material on the post-referendum decision-making process. The two speeches published here, and the six appendices referred to in the speeches (all key documents generated by the post-referendum decision-making process during three post-referendum consultation meetings in 2021), are intended to contribute to filling that significant gap in the literature about contemporary Bougainville. As statements of the positions in late 2022 of both governments, presented by the senior officials of each government, the speeches are of some historical significance, and accordingly are presented here with minimal editing.

The referendum was agreed to under the BPA, which was the peace settlement to the violent and deeply divisive civil conflict in Bougainville, 1988–97. It was signed on 30 August 2001 in Arawa (Bougainville) by the PNG prime minister and Bougainville leaders in the presence of international community witnesses. The BPA is often described as based on three main pillars: demilitarisation of Bougainville; autonomy for Bougainville; and the conduct of the referendum itself. The agreement was also designed to encourage its own implementation, by providing implementation incentives to the parties through not only provisions linking and

sequencing key steps but also a binding timetable for the conduct of the referendum. The agreement was given effect by both extensive amendments to the PNG Constitution (a new Part XIV was inserted) and an Organic Law on Peace-building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum (the Organic Law), both enacted in early 2002. The Organic Law, in particular, contained extensive detail on the conduct of the referendum.

The demand by the Bougainville leaders for a referendum on the choice of the future political status of Bougainville (which was required to include a choice of independence) was made by the Bougainville Revolutionary Army (BRA) early in the Bougainville conflict. Although independence had been an issue long before that conflict, dating back to at least the 1960s, the level and intensity of support for that goal were greatly enhanced by the experience of the violence and human rights abuses during the nine-year Bougainville conflict.

Of critical importance for the issues dealt with in the speeches presented here is that the constitutional provisions on the referendum are explicit that the results of the vote do not bind the Go-PNG. Instead, the BPA and the PNG constitution provide for a possibly three-stage post-referendum process for making a decision on the results of the referendum, and thereby finally deciding Bougainville's future political status. Those stages are: consultation between the governments about the referendum results; following that consultation (and subject to what occurs during the consultation), a decision by the PNG parliament on the referendum results; and potentially the reference of any difference that the governments may have about the referendum (including differences over a decision by the parliament on the referendum results) to an inter-government dispute resolution process. The potential third stage could possibly see any differences over constitutional issues arising from the post-referendum process being referred to the PNG Supreme Court.

The issues discussed in the two speeches have arisen in the context of the conduct, to date, of the continuing post-referendum decision-making process. While required by the PNG constitution, unlike those provision on the conduct of the referendum itself, the provisions on the post-referendum decision-making process contain very little detail. This lack of detail helps to explain the extremely slow implementation of the provisions for the process, and the emergence of many of the issues that the speeches presented here consider.

In advance of the referendum, there was concern in both governments that not only the conduct of the referendum, but also the managing of the post-referendum decision-making process could give rise to tensions and differences. Largely as a result of such concerns, in mid-2018, the governments agreed to establish a Joint Post-referendum Planning Taskforce, which in due course met eight times in 2019, developing proposals for managing the conduct of, and providing support to, the consultation process. Proposals for support included: appointing an independent

moderator to chair meetings, advise the parties, and resolve differences; establishing an independent secretariat to support the process; and guidelines on various aspects of the decision-making process.

Consultation – the first stage in the decision-making process – was expected to begin soon after the referendum, early in 2020. For a variety of reasons, however, the first consultation meeting did not occur until almost 18 months after the referendum. The factors involved in the delay included: unsuccessful attempts by the ABG in the first half of 2020 to abolish the two-term presidential limit under the Bougainville constitution; COVID-19 impacts on travel and the conduct of large meetings, which also delayed ABG general elections; a constitutional crisis in the PNG national government late in 2020; and the several weeks of national mourning in PNG following the late February 2021 death of founding PNG Prime Minister, Grand Chief Sir Michael Somare.

Although the post-referendum consultations did not begin till May 2021, after the September 2020 election of new ABG president, Ishmael Toroama, there was a series of engagements between him and PNG Prime Minister James Marape. In the course of those meetings early in 2021, agreement was reached on an ABG proposal to simplify the process for transfer of functions and powers available for transfer to the ABG from the national government under the BPA's autonomy arrangements and the consequential amendments to the PNG constitution. This agreement was recorded in the Sharp Agreement (see Appendix 1), which was seen by the ABG as an important step in its efforts to prepare for independence.

Despite the ongoing inter-government engagement after Toroama's election, by April 2021 the constant deferral of the commencement of the consultation process was generating considerable disquiet in the ABG and among Bougainvillean opinion leaders, a development about which the United Nations resident coordinator (who was following the process closely) became concerned, leading to heightened diplomatic activity. At least in part in response, in the first part of May 2021, the national government took urgent action to prepare for the first consultation meeting, and a commencement date of 18 May 2021 was agreed at short notice. In what became a somewhat chaotic rush to prepare for the consultation, the 2019 preparatory work by the taskforce was almost completely forgotten, and was not used in the conduct of the consultation process. The only exception concerned the taskforce proposal for a moderator, Marape and Toroama agreeing in November 2020 that Bertie Ahern should be appointed to that role. Though offered the moderator role, Ahern in fact never took it up in any practical sense, other than making a 'virtual' presentation at the third consultation meeting, and his lack of involvement saw his appointment revoked in mid-2022. No replacement has been made in the 15 months since then. In late 2023 however, an impasse in consultation about the decision-making role of the PNG parliament in relation to the referendum results has

given rise again to serious discussion of the possibility of identifying a suitable moderator who could be involved in the ongoing decision-making process.

Rather than follow the taskforce proposals, when consultation meetings got underway in May 2021, the two governments instead largely made use of the procedures developed for the Joint Supervisory Body (JSB), the main inter-government body for overseeing implementation of the BPA. Those procedures largely involve inter-government meetings between technical officers which develop positions and documents that are given brief consideration by much shorter inter-government meetings of politicians, usually of less than half a day in length. The use of the JSB procedures almost inevitably ensured that, despite the importance, difficulty and sensitivity of the issues involved in the post-referendum process, there was little opportunity for serious engagement and negotiation between the leaders of the two governments in the post-referendum consultation process. The lack of an actively engaged moderator also made it difficult to address and resolve difficulties arising, and differences between the governments, in the conduct of the process. The lack of an independent secretariat contributed to difficulties ensuring systematic preparation for and conduct of engagement between the governments.

The ABG presented its position about the referendum results to the first consultation meeting on 18 and 19 May 2021, in Kokopo, East New Britain. On the basis of the near unanimous vote of Bougainvilleans for independence, the ABG asked that PNG honour the will of the Bougainville people, by recognising Bougainville's right to achieve full independence, sovereignty and UN membership by 2025. Neither in that May 2021 meeting, nor in the subsequent two consultation meetings in July and December 2021, did PNG ever explicitly oppose that Bougainville position, nor did it propose an alternative position. Indeed, in that meeting (and at other points thereafter), Prime Minister Marape stated that the referendum results could not be ignored, and had a prominence like Mt Wilhelm, the highest mountain in PNG. At the same time, however, he expressed reservations about the Bougainville position, arguing that: a precedent of Bougainville seceding could encourage other resource-rich parts of PNG to follow suit, leading to PNG's dissolution; independence would be divisive of families and communities; and Bougainville was not ready for independence in terms of funding and capacity. He also emphasised that the final decision on the Bougainville independence issue was one for the PNG parliament, and not for him or the PNG team participating in the consultations. By both acknowledging the results and not opposing the Bougainville position, however, the PNG response encouraged ABG perceptions that the positions of the two governments were not far apart.

Towards the end of the meeting, Toroama tabled an ABG document under the name of the ABG attorney general, Ezekiel Masatt, entitled 'Bougainville Independence Timeline General

Framework 2021–2025' (see Appendix 2). It listed a number of steps that the ABG envisaged being taken between 2021 and 2025 in preparation for a final outcome of Bougainville independence in the form of United Nations membership. In general, these steps assumed that the outcome of the post-referendum decision-making process would be independence. For example, a step proposed for 2022 was: 'Set up the Bougainville Constitutional Planning Commission for Independence', and a step proposed for 2024 was: 'Bougainville Constituent Assembly provides feedback on the draft Independent Bougainville Constitution'. This 'timeline' document was not discussed in any detail, and was not referred to in the signed joint statement of the two governments emanating from the Kokopo meeting (see Appendix 3).

Then in the preparations for the second consultation meeting in July 2021 in Wabag, in Enga Province, the ABG's expectation of PNG support for its position on independence was further stimulated when the PNG officers tabled their own timeline, in this case termed a 'road map' of steps towards a final agreement. This curious document showed the final stage in the decision-making process to be 2030, not 2025, but specified that that final step would be 'Declaration of Independence of Bougainville', with no alternative possible outcome being included. At the same time, however, the 'road map' also removed several steps included in the earlier ABG 'timeline' which the Go-PNG regarded as pre-empting a final decision on the independence issue, significant among these being the ABG proposal for development of an Bougainville independence constitution. Despite the removal of such steps from the PNG 'road map', the important point for the ABG's negotiators was that the PNG officials were proposing a declaration of independence as the final step in the process, something that significantly elevated ABG hopes that independence was close to being agreed.

Buoyed by such hopes, the ABG officials argued strongly for 'reinstating' in the 'road map' some of the steps towards independence that the PNG officials regarded as pre-empting the decision on independence and which had therefore been omitted from the 'road map', notably development by the ABG of a Bougainville independence constitution. Inexplicably (at least in retrospect), PNG officials agreed to this demand, and so the draft 'road map' tabled jointly by officials of both government in the Wabag meeting included both the 'Declaration of independence' as the final step in the process, and steps by the ABG that assumed that Bougainville independence was the only possible outcome of the process. In particular, steps envisaged for 2022 included both: 'Establishment of Bougainville Constitutional Planning Commission', and 'Preparation of Bougainville Constitutional Planning Commission', and steps proposed for 2025 included: 'Implementation of Bougainville Constitutional Planning Commission', and 'Bougainville Constituent Assembly considers and adopts Draft Bougainville Independence Constitution' (see Attachment A to Appendix 4).

The elevated ABG hopes were only really checked (and initially only a little) when the partially revised 'road map' document was discussed at the second consultation meeting. At almost the last minute, PNG Prime Minister James Marape insisted on adding words so that the final step in the 'road map' attached to the joint statement of outcomes of the meeting was 'Declaration of Independence/Political Settlement' (see Appendix 4). As became clear in subsequent public statements by Marape, he intended the addition of the words 'Political Settlement' to signal that PNG envisaged some form of ultimate political settlement other than independence. Otherwise, however, proposed steps that the ABG officials had insisted on being included in the 'road map', notably the steps for development of a Bougainville independence constitution, were retained in the 'road map' (see Attachment A to Appendix 4). Otherwise, in that second meeting, the governments compromised on the date for the final stage of the decision-making process: rather than being either 2025 (ABG preferred) or 2030 (PNG preferred) it was to be in a two-year window, not before 2025 and not later than 2027.

On the day following the Wabag meeting, the front-page headline in one of the two PNG daily newspapers, the Post Courier, proclaimed that independence by 2027 had been agreed, and in support published one of the later versions of the 'road map' circulating in the Wabag leaders' meeting just before Marape's intervention added the words 'Political Settlement'. In response on the same day, the prime minister issued a statement emphasising not only that no agreement had been reached in Wabag, but also that the final decision-making authority in relation to the independence issue was vested in the PNG parliament alone. In the following months, the prime minister made several further statements emphasising much the same points. There was still no suggestion of an actual PNG position on the Bougainville independence demand, but it was at last becoming clear to the ABG leaders that gaining agreement to that demand might in fact be problematic!

Seriously disappointed at the dashing of their hopes that agreement to independence might be close, the ABG nevertheless remained fully committed to achieving independence. Only days after the Wabag meeting, the ABG announced a decision to establish the Bougainville Constitutional Commission with the role of developing a draft independence constitution. Subsequently, in a major statement to the PNG parliament in September 2021, Marape not only emphasised lack of agreement on independence and the final decision-making role of parliament, but also indicated that steps pre-empting parliament's decision, such as making an independence constitution, lacked any legal basis.

Frustrated by the fall-out from the Wabag meeting, the ABG took a different approach to the third consultation meeting, held in Port Moresby in December 2021. In his opening statement, President Toroama asserted strongly that the consultation process had now gone as far as it could. Instead,

attention should now turn to the second stage in the constitutionally mandated post-referendum decision-making process, namely a decision by the PNG parliament on the independence issue. In the absence of detail in the relevant provisions of the BPA and the consequential provisions of the PNG constitution, the two governments held starkly different views on how the referendum results should be tabled in parliament, and the extent of the parliament's decision-making powers. In part this situation arose because of significant differences in wording between BPA para. 311(a) and the corresponding provision of the PNG constitution, s.342(2), and in particular the omission from s.342(2) of the words 'final decision-making authority' found in para.311(a), in relation to the role of parliament. The absence of those words encouraged the ABG view that s.342(2) could be interpreted only in a way that ensured that the will of the people expressed in the referendum would in fact be honoured by agreement by the PNG parliament to independence. In contrast, the PNG position was that the role of parliament under s.342(2) must be interpreted by reference to the BPA provision for 'final decision-making authority', leaving parliament with an absolute discretion on the independence issue.

At the time of the December 2021 consultation meeting, general elections for the PNG parliament were scheduled six months later (June–July 2022), and there was some concern in both governments to ensure that at the same time as the issues about the role of the PNG parliament were being resolved, the issues so far agreed in the post-referendum decision-making process should not be readily undone should there be a change of government as a result of the election. The main matters that had been agreed were early tabling of the results in the parliament, and for the timetable for it reaching a final decision on the future political status of Bougainville — not before 2025 and not later than 2027. With that concern at the forefront, attention in the preparation for the December meeting turned mainly to agreeing what process should be used to not only protect what had been resolved to date from post-election change, but also for taking the referendum result to parliament and for determining its role and powers in relation to the results. The ABG proposed that a treaty between the governments should make the necessary provision. The prime minister instead proposed that the two governments agree to constitutional regulations, which under the PNG constitution can only be made, amended or repealed by the PNG cabinet with the approval of the ABG cabinet. The joint statement from the meeting (Appendix 5) called on joint officials meeting to develop an agreement that would determine the choice between a treaty and constitutional regulations as well as the key aspects of the parliament's decision-making process, all to be included in an agreement to be called the Era Kone Covenant (Appendix 6).

With some difficulty, negotiations between officials about the text of the proposed covenant that began in mid-January 2022 saw the content of the Era Kone

Covenant agreed, and the final document signed on 5 April 2022 (see Appendix 6). The major difficulty in the negotiations involved disagreement on the extent of the powers of the PNG parliament to make a decision on the referendum results. The ABG argued that parliament was limited to endorsing what was agreed to about the results between the two governments in the consultation process, a position which involved problems when little had in fact been agreed. In contrast, PNG continued to argue that the parliament was free to decide as it wished. The difference in positions was only partially dealt with in the covenant by leaving issues about the role of parliament to be defined later, in a jointly formulated report to the parliament on its decision-making role. The covenant also provided a timetable for the tabling of the referendum results in parliament, 'not later than the end of 2023'. All of these and some related matters were to be elaborated in jointly developed constitutional regulations. This was only partial agreement, because the difference over the power of the parliament to make a decision on the referendum results was unresolved.

Meanwhile, the ABG remained committed to achieving full independence within the time frame that had been agreed in the July 2021 Wabag meeting — no earlier than 2025 and no later than 2027. It continued to proceed with an ABG-wide 'Independence-ready' program that had been instituted late in 2020. Then in April 2022, it took definitive steps to implement its July 2021 decision to establish the Bougainville Constitutional Planning Commission (BCPC), claiming that it was doing so in accordance with the 'road map' attached to the joint statement emanating from the Wabag meeting. Despite the prime minister stating that there was no legal basis for such action, no attempt by the national government was made to respond to this development. The BCPC has been working ever since to develop proposals for what its Terms of Reference (approved by the Bougainville Executive Council) calls a 'home-grown' constitution. For the most part this work has involved conducting extensive public consultations about the content of the proposed constitution both in multiple areas of the four main regions of Bougainville (Atolls, North, Central and South), and with members of the large Bougainville diaspora in eight of PNG's 21 provinces. The BCPC secretariat having consolidated the hundreds of pages of reports of these consultations into a summary report of recommendations from all areas consulted, in October 2023, the BCPC began discussing its own recommendations for the content of the proposed Bougainville independence constitution. It seems likely that the aim of this work is not just to prepare for independence, but also to send strong messages to the PNG government of the irreversible commitment of the ABG, and of Bougainville more generally, to achieving no other goal but independence.

Under the Era Kone Covenant, the process of developing constitutional regulations was largely dependent on the two governments reaching agreement on the decision-making role and powers of the parliament, an outcome that proved elusive.

The nature and extent of the differences between them in late September 2022, over six months after the covenant was signed, is clear in the two speeches presented in this paper. By June 2023 little, if any, real progress had been made on developing either the proposed joint report for parliament or the constitutional regulations. Each side became increasingly frustrated with what they saw as the intransigence of the other.

An attempt to break the deadlock came in June 2023, with a June 2023 statement to the parliament by the PNG minister for Bougainville affairs, Manasseh Makiba. He explained that because 'officials on both sides have not been able to agree the role of the National Parliament in this process' (Makiba 13/6/2023:16), the parliament should determine its own process by using its powers under its standing orders to make a sessional order to meet the special needs of making a decision on Bougainville independence (Makiba 13/6/2023:20–21). He stated his intention not only to table the referendum results before the end of 2023 (Makiba 13/6/2023:18), which would implement part of the Era Kone Covenant, but also that in due course a vote could be taken in parliament on a motion to 'accept the results' of the referendum (Makiba 13/6/2023:21). He proposed that the sessional order would provide that the motion on accepting the results could not be moved until after three meetings from the tabling of the results (Makiba 13/6/2023:21) and that during the consequential delay a bipartisan parliamentary committee would organise a country-wide awareness and consultation program about Bougainville and the decision-making role of the parliament (Makiba 13/6/2023:17–18). After that, to pass the motion would require a vote in support from a two-thirds absolute majority vote of the members of parliament (Makiba 13/6/2023:21). Makiba emphasised that in his view parliament could 'make any decision' that it wished, contrary to the ABG view, which he described as that 'parliament should just endorse or approve the result' (Makiba 13/6/2023:16).

The ABG's attorney general and minister for Bougainville's independence mission implementation, Ezekiel Masatt, has been critical of Makiba's statement, saying that the two-thirds majority vote was proposed without consulting the ABG, or the two legislatures (PNG parliament and the ABG house of representatives) (*Post Courier* 28/6/2023); that achieving such a majority would be very difficult when most MPs have probably not ever dealt with Bougainville issues (*Sunday Chronicle* 25/6/2023); and that PNG 'was [now] hell-bent on making Bougainville independence an impossibility' (*Post Courier* 28/6/2023).

The lack of any agreement on how a parliamentary decision on the referendum results should be reached remains the key issue. The ABG position — that parliament should endorse what the two (executive) governments have agreed during the consultation process — cannot now be readily given effect. Having declared the post-referendum consultation process at an end in December 2021, there is no agreed

position available to be endorsed. Instead, the focus since the end of 2021 on the powers and role of parliament is at present likely to see parliament asked to vote on the results, and a Bougainville position likely to be presented as a demand for recognition of independence that is opposed by PNG. In those circumstances, it is highly likely that it will prove difficult in the extreme for the ABG leadership to build sufficient support in the PNG parliament for agreement to the Bougainville position.

At the time of writing (late 2023), it seems that there could be advantages for Bougainville to seek agreement from the PNG government to re-engage in the post-referendum consultation process with a view to exploring whether there might be ways of proceeding that take some account of PNG's concerns about the Bougainville independence demand. If this outcome were to be achieved it would be vitally important that efforts be made to ensure that the process is conducted in a way that permits each

government to seriously consider the concerns of the other, with a view to finding a compromise that takes some account of both the goals and the concerns of both governments.

The two speeches included in this publication were presented just a few months after the April 2022 signing of the Era Kone Covenant, at a time when the officials from the two governments were still involved in sporadic discussion on the issues needed to give effect to it. The speeches provide insights into the concerns and positions of both governments, which help to explain not only why the covenant was never implemented, but also the reasons why Minister Makiba took the approach he did in his 13 June 2023 statement. Hence, to a very large extent, the issues dealt with in the speeches and the views expressed there remain highly relevant to an understanding of the stage reached in the post-referendum decision-making process in mid-to-late 2023.

Autonomous Bougainville Government's statement at The Australian National University, Department of Pacific Affairs State of the Pacific conference, on behalf of President the Hon. Ishmael Toroama, MHR

Shadrach Himata

Chief Secretary, Autonomous Bougainville Government

I am here today to represent the people and government of the Autonomous Region of Bougainville (ARoB). The following statement is a reflection of the position of the ARoB President, Hon. Ishmael Toroama, and of the Toroama administration's Bougainville Independence Readiness Mission, launched late in 2020 (soon after the election of President Toroama), and the position of the Autonomous Bougainville Government (ABG) in the post-referendum joint consultations between the ABG and the Government of Papua New Guinea (Go-PNG).

In November 2019, a referendum was successfully conducted amongst Bougainvilleans (both in Bougainville and in other parts of PNG, Solomon Islands, and northern Australia). The purpose of the referendum was to decide on Bougainville's future political status, in accordance with the 2001 Bougainville Peace Agreement (BPA) and the PNG constitution. After having jointly considered all the possible political options, the two governments agreed to put only two options on the referendum ballot paper. The first choice was for an even higher form of autonomy than the current arrangements. The second choice was for Bougainville to become an independent sovereign nation. An overwhelming 97.7 per cent

of our people voted for political independence for Bougainville from PNG.

The 2019 Bougainville referendum is part of a wider Bougainville peace process intended to end conflict and restore peace in Bougainville after a 10-year bloody civil war (1988–1997) and to satisfy the yearning of Bougainvilleans for self-determination, a goal that even predates PNG's independence.

Bougainville's historical struggle for the right to self-determination was subjugated by oppression and the marginalisation of our rights. In the last 100 years we have had to endure hardships suffered under oppressive regimes that sought to take away our resources, our rights and — in the violent conflict 1988–1997 — even our lives.

Thus our struggle for independence has been a long one, from at least the 1960s, and continuing to the present. Bougainville's leaders made a unilateral declaration of independence from PNG on 1 September 1975, only days before PNG's independence day. In mid-1976, a political compromise was reached between the people of Bougainville and the Go-PNG. This was elaborated in the 1976 Bougainville Agreement, which resulted in the creation of the first elected provincial government in PNG — the North Solomons Provincial

Government (NSPG) — and to amendments to the PNG constitution in December 1976 and the passing of the Organic Law on Provincial Government in early 1977, under which provincial governments were introduced into all of the provinces in the country. However, the Bougainville Agreement allowed for a special arrangement of autonomy and self-government for Bougainville and its people, particularly through the financial autonomy that came through provision for all Panguna mine royalties — until then received by the PNG government — instead being paid to the NSPG.

Insurrection on Bougainville was reignited in 1988 when the landowners of the land destroyed or severely damaged by the huge Panguna mine pit and riverine tailings disposal sought to exert more control over their resources and to have a fair share in the benefits from the mine's profits. The highly profitable mine, which bankrolled PNG's independence, was operated by Conzinc RioTinto Australia through its majority-owned subsidiary, Bougainville Copper Limited. The refusal by the PNG government to listen to the landowners' concerns resulted in a ten-year civil war that cost as many as 20,000 lives and billions of kina worth of property loss. No province in PNG has lost 20,000 lives at the hands of the state, not only through direct fighting but also the harsh conditions imposed by a militarily enforced sea and air embargo in relation to Bougainville, which caused loss of lives through such events as childbirth complications, sickness and disease.

As the conflict, which had started in late 1988 in areas around the Panguna mine, progressed during 1989 and 1990, it was no longer seen as a war for our rights and resources, but instead a struggle for the people's right to self-determination after suffering at the hands of the national government and its military forces. In May 1990, Bougainville Revolutionary Army (BRA) leader, Francis Ona, made Bougainville's second unilateral declaration of independence.

The Bougainville crisis, as it was infamously known, was fought between the PNG security forces and the BRA in what turned out to be the bloodiest and most destructive conflict in the Pacific region since World War II. In August 2001 the BPA was signed between the people of Bougainville and the PNG government, a joint creation that formally ended hostilities between the parties.

The BPA was created to end the war and begin the peace process on Bougainville, and contains three main pillars: first, autonomy for Bougainville; second, a referendum for Bougainvilleans on independence for Bougainville; and third, weapons disposal by armed Bougainvillean groups and withdrawal of PNG security forces from Bougainville. The BPA is also a living document that paves the way for self-determination for Bougainvilleans. Under the BPA, the newly created ABG was empowered to administer the autonomy arrangements in Bougainville whilst acting as a transitional government for Bougainville as we anticipate our long-awaited independence. The BPA provided that after 10 to 15 years of autonomy, a constitutionally guaranteed referendum on

independence had to be conducted; a most unusual provision in international experience. The referendum, as well as autonomy, were provided for by the PNG parliament's enactment in 2002 of both amendments to the PNG constitution and the Organic Law on Peace-building in Bougainville — Autonomous Bougainville Government and Bougainville Referendum (the Organic Law). These provided a constitutional basis for a referendum for Bougainville, guaranteed under the PNG constitution and the Organic Law. Under the BPA, weapons disposal by armed Bougainville groups had to be certified by the UN as substantially complete before the constitutional arrangements for autonomy and the referendum came into operation, and this occurred in July 2003. Thus the people of Bougainville have fulfilled significant responsibilities under the BPA.

In May 2021, following the 2019 Bougainville referendum, the ABG and the PNG government began the post-referendum joint consultations, an essential constitutional process required under the BPA and s.342 of the PNG constitution. Under section 342, the two governments are required to consult about, and implement, the outcomes of the 2019 referendum (that is, political independence for Bougainville).

Three post-referendum consultation sessions were held in 2021: one in May, in Kokopo, East New Britain Province; one in July in Wabag, Enga Province; and one in December in the nation's capital, Port Moresby (see the joint statements made after each meeting, in Appendices 3, 4 and 5). The consultation meetings were jointly chaired by Bougainville President the Hon. Ishmael Toroama and the prime minister of PNG, the Hon. James Marape. While a number of issues have been resolved through these consultations, others are yet to be worked out. In December 2021, ABG president, Ishmael Toroama, stated the ABG position that the consultation process was over, saying the consultation process had been taken 'as far as we can', and that it was now time 'to address "head on" the long historical issue of independence as expressed in the Referendum Result' (Toroama 10/12/2021).

A major achievement through the consultations was the agreement on the timeline for independence, under the July 2021 Wabag Joint Statement and Referendum Results Implementation Roadmap (Appendix 4). The timeline specifies that final agreement on Bougainville's political future must be reached and implemented not before 2025 but not after 2027. Further provision in relation to the issues in question was recorded in the April 2022 Era Kone Covenant, signed by the president and the prime minister (see Appendix 6). The covenant confirms the previously agreed timeline and envisages the full process of the ratification of the referendum results in the national parliament, as provided for in the BPA, being covered under constitutional regulations, which are yet to be worked out by the two governments' technical teams.

The 2001 BPA envisaged the right of the people of Bougainville to choose their future political status being constitutionally guaranteed through two stages. The first was through the referendum itself. The

second was for the result of their vote to be acted on, as required and mandated by s.342 of the national constitution, initially through the post-referendum consultation process, but then through ultimate endorsement or 'ratification' by the parliament of the referendum result as the given choice of the people.

The provision for 'ratification' of the referendum results is found in paragraph 311(a) of the BPA, though not in s.342 (or any other relevant section) of the PNG constitution. In the spirit of the BPA, the word 'ratification' should be given its ordinary meaning. It was not used in the BPA in its technical meaning under the PNG constitution and/or international law. It just involves endorsement by the PNG parliament. The ABG position is that because the referendum result showed overwhelming support by Bougainvilleans for independence, the two governments are under a clear constitutional duty to conclude the process in accordance with s.342 of the PNG constitution and under international law principles, by agreement to Bougainville becoming independent.

We maintained our position during the joint consultations that the two governments are also obliged by international law principles, and particularly by the right to self-determination, to protect the Bougainville people's choice for independence. Furthermore, it is Bougainville's position that the PNG constitution is supreme, and not the parliament. The national parliament is therefore constitutionally obliged to accept the proposed pathway agreed to by the two governments under the Era Kone Covenant through the proposed constitutional regulations that are still under discussion, and so not yet agreed to by the two sides.

To reiterate, 'ratification' under its ordinary meaning was never intended to give the PNG parliament a veto power, enabling it to overturn the referendum outcome. Instead, it was intended to provide a way for the PNG parliament to decide on the choice made by the people on their political status, taking into full account the outcomes of the post-referendum consultations between the two governments. The constitutional guarantee of Bougainville's right to choose its political status has ushered in a new constitutional order in PNG, whereby it is not just necessary for the national parliament to protect the choice of the people, but it is also obliged morally to agree to external self-determination as a remedy for the oppression that the state had inflicted on the people of Bougainville over the years.

Even if the consideration by the parliament of the referendum results were to end up in a negative vote against independence, then under s.343 of the PNG constitution, the two governments would be required to resolve their differences through the dispute settlement process provided for in the BPA and ss.333 to 336 of the constitution. (There has also been agreement between the two governments to involve an agreed international moderator to assist the parties in resolving difficulties in the consultation process. That role was initially offered to former Irish prime minister, Bertie Ahern, who had been chair of the Bougainville

Referendum Commission from 2018 to 2020, but his limited capacity to commit to the role resulted in a joint decision in 2022 to end his role. No other person has yet been appointed as moderator.)

It is important for the PNG government to recognise that the long and detailed provisions concerning Bougainville in Part XIV of the PNG constitution are *sui generis*, meaning they are applicable only to Bougainville to meet its peculiar political status, in accordance with the BPA and the explicit wording of section 276(1) of the constitution: 'This Part applies in and in relation to Bougainville only'. Hence the provisions about autonomy and referendum very clearly do not apply to provinces elsewhere in PNG. Therefore, there should not be any fear or anxiety whatsoever on the part of the PNG government in relation to implementation of the referendum result becoming a precedent that other parts of PNG might seek to emulate.

In the same vein, it is also necessary for the PNG state to maintain the unity of PNG by ensuring that the decision of the national parliament is not repeated after Bougainville's independence. Any nation-wide consultation that has been proposed by the national government with a view to raising political awareness concerning the referendum result and the future political independence of Bougainville is categorically within the prerogative of the PNG government, and is not a matter for the ABG. The Toroama government will not oppose it as long as it is consistent with Part XIV of the PNG constitution and the 2001 BPA.

The important thing is that the Bougainville people were granted the legal right to choose their political status and the 97.7 per cent result has conclusively settled the issue. Bougainville's position regarding the role of the national parliament is as provided by the BPA — it is to protect the vote of the Bougainville people by endorsing the result of the referendum.

A failure to protect the constitutional and democratic choice of the people will amount to a breakdown of the state's legitimacy and would be grounds for Bougainville to assert its right under international law to remedial secession. In that scenario it will also allow the ABG to take appropriate action/s, should the national parliament fail to ratify or endorse the choice of the people for independence.

Bougainville's system of government has followed a partially presidential system of government, in terms of the direct popular election of its premier by the whole population of Bougainville and president under both its first (NSPG) (1976–1988), and second (ABG) (2005 onwards) constitutions. That system is different to the Westminster system followed by the PNG national government, where the head of government (the prime minister) must be a sitting member of parliament, elected by only the members of parliament. Bougainville has resisted the watering down of the direct mandate of the people, and so has rejected the way political parties dominate the election of the PNG prime minister, and has developed its own viable form of government.

Looking into the future, President Toroama has made it known in no uncertain terms that it is his policy,

and that of the ABG, that Bougainville must become independent. He has made it clear that choices about Bougainville's political future will not be compromised by imposition of a lesser political status, outside the constitutionally sanctioned processes under Part XIV of the PNG constitution. At the same time, however, the ABG, under his leadership, remains firmly committed to working within the existing legal and constitutional framework that governs the Bougainville peace process, and insists that the national government also commits to ensuring the joint implementation of this process.

Achieving political independence for Bougainville requires development on Bougainville to be holistic. This means developing the socio-economic and political capacities of Bougainville to ensure service delivery to the people is far reaching and that the people are actively involved in the development process in Bougainville.

The Toroama administration has introduced a six-point ABG strategy that looks at reforming and improving Bougainville through innovative means. Amongst other things, this involves: raising revenue; improving law and order; improving the public service machinery; and promoting good governance at all levels of government. These are part and parcel of our Independence-Ready Mission that has been in place since late 2020, and will set the foundations for an independent Bougainville in the future.

Complementary to our political drive for independence is our focus on developing the economic sector on Bougainville. We are without a doubt one of the most resource-rich islands in the Pacific. Bougainville's resources were the economic guarantor for PNG's independence in 1975, and it is now time we looked to providing for ourselves. The Toroama administration has initiated several

economic development programs through foreign direct investment and the development of both existing and new industries on Bougainville. These programs will earn revenue for Bougainville whilst creating an independent financial structure for a fiscally self-reliant Bougainville.

This would require the ABG undertaking rigorous policy and legislative initiatives in both the economic and social sectors that would set the foundations for development, growth and prosperity for a new Bougainville nation. On that note, we are currently focusing on 'low-hanging fruit' in terms of economic investments, whilst at the same time identifying high economic impact investments and programs that would help raise internal revenue generation opportunities as soon as possible.

Furthermore, we are also deliberately investing in essential infrastructure, such as power, telecommunications, water and sewerage, and transportation that would provide a conducive environment for business and commerce to thrive.

We cannot deny the difficult history that Bougainville has endured and the present challenges that we face as we continue to remain tethered to PNG. Our people have spoken almost unanimously through the 2019 Bougainville referendum of their determination to become an independent sovereign nation. We have fought and spilled blood to protect our rights and defend our people. By the same token we have promoted sustained peace and unity to date. So it is time for the national government to fully respect and endorse the wishes and aspirations of the Bougainville people to be politically free, liberated and independent.

In conclusion, it is the call of my President Toroama to let his people go!

The Bougainville Post-Referendum Process — The National Government Perspective

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Introduction

On 30 August 2001, the Bougainville Peace Agreement (BPA) was signed in Arawa, in what is now the Autonomous Region of Bougainville (ARoB). The agreement marked the formal end to the Bougainville conflict and through a process of constitutionally mandated milestones set the ARoB on a path to long-term peace and reform.

Amongst scholars and peace-practitioners, and to the United Nations, the BPA is regarded as one of the most

successful peace settlements of modern times. There is no question that this is the case. Since the agreement was signed, apart from some very localised conflicts mainly in south Bougainville, neither a bullet has been fired nor a life lost to the conflict that wracked Bougainville from 1988 to 1997. And the BPA has allowed the government of Papua New Guinea (PNG) and the Autonomous Bougainville Government (ABG) to embark upon a journey that we all believe will end in sustained peace.

Whilst much is made of the Bougainville conflict, and the harsh division it caused, it is important to recognise

that there is much more that unites the people of Bougainville and broader PNG than divides us.

Together, we represent a nation born out of colonialism, comprising diverse languages, cultures and history, and our collective drive for self-determination led to the peaceful transition of power from Australia. In the early years of independence, Bougainvilleans and Papua New Guineans alike carved out a system of decentralised government and a nation that stands to this day.

Whilst it is true that we have experienced our fair share of disappointments and setbacks over the 47 years since we gained independence, we have also grown together, shared together and learnt new ways together.

The fact is that the Bougainville conflict was a deep mistake. A mistake on all sides. It should never have occurred. With tens of thousands of lives lost, PNG as a nation bears the toll of this tragedy. But from conflict we have moved to consensus. Replaced are the guns and bullets of war, with careful and respectful dialogue.

Our late founding father, Grand Chief Sir Michael Somare, always had a special place for Bougainville in his heart. This was evident in the final years of his long life, when he travelled to Bougainville to spend time with another of our great founding fathers, former president of Bougainville, John Momis.

Like Sir Michael, millions of Papua New Guineans share a great affection for Bougainville and the region's people. Many Papua New Guineans have lived and worked in Bougainville, and many have Bougainvillean kin that they hold dear.

It is these ties that unite us as we work through the complex issues that relate to Bougainville's own drive for self-determination and independence.

The Bougainville Peace Agreement

The BPA was many years in the making. The origins of the peace process that produced it lie in two meetings in Cairns, Australia, in September and December 1995, instigated by the then premier of the Bougainville Transitional Government, Theodore Miriung, involving leaders of opposing Bougainville factions. Some 18 months later, in July 1997, the Burnham Declaration on the Re-establishment of a Process for Lasting Peace and Justice on Bougainville was signed. In large part because of the difficulties involved in the opposing Bougainville factions reaching agreement on a common Bougainville position for negotiations with PNG, it took two more years before negotiations for a lasting peace agreement began in Buka, on 30 June 1999. What followed was a careful process involving 26 separate negotiation sessions that eventually achieved agreement on the issues that were in dispute. The focus was on three major groups of issues, namely: autonomy in government arrangements for Bougainville; demilitarisation of Bougainville through disposal of weapons by armed Bougainville factions together with withdrawal from Bougainville of PNG security forces; and the holding of a deferred referendum for Bougainvilleans on secession of Bougainville from PNG.

This tripartite focus of the negotiations from June 1999 to August 2001 is reflected in the basis of the BPA in the same three pillars, often summarised as weapons disposal, autonomy and referendum. The BPA also provided for most of the matters agreed to in it to be given full legal effect by the PNG parliament making significant amendments to the PNG constitution, and the Organic Law on Peace-building in Bougainville — Autonomous Bougainville Government and Bougainville Referendum (the Organic Law) — providing detail of some of the provisions in the constitution.

The constitutionalisation of most of the BPA was achieved through insertion of a new Part XIV in the national constitution, achieved through enactment of constitutional amendment No.23, which came into effect on 25 June 2002. I would add that the passage of this amendment, which required two separate two-third absolute majority votes, at two separate sittings of parliament spaced at least two months apart, symbolised the degree to which all Papua New Guineans recognise the unique and special nature of Bougainville and the needs arising from the peace process.

The first pillar of the BPA — the establishment of an autonomous government for Bougainville — represents an arrangement unique in PNG, under which Bougainvilleans held a democratic and highly participatory constitution-making process conducted from July 2002 to November 2004, in which they made their own Bougainville constitution, and through that law chose to have their own elected parliament, a directly elected president, and other institutions of their autonomous government, such as courts, an ombudsman commission, and their own public service. It was that constitution, adopted by a Bougainville Constituent Assembly in November 2004, that provided for the establishment of the ABG, through elections that were held in May–June 2005. The establishment and subsequent successful operation of the ABG, with three more general elections held in 2010, 2015, and 2020, has been a remarkable achievement in implementing the BPA.

An equally significant aspect of the autonomy arrangements involves the constitutional provisions giving the ABG the right to 'draw down' 59 powers and functions from the national government. In other words, those powers and functions are available for transfer to the ABG, at its initiative, subject to giving at least 12 months' notice of intention for transfer, and jointly developing a plan in each case for the ABG to develop the capacity and resources it will need to exercise the particular power or function.

The second pillar — weapons disposal — saw a concerted effort in the early 2000s that resulted in the removal and destruction of thousands of weapons, a process independently verified by the United Nations (UN) in 2003 and 2005 as substantially completed. While it was acknowledged by the UN to be incomplete, the process resumed, with some further success, in the years just before the referendum.

The third pillar, which is now of increasing topical interest, was a deferred non-binding referendum on Bougainville's future political status, of which one option was to be independence, which was required

to be followed by a joint PNG-ABG post-referendum decision-making process on the final political status of Bougainville. I will discuss aspects of the arrangements for the referendum and the post-referendum decision-making process a little later.

Inter-governmental arrangements

Before discussing the referendum and the post-referendum processes, it is important to provide some context to the inter-governmental arrangements that guide the implementation of the BPA provisions on implementation of the BPA, and of the autonomy arrangements in particular.

Implementation of arrangements prescribed by the BPA is overseen by a Joint Supervisory Body (JSB) which, in practice, is jointly chaired by the prime minister of PNG and the president of Bougainville. The JSB consists of equal numbers of members representing the national government and the ABG. Part of the JSB's role is to provide direction and guidance to officials implementing the BPA, as well as being a platform for inter-government consultation, and for resolving differences and determining mutually agreed positions.

While much attention is rightly given to the referendum and the future form that Bougainville's political status will take, the autonomy arrangements are an equally important — in fact in my view, a more important — part of the Bougainville peace process, and implementation of the BPA.

Autonomous government for Bougainville, as I have said, is unique in its nature and form within PNG. No province elsewhere in PNG is accorded the right to attain the powers and functions that Bougainville can.

Whilst I would like to be able to speak to the complete success of the autonomy arrangements, I cannot.

The fact is that in the more than 21 years since the signing of the BPA, and the more than 17 years since the creation of autonomous government, just a fraction of the powers and functions available to the ABG have been drawn down. And to me, this represents a failing on the part of both governments.

The establishment of institutions, and the transfer of economically enabling powers, are the foundation upon which Bougainville's future can be secured, regardless of what form Bougainville's political status and arrangements may eventually take. They are the bedrock of stability that will enable Bougainville to become either fully autonomous or an independent nation state (should that be the path that is followed). But unfortunately, due to a range of factors that have, at least to some extent, been beyond the control of both governments, work has not progressed nearly as rapidly as was expected when the BPA was signed.

The Sharp Agreement

That is the reason why early in 2021, Prime Minister Marape and Bougainville President Toroama signed what is known as the Sharp Agreement (see Appendix 1). Under the terms of that agreement, the notification period and requirement for a capacity assessment for the drawdown of powers has been waived. The

idea behind this initiative was to give impetus to the transfer of powers process. This has been supported by resolutions of leaders of both governments at JSB meetings to build a more coherent framework for drawdown of functions and powers to occur, which includes adopting a sector-based approach, in part modelled on the highly successful law and justice program that operates across PNG, and in Bougainville in particular.

And whilst the implementation of the drawdown process since the ABG was established in 2005 has been slow, there have been some significant achievements and milestones. Long before the Sharp Agreement, the ABG had already drawn down its own public service powers, currently headed by my friend here today, Shadrach Himata, as chief secretary. Important departments have been established, and critical powers have been drawn down, including mining, lands, financial management and, to some extent, fisheries.

But the challenge that faces the ABG, as it does the national government, is not just drawdown of powers and the subsequent enactment of ABG laws. With the transfer of powers comes responsibility: the need to capacitate offices, establish both policies and regulatory frameworks, and fund important work. In the fiscally challenged environment that we have all faced following the COVID-19 pandemic, those activities which are central to the actual exercise of functions and power have become all the harder to achieve.

The election of Prime Minister Marape

Prime Minister James Marape, when he assumed office in mid 2019, made it clear that supporting Bougainville and reaching a final resolution on Bougainville's political future was a top priority. For the best part of the last two years, he held the Bougainville Affairs portfolio. He has been perhaps the most engaged prime minister ever in our history when it comes to Bougainville, and he has committed to working with the government and people of Bougainville to ensure that they are empowered to manage their own affairs, in an economically independent way.

He personally ensured that critically important final financial support was made available for the conduct of the 2019 referendum on Bougainville's future, and invested considerable time and effort in working with then president, John Momis, and Bougainville Referendum Commission chair, Bertie Ahern, to ensure that the referendum was free, fair, and conducted in accordance with internationally accepted standards. Since the referendum, he has travelled to Bougainville frequently, and since President Toroama was elected in September 2020, has met with him often, and has at every stage sought to keep the nation informed as Bougainville's journey continues.

The referendum

The referendum on Bougainville's political future took place in late November to early December 2019. Over 87 per cent of Bougainvilleans, both in Bougainville and

elsewhere in PNG (as well as in Honiara and northern Australia), who were registered to vote, under a remarkably accurate roll of voters, exercised their right to vote – a remarkably high turnout figure. And the outcome was that a resounding 97.7 per cent voted in favour of independence.

I will be honest in saying that the outcome of the referendum did not come as a complete surprise. The lead-up to the referendum saw vigorous campaigning on the part of the pro-independence side, and sadly, much less from those in favour of greater autonomy. But the fact is that the people of Bougainville have expressed their view, and it is now for the two governments to conclude the post-referendum decision-making process under the BPA and the PNG constitution, by bringing the results to the national parliament for a final vote.

The nature of the referendum

At this juncture, I want to speak a little more about the constitutional provisions related to the referendum, and in particular the obligations that they impose upon the national government.

Notwithstanding the fact that the referendum was free, fair, and conducted in accordance with international standards, it is important to note that the referendum outcome was never intended to be binding on the state. Paragraph 2 of the BPA is clear and reads as follows:

The agreement provides for the right, guaranteed in the National Constitution, for a referendum among Bougainvilleans on Bougainville's future political status.

The choices available in the referendum will include a separate independence for Bougainville.

The referendum will be held no sooner than ten years, and in any case no later than fifteen years, after the election of the autonomous Bougainville Government.

The actual date of the referendum will be set taking account of standards of good governance and the implementation of the weapons disposal plan.

The outcome of the referendum will be subject to ratification (final decision making authority) of the National Parliament.

The statement that the referendum outcome is subject to the 'final decision-making authority' of the PNG parliament is repeated in paragraph 311(a) of the BPA.

It is important, as we consider the post-referendum process, that we acknowledge that those who framed the BPA deliberately agreed to insert into the text that statement about the final decision-making authority of the PNG parliament. Whilst there has been some debate as to what the term 'ratification' means, in both practical and legal terms, the reference to the 'final decision-making authority of the national parliament' is clear and unambiguous. And it is the national government's view that the overwhelming vote for independence did not change this responsibility of parliament.

Part XIV of the national constitution provides the legal authority through which the terms of the BPA shall be met. It contains detailed provisions related

to a range of matters, including the conduct of the referendum, as well as the other two BPA pillars. By contrast it contains only brief provision for the legal and administrative arrangements that must be followed once the referendum has taken place.

Specifically, Division 7 of Part XIV of the constitution outlines the arrangements that apply to the referendum. This is in turn underpinned by the Organic Law, which articulates the administrative and legal arrangements for the implementation of the BPA, most notably in Schedule 1, which contains detailed rules for the conduct of the referendum.

But for the purpose of our discussion today, the provision that I want to draw your attention to is s.342 of the national constitution, the main provision on post-referendum decision-making, which reads as follows:

342. REFERENDUM RESULTS AND IMPLEMENTATION

1. The National Government and the Bougainville Government shall consult over the results of the Referendum.

2. Subject to the consultation referred to Subsection (1), the Minister responsible for the Bougainville Referendum shall table the results of the Referendum in the National Parliament and the Speaker of the National Parliament shall furnish to the Bougainville Executive a copy of the minutes of the relevant proceedings and of any decision made in the National Parliament regarding the Referendum.

It is important when reading this section of the constitution that the provisions contained in the BPA regarding the final decision-making authority of the parliament be kept in mind, particularly because s.278(3) makes the BPA available 'as an aid to interpretation' of any provision of the constitution or the Organic Law, where the BPA is relevant. Read together, the constitution and the BPA require the referendum results and the outcomes of consultations to be tabled in the parliament. Once that occurs, it is for the parliament to debate the matter and determine a motion. And for any motion to be carried, the parliament must exercise its sole authority in accordance with s.114 of the national constitution by way of vote on that motion. Of course, parliament could elect not to take a vote (which I personally consider to be highly unlikely), in which case in accordance with s.342(2) the speaker of the national parliament would simply be required to provide a copy of the minutes of proceedings to the Bougainville executive.

Post referendum consultations

But before we get to a vote, s.342(1) of the constitution requires that the two governments consult on the outcome of the referendum, a process that has been taking place since May 2021.

As secretary for the Department of Prime Minister and the National Executive Council, one of my roles is to co-chair the Joint Technical Team (or JTT) on Bougainville. The JTT undertakes an important role. It consists of high-level public service representation

across both governments and is responsible for reporting to leaders through the JSB on the implementation of measures contained in the BPA. This body also collaborates on matters related to the post-referendum consultations. In many ways, it acts as a sounding board for different government positions and a means through which compromise and consensus can be reached.

The joint post-referendum consultations themselves are chaired by the prime minister and the president, who in turn have been guided by the UN, and by Mr Bertie Ahern in his capacity as joint post-referendum consultations moderator.

To date there have been three consultation meetings. The first took place in Kokopo, East New Britain Province, in May 2021 (the joint outcome statement is in Appendix 3). The second in Wabag, Enga Province, in July 2021 (joint outcome statement in Appendix 4). And the final consultation, to date, took place in Port Moresby in December 2021 (joint outcome statement in Appendix 5). At each consultation, the two governments explored ways to fulfil the obligation contained in s.342 of the national constitution. There have been detailed discussions and to some extent debate on what form a vote in the parliament should take, and indeed whether parliament must vote on the referendum results at all.

The consultation meetings have discussed the post-referendum aspirations of the Bougainville government and considered a range of options and pathways for the future. Some of these are reflected in what is known as the Wabag Roadmap (Appendix 4). And whilst the two governments have not always been able to agree on the exact approach for taking the referendum results further, engagement has always been respectful. And for me, this is a demonstration of the maturity of the relationship that the two governments now have.

At this point, I would note that alongside our joint consultations, the Bougainville government has been undertaking work on a range of issues related to a future independent Bougainville state along the lines of aspirations contained in the Wabag Roadmap. It is this that forms the Bougainville position, where a process would be followed that would involve a recognition of Bougainville's independence by PNG, initially by 2025, with that recognition to be formalised (by way of Bougainville's admission to the UN) between 2025 and 2027. The road map proposes that a Bougainville Constitutional Planning Commission be formed to develop a constitution for an independent Bougainville, and that preparations be made for Bougainville to assume certain sovereign powers. But for the prime minister, the position of the national government has always been clear. At no point will the national government agree to any commitments or proposals that seek to presume a final decision of the parliament. Details of a final political settlement can only be addressed, and implemented, after the parliament has had a final say.

I appreciate that for our Bougainville colleagues, this approach has at times seemed frustrating, which is a view that I can understand. This is an issue that is deeply

personal for the Bougainville people, and I respect that for the vast majority of Bougainvilleans, independence is still the end goal. But we cannot lose sight of what the BPA says, nor may we seek to ignore or discard our national constitution, which is the highest law of the land.

This has been the basis on which the national government position in the post-referendum consultation process has been formed. As the prime minister has said, on many occasions, independence is not his to give. The Hon. James Marape MP has but one vote, and that is as the member for Tari-Pori. The prime minister will cast that vote, alongside all other 117 members of the national parliament, when the time comes.

I do not mean to underplay the significance of the role that the prime minister plays. He co-chairs the joint consultations, and of course he plays a leadership role in the national parliament. But as the prime minister has also often said, any decision on Bougainville breaking away from PNG is deeply personal, and it is his view that each member of the parliament should have their own say.

Let me now talk about the next steps and the agreements on the post-referendum process that have been reached so far by the two governments.

The Era Kone Covenant

On 5 April 2022, in the dying days of the 10th national parliament, the prime minister and President Toroama signed a document that is known as the Era Kone Covenant on the Finalisation of the Bougainville Referendum (Appendix 6). The covenant is so named, as the commitments that are contained within it were reached at Port Moresby's APEC Haus, which is located on traditional land known to Motuans as Era Kone.

The basis of the Era Kone Covenant is as follows.

First, the two governments, through the covenant, have recognised that the BPA is a joint creation, that the referendum was constitutionally sanctioned and that the final decision-making authority with respect to the referendum results rests with the national parliament. The covenant also references PNG's international obligations.

Second, the covenant documents the outcome of the consultations to date, namely:

- That the referendum results will be tabled in the parliament during the term of the 11th parliament (2022–2027).
- That the two governments will jointly formulate a brief to the 11th parliament on its role in giving effect to the decision-making process outlined in s.342 of the national constitution.
- To assist the 11th parliament, the head of state, acting on the advice of both the National Executive Council and the Bougainville Executive Council, may make constitutional regulations as envisaged by s.349 of the PNG constitution, prescribing all matters that are necessary or convenient to be prescribed for carrying out and giving effect to the agreements contained in the covenant.

- That the constitutional regulations will be protected by the double entrenchment provisions contained in s.349(2), meaning that such a regulation cannot be altered or repealed without the consent of both governments and, in Bougainville's case, the Bougainville executive.

The covenant contains specific time frames with respect to the agreed path forward:

- Reporting to the PNG parliament and the tabling of the referendum results and the outcomes of the joint consultations will take place no later than the end of 2023; and
- That following a vote of the national parliament, implementation of the agreed final political settlement, which may include independence, **will commence no earlier than 2025 and no later than 2027** (emphasis added).

Constitutional regulations

The prime minister has committed to do everything possible to ensure that the agreements reached to date, as reflected in the Era Kone Covenant, are honoured. That is why, in the latter part of 2021, the national government proposed that constitutional regulations should be made under s.349 of the national constitution. It is important here to note that the reason that regulations have been proposed is that they are protected by the double entrenchment provisions that I mentioned above, that apply to all of Part XIV of the national constitution. By proposing such a regulation be made, the national government is seeking to provide assurances to our ABG colleagues that the core commitments that have been reached, and the agreed process to be followed in determining a final political settlement will be upheld in law.

Whilst we had hoped to agree and finalise the proposed regulations before the 2022 national election took place, this was delayed due to concerns raised by the Bougainville side with respect to the authority of the national parliament.

The national government position

It is here that I want to make a very strong point. It is the national government's position that nothing can usurp the power and authority of the constitution. While our Bougainville friends have sought to make the case for PNG agreeing to and granting independence without a formal vote taking place in the national parliament, drawing on the example of PNG's own autochthonous experience in gaining independence, the legal advice of our most senior lawyers is that this cannot be allowed. To do so would simply be unconstitutional.

The foundation of our nation is the constitution. It cannot be discarded for the sake of convenience or political cause. As I said earlier, the way parliament makes a decision is prescribed by s.114 of the constitution. That is, any decision of the parliament shall be decided by a majority of votes of the members present and voting.

But putting aside our constitutional obligations, there is another important and more philosophical reason that parliament should retain final decision-making authority, as prescribed by the BPA.

PNG is a parliamentary democracy. The elected members of the parliament comprise and represent every person in our nation, including all the people of Bougainville. Put another way, the views that the members express represent the views of those in their electorates.

I appreciate that this insistence on recognition of the BPA provision on the role of the parliament causes some concern for our Bougainville colleagues. They argue that the people of Bougainville have already expressed their will, through the referendum, in favour of Bougainville becoming an independent state. This is not denied. It is acknowledged and accepted by the national government. But as the prime minister has said, a decision of such a magnitude must be sanctioned and endorsed by all the people. Papua New Guinea is a nation that comprises 1000 tribes, and over 800 languages. At the same time, however, we are a family. And like all families, when matters of dispute arise, it is important that each family member gets their say before a final decision is made, or a resolution put in place. This is also the Melanesian Way. Consensus is important, as is the need to talk through issues and understand implications.

National awareness

That is why the prime minister, in his inaugural address to the national parliament following his re-election in August 2022, made it clear that he intends to undertake a nationwide awareness and consultation campaign on Bougainville's future. I need to be clear here. This is not about holding a second referendum. It is not about undermining the Bougainville position or questioning the Bougainville peoples' aspirations. Not at all. A process of national consultation does not, and will not, undermine the commitments that the two governments have made. Nor will it alter the agreement that has been reached by way of the Era Kone Covenant.

For many Papua New Guineans, the history and context of the Bougainville crisis is not well known or understood. This is in large part because so many young people were born during and after the crisis took place. A national consultation and awareness process will allow us to inform all the people of our nation about the circumstances that have led us to this time, and the process that must take place to finalise the terms of the BPA.

It is the prime minister's view that many of our people will question why Bougainville is seeking to become independent. And whilst he would never seek to diminish the outcome of the referendum, or the will of the Bougainville people as expressed in that outcome, he considers it important, as we move forward with a final political settlement, that our people understand the basis upon which decisions about Bougainville will be made.

At the same time, the national government must also consult about, and examine, the constitutional

implications that may arise from Bougainville independence. This is because the constitution does not at present provide a mechanism or pathway to enable the creation of a new independent nation state. The national government must also carefully consider the implications that may arise in the context of other parts of our diverse nation.

The prime minister is of the firm view that PNG-wide awareness and consultations must be completed within the time frames that have been agreed to with respect to bringing the matter to parliament for a final vote. On this point I want to be clear. The process that we are proposing to undertake will not compromise the agreements that our two governments have reached to date.

I would also note that national consultation is not restricted to the national government. The prime minister welcomes a process where our two governments undertake this awareness raising and consultation together. Indeed, the prime minister has written to President Toroama proposing just that. In this way, it would ensure that the ABG is fully represented and heard as discussions take place.

The path ahead

So, having summarised the process that has been undertaken to date, what needs to come next?

Clearly, given the commitments already made, it is imperative that the two governments continue to work together to ensure that the terms of the Era Kone Covenant are met, and that constitutional regulations are agreed and put in place. As part of that process, the two governments need to come together and jointly formulate a report for the national parliament about the referendum results and the outcomes of the post-referendum consultations.

Arrangements must be made to table that report in parliament, providing the opportunity for members of the Bougainville government to be able to put their case to the parliament. There needs to be a process of concerted awareness across the nation, along the lines that I outlined above, and for the people of PNG to clearly understand the process that will take place. And of course there must be a motion that is put to the parliament that allows the members of the parliament to exercise their constitutionally mandated decision-making authority. But it would be wrong to think that this is all that is now required to conclude the Bougainville peace process and the terms of the BPA.

As I said earlier in this paper, the BPA was deliberately framed in such a way as to empower the people of Bougainville. And the mechanism for this was the creation of a unique system of autonomous government.

It is my contention that we must remain resolute in pursuing much more complete implementation of autonomous government in Bougainville. The fact is that after the referendum took place, focus shifted from practical measures to support Bougainville's economic growth and practical autonomy through drawdown of functions and powers to the question of independence. And in my view, this has been to the detriment of the people of Bougainville. Simply put, valuable resources

and efforts have been diverted in favour of the post-referendum consultation process. This has been at a cost to Bougainville's longer-term development.

Another part of the BPA that I neglected to reference in the earlier part of this paper is the requirement that regular reviews of Bougainville's autonomy arrangements take place. The first such review was conducted in October 2013 (PNG-ABG 2013), and the second in 2018 (PNG-ABG 2018).

What both reviews found was that there was an urgent and ongoing need to support the ABG to realise the true potential that the constitutional arrangements for autonomous government can provide. Both reports were critical of the national government's failure to fully adhere to constitutional grant provisions, and the ABG's own failures in terms of good governance. Taken together, the reports demonstrate that for Bougainville to realise its full potential, whether as an independent state or in another form, there is a need for investment in services, enhancements in public service capacity and the application of laws.

That is why, in closing, I want to emphasise the need for sustained efforts in implementing the terms of the Sharp Agreement and to accelerate the process of transferring powers and functions to the ABG.

The foundations of any state or polity rest on good governance and strong institutions. That is why, in the period ahead, as we consider and determine Bougainville's longer-term political future, we must maintain a focus on enlivening those powers and functions that are already available to the ABG.

The prime minister has been clear that economic independence for Bougainville must be achieved, whether to ensure full autonomy or independence, a goal he holds for every part of PNG; for no nation, whether large or small, can sustain itself on aspiration alone.

That is why the prime minister has maintained a strong focus on delivering economic investments to Bougainville. He has directed that outstanding constitutional grants be paid, and that efforts be focused on building the capacity of the ABG public service.

Enhancing coordination

Finally, it is the prime minister's view that regardless of the outcome that comes from a vote in the national parliament, there is a need for greater coordination efforts to deliver on the terms of the BPA and any agreed final political settlement. This requires not only a whole-of-government approach, but a genuine mechanism that will facilitate and aid partnership and support the needs of both governments.

Last year, the national government, with the support of the government of Australia, commissioned an independent review of the National Coordination Office for Bougainville Affairs (NCOBA). What that review found was that NCOBA lacks the capacity to effectively manage and coordinate either the implementation of the autonomy arrangements or the joint peace and post-referendum consultation process. Whilst established with an intent to perform a coordination and broader oversight role to aid the work of the two governments,

the organisation has evolved more into an arm of the national government and has struggled to drive coordination of whole-of-government implementation of key measures.

Given this, last year the National Executive Council, PNG's cabinet, directed that institutional reform be explored along similar lines to arrangements that were put in place during the referendum. Then, an independent Bougainville Referendum Commission was established to coordinate and manage all activities related to the referendum process.

Such a model could also be meaningfully deployed to support broader work related to the post-referendum process and continued implementation of the BPA. It is envisaged that, subject to final consultations and agreement between the two governments, a new commission would be formed. The commission would be headed by an independent commissioner accountable to both the prime minister and the president through the JSB. The commissioner would be supported by a joint government oversight board that would vet and advise on proposals for the JSB, oversee implementation of the agreed final political settlement and ensure accountability and oversight of the commission's work. The work of the commission would be governed by an act of both parliaments that clearly outlines the role and mandate of the organisation.

In practical terms, arrangements for a reconstituted NCOBA could also be prescribed in a constitutional regulation under s.349 of the constitution. Subject to broader views of the two governments on the enactment of such regulations, these arrangements could complement and support implementation of the agreed final political settlement. The regulation would operate much like Schedule 1 to the Organic Law on Peace-building which prescribed the process for the conduct of the referendum and the role of the Bougainville Referendum Commission (BRC). This could in turn be underpinned by a charter, like that which was jointly endorsed for establishing the BRC.

Further discussions on the proposed commission are expected to take place in the coming months, when the next meeting of the JSB convenes.

Conclusion

To conclude, we have come a long way over the 21 years since the BPA was signed. Peace has been sustained within the ARoB.

The BPA has stood the test of time. And whilst some elements have been more successful than others, the realisation of autonomous government has been a major achievement. Bougainville has now successfully conducted four elections for the Bougainville legislature, and for the office of the president. Powers in important areas such as mining, the public service and financial management have been drawn down.

But despite this, only a fraction of the 59 powers and functions available to the ABG under s.290(2) of the PNG constitution have been transferred. Whilst there is a range of factors that have impacted on the

transfer process, more should have been done in the 17 years since the ABG was formed.

The Sharp Agreement, signed early in 2021, is a positive initiative. It provides a basis for the rapid acceleration of the transfer of powers. But this requires more than simply the enactment of laws. There is also the need to enhance capacity, build regulatory structures and fund important work.

Since first taking office in 2019, Prime Minister James Marape has invested significantly in Bougainville. His desire to respectfully conclude the Bougainville peace process has been steadfast. He has continued to engage with the Bougainville president, and for the best part of the last two years has fulfilled the role as minister for Bougainville affairs.

The referendum on Bougainville's future was constitutionally mandated. It was free, fair, and conducted to accepted international standards. The result was emphatic. More than 97 per cent of voters chose independence over greater autonomy. The result was constitutionally sanctioned, and it must be respected.

But at the same time, the referendum was never intended to be binding on the state. The framers of the BPA were clear on this point, and this is reflected in the nation's constitution. And this must be also respected.

Constitutionally mandated post-referendum consultations have taken place in a spirit of openness. Discussions have been respectful. Whilst matters of constitutional interpretation have at times been contentious, the signing of the Era Kone Covenant on the Finalisation of the Bougainville Referendum marked a significant moment where the two governments were able to agree on the pathway that must be followed to bring the referendum results to the national parliament, which in turn are to be captured in a constitutional regulation.

Under the terms of the covenant, the referendum results must be tabled in the national parliament by the end of 2023, and once the parliament has deliberated and reached a resolution on the referendum outcome, implementation of the agreed final political settlement, which could involve independence for Bougainville, must commence by no earlier than 2025 and no later than 2027.

In terms of next steps, much work must take place. The report to parliament must be formalised and mutually agreed, and as the prime minister has instructed, national awareness must occur. This must happen within the time frames that have been agreed.

The path ahead will not be easy. There is much work still to be done. The focus on independence has come, to some extent, at the expense of sustained efforts to cement autonomous government. Work on implementation of the Sharp Agreement must progress, and the foundations for strong institutions must be laid.

In all of this, a critical factor will be coordination and longer-term implementation. It is on that basis that the national government has formed the view that the time may have come to establish a formal independent body to oversee the continuing peace process and implementation of the agreed final political settlement.

Such a body would be neutral and report to both governments, guided by an advisory board.

Peace in Bougainville has been maintained due to the political dialogue process. Whilst the path we have taken has not always been easy, we have avoided further conflict. Regardless of what form Bougainville's political future may take, Papua New Guineans and Bougainvilleans will always have a close bond and shared history.

And it is that which will endure as we continue our efforts to formally conclude the Bougainville peace process.

Author notes

Ivan Pomaleu OBE is the Papua New Guinea (PNG) national government's Chief Secretary, and at the time of the presentation of his address was the Secretary for the Department of Prime Minister and the National Executive Council, a position he had held since January 2021. In this role, he has oversight of whole-of-government policy and program delivery. He co-chairs – with Mr Himata – the (PNG and ABG) Joint Technical Team on Bougainville, supporting Joint Supervisory Body meetings, and post-referendum decision-making meetings. Prior to joining the department, Ivan held various positions in the Investment Promotion Authority, including as managing director from 2001 to 2016. From 2013 to 2019 Ivan was PNG's ambassador for APEC. He holds a bachelor of science from the University of Papua New Guinea, a diploma in economic planning from the International Development Centre of Japan, and an MBA from Deakin University, Victoria, Australia. Ivan is originally from Manus Province and now lives with his family in Port Moresby.

Shadrach Himata is the Chief Secretary of the Autonomous Bougainville Government (ABG). He worked in the mining industry, both in PNG and abroad, for six years, before holding a series of senior mining sector-related posts in the PNG Public Service, in the Department of Mining, the Mineral Resources Authority and the Department of Mineral Policy and Geohazards Management, where he was departmental secretary until his 2017 resignation. He then became secretary of the ABG's Department of Mineral and Energy Resources, then deputy chief secretary Policy and Strategic Planning, before becoming first acting, and then in 2022 permanent chief secretary of ABG. He co-chairs – with Mr Pomaleu – the PNG and ABG Joint Technical Team on Bougainville. To date he has served a total of 25 years in the public service, for both PNG and Bougainville. Shadrach holds a bachelor degree in mineral process engineering from the University of Technology and postgraduate qualifications in mineral economics from Curtin University, Perth, Western Australia. Shadrach is from the Nuguria (or Fead) islands, north-east of Buka Island, and currently lives in Buka.

References

BRC (Bougainville Referendum Commission). 2020.
Final Report: The Final Report of the Bougainville Referendum Commission on the Conduct of the

Bougainville Referendum.

Makiba, M. 13/6/2023. Hon. Manasseh Makiba, MP, Minister for Bougainville Affairs, Ministerial Statement. Copy held in A. Regan's files.

PNG-ABG. 2013. Joint Review of Bougainville's Autonomy Arrangements by Government of Papua New Guinea and the Autonomous Government of Bougainville: Joint Report by both Governments to the Bougainville House of Representatives and the National Parliament of Papua New Guinea pursuant to the National Constitution Section 337(1)(a). 26 October. Waigani, PNG: Government Printer.

PNG-ABG. 2018. Government of Papua New Guinea and Autonomous Bougainville Government – Joint Supervisory Body. Second Independent Autonomy Review.

Post Courier. 28/6/2023. Road Block to Independence.
Sunday Chronicle. 25/6/2023. Roadblock. Constitution Is Supreme Not Parliament. Independence looks impossible under PM Marape. 25 June. Copy held in A. Regan's files.

Toroama, I., 10/12/2021. President Hon. Ishmael Toroama, MHR Statement and joint statement at the Third Joint Consultation Meeting.

Appendix 1: Sharp Agreement

SHARP AGREEMENT

On the Dispensation of Constitutional Requirements Relating to the Process of Transfer of Functions and Powers

An Agreement proposed at the Sharp Memorial Centre, Arawa, and made today at Port Moresby between the **Government of Papua New Guinea** and the **Autonomous Bougainville Government** to remove impediments to the constitutional process of transfer of functions and powers.

Preamble

Whereas Section 295 of the National Constitution provides for a process for the transfer of functions and powers from the National Government to the Bougainville Government by which a function or power may be requested by the Bougainville Government to be transferred to it; and

Whereas the pre-requisite steps for initiating the process for transfer of a function or power being for Bougainville to assess its needs and capacity in relation to the function and power; and, for the Bougainville Government to give to the National Government 12 months' notice of its intention to seek the transfer of the function or power; and, for Bougainville to then consult with the National Government concerning the transfer of that function or power; and

Whereas Section 295 of the National Constitution further provides that both Governments may however agree to waive or dispense with those requirements; and

Whereas the Prime Minister of Papua New Guinea has on the occasion of the declaration of the result of the Bougainville Referendum on the 13th of December 2019, and on other occasions, declared his Government's commitment to facilitate the transfer to Bougainville of all powers available to Bougainville under Section 290 of the National Constitution; and

Whereas both Governments understand the need also to remove other forms of economic and financial controls which hinder the ability of the Autonomous Bougainville Government to effectively perform its function:

It is now hereby **AGREED** as follows:

1. This Agreement abrogates the application of the ***Memorandum of Understanding between the Government of Papua New Guinea and the Autonomous Bougainville Government on the Overarching Framework for the Transfer of Functions and Powers from the National Government to the Autonomous Bougainville Government Pursuant to the Bougainville Peace Agreement*** of 2017;
2. The requirements under Section 295(a) and (b) of the National Constitution relating to the process of transfer of functions and powers available to Bougainville under Section 290 of the National Constitution, irrespective of whether a specific request was made or not by the Bougainville Government since the establishment of the Autonomous Bougainville Government, are dispensed with, effective as of the date of this agreement;
3. The Autonomous Bougainville Government shall, in consultation with the National Government, proceed to develop and continue to implement agreed plans for the transfer of functions and powers for which the Bougainville Government shall become responsible in accordance with the Bougainville Peace Agreement and Section 3 of the ***Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum, 2002***;
4. The Autonomous Bougainville Government shall as from this day be at liberty to legislate on any, or all, of those areas or matters under Section 290 in accordance with agreed plans;
5. All outstanding issues of the transfer of a function and power for which notice under Section 295(b) has been given, which includes the signing of inter-agency memorandum of understanding, will continue to be pursued to their completion.
6. All economic and financial controls by the National Government that continue to impede on the ability of the Autonomous Bougainville Government to effectively manage its own revenue collection – whether or not these controls have arisen under agreed plans by the implementing agencies as envisaged by Sections 4, 5, and 39 of the ***Organic Law on Peace-Building on Bougainville – Autonomous Bougainville Government and Bougainville Referendum 2002*** – shall be reassessed or reviewed by the relevant agencies and have them removed as soon as practicable.

Signed at Waigani this 13th day of May 2021.

Hon. JAMES MARAPE, MP
Prime Minister
Government of Papua New Guinea

Hon. ISHMAEL TOROAMA, MHR
President
Autonomous Bougainville Government

Witnessed by:

Hon. BRIAN KRAMER, MP
Minister for Justice
Government of Papua New Guinea

Hon. EZEKIEL MASATT, MHR
Attorney General & Minister for Bougainville
Independence Mission Implementation
Autonomous Bougainville Government

Appendix 2: Bougainville independence timeline general framework 2021–2025

Autonomous Bougainville Government

BOUGAINVILLE INDEPENDENCE TIMELINE GENERAL FRAMEWORK 2021 – 2025

Presented to the Joint Technical Team on Consultation for Bougainville Independence – Wednesday 19 May 2021

2021

By the end of 2021, all of the following key milestones would have been achieved:

- Execution of the Sharp Agreement Joint Implementation Plan (completion of the transfer of all Section 290 Powers and Functions).
- Bougainville Parliament Legislates Section 290 Powers & Functions.
- Bougainville Economic Development Plan Established.
- Bougainville Long Term Development Strategy refined (capturing all Section Independence Ready plans).
- Progressing Bougainville Independence Constituency Ready Missions.
- Both Governments will have an agreed definition of Ratification and method of Endorsement as reaffirmed by both Governments within the Joint Communique.
- Establishment of a Joint Parliamentary Standing Order on Ratification process.
- Establishment of Foreign Missions Coordination Office on Bougainville.
- Bougainville will be able to fully participate in International trade.

2022

By the end of 2022, all of the following key milestones would have been achieved:

- Establishment of a One-Line Budget system for Bougainville.
- Declaration of Self-Government of Bougainville in June 2022. (Constituent Assembly)
- Final participation of Bougainville in the PNG National Elections.
- [left blank]
- Set up the Bougainville Constitutional Planning Commission for Independence.

2023

By the end of 2023, all of the following key milestones would have been achieved:

- Setting up Sovereign Institutions to implement Section 289 Powers and Functions such as;
 - o Central Banking and Currency
 - o Telecommunication and Postal Services
 - o Highly Migratory and straddling Fish Stocks
 - o Defence
 - o Defined Territory and Exclusive Economic Zones
 - o Power over Citizenship
 - o Quarantine
 - o International Civil Aviation including Bougainville Air Space
 - o International Shipping
 - o Customs
- Full capacity gained to implement the Sovereign Powers and Functions.
- Bougainville Internal Revenue surpasses the Recurrent Grants from the National Government.
- All Joint Consultations would end and Ratification process commences followed by National Constitutional Amendment (if need be).

2024

By the end of 2024, all of the following key milestones would have been achieved:

- Ratification of the Joint Consultation outcome.
- Bougainville Constituent Assembly provides feedback on the draft Independent Bougainville Constitution.

2025

By the end of 2025, all of the following key milestones would have been achieved:

- First election of the Independent State of Bougainville.
- All Section 289 Powers and Functions fully operational.
- Bougainville fully recognized as a Sovereign Nation.

Tabled by (signed)

Hon. Ezekiel Masatt, AG, MHR

Minister for Bougainville Independence Mission Implementation

Appendix 3: Kokopo Joint Statement

JOINT STATEMENT

On the Outcomes of the first Post-referendum Consultations held at Kokopo, East New Britain.

Whereas we acknowledge the requirements under s.342 of the Constitution for both the National Government and the Autonomous Bougainville government to consult on the results of the Referendum.

Whereas we jointly recognize that the first post referendum consultations (first consultations) have been held from 18th–19th May, 2021 here in Kokopo, East New Britain.

We jointly acknowledge that the results of the Bougainville Referendum have been tabled in the first consultations and that the Bougainville people have voted 97.7% in favour of Independence.

We jointly appreciate the positions of both Governments on the Referendum results and the road ahead of us.

We jointly direct the technical teams for both the National Government and the Autonomous Bougainville Government to:

- I. consult on the definition and process of ratification;
- II. identify Constitutional issues relating to the referendum result and the tabling of the consultation outcomes in the National Parliament;
- III. develop a Joint Roadmap on Post-Referendum Consultations; and
- IV. fully implement the Sharp Agreement as a matter of priority.

We jointly agree that the second Post-Referendum Consultations will be held in Wabag, Enga on the margins of the Joint Supervisory Body meeting in June 2021.

Signed at Kokopo this 19th day of May 2021

Hon. JAMES MARAPE, MP
Prime Minister
Government of Papua New Guinea

Hon. ISHMAEL TOROAMA, MHR
President
Autonomous Bougainville Government

Appendix 4: Wabag Joint Statement

JOINT STATEMENT

The Government of Papua New Guinea (National Government) and the Autonomous Bougainville Government (ABG):

- i. Acknowledge the requirements of s. 342 of the National Constitution for both the National government and the Autonomous Bougainville Government to consult on the results of the Referendum;
- ii. Acknowledge that the first consultation was held on 18th and 19th May, 2021 at Kokopo, East New Britain Province, and that the Referendum results of 97.7% choice for separate independence was tabled at this consultation;
- iii. Acknowledge that the Bougainville Independence Consultation Team tabled in the Kokopo Consultation, the Year “2025” as the year for the Declaration of Bougainville’s Independence;
- iv. Acknowledge that the Kokopo Consultations agreed to consult on a joint roadmap in the second consultation;
- v. Acknowledge that the second consultation was held in Wabag on 6th of July 2021;
- vi. Consulted on the joint roadmap that will guide the post referendum process;
- vii. Acknowledge that the process needs to be agreed upon to decide the final political settlement.

We agree to:

1. Continue to consult and develop clarity on establishing the constitutional and parliamentary pathway for the tabling of the results of the Referendum, the outcome of the consultation to give effect to the results of the Referendum and the outcome of the Consultations, and the pathway consequential to the outcome of the National Parliament’s decision.
2. Take all actions necessary to process an end point which is the culmination of all the activities that flows from the constitutional amendments give effect to the National Parliament’s decision.
3. Take immediate actions which are focused on the full implementation of the Bougainville Peace Agreement subject to the National Constitution, with a focus on completing outstanding tasks under the pillars of

the Bougainville Peace Agreement, including the implementation of the Sharp Agreement to support the economic growth of Bougainville to ensure that Bougainville is in a position to effectively and efficiently manage its own economic affairs in preparation for a political settlement.

4. Allow the National Government to undertake national consultations across Papua New Guinea on the outcome of the Referendum, noting that the constitutional amendments which would have been set in motion by the signing of this Statement will need to be enacted to give effect to Bougainville's final political status.
5. Determine a political settlement no earlier than 2025 and no later than 2027 guided by an agreed joint road map which is annexed to this Statement.

Signed at Wabag this 6th day of July 2021

Hon. JAMES MARAPE, MP
Prime Minister
Government of Papua New Guinea

Hon. ISHMAEL TOROAMA, MHR
President
Autonomous Bougainville Government

ATTACHMENT A

REFERENDUM RESULTS IMPLEMENTATION ROAD MAP

2021

- Joint Statement on the Road Map to be issued at the conclusion of the consultation
- Agreement on the process and the content of Ratification
- Sharp Agreement Implementation

2022

- Implementation of One-Line Budget
- Completion of Sharp Agreement Implementation
- Establishment of Bougainville Constitutional Planning Commission
- Preparation of Bougainville Constitutional Planning Commission*

2023

- *Report to 11th Parliament*
- *Tabling of the results and outcomes of Consultations*
- *Commencement of PNG Constitutional Amendment*
- *Assumption of s289 Powers*

2024

- Report to National Government Stakeholders by GoPNG
- Amendment of Constitutional Law Process to repeal and replace Part XIV in its entirety
- Preparation of Self-Government

2025

- Implementation of Bougainville Constitutional Planning Commission
- Bougainville Constituent Assembly considers and adopts Draft Bougainville Independence Constitution

2026

- Prepare Treaty
- Preparations for Declaration of Independence/Political Settlement

2027

- Assume all or any Sovereign Powers
- Declaration of Independence of Bougainville/Political Settlement

Appendix 5: Port Moresby Joint Statement

THIRD INTER-GOVERNMENT CONSULTATIONS ON BOUGAINVILLE REFERENDUM RESULTS

PORT MORESBY JOINT STATEMENT

The Government of Papua New Guinea (National Government) and the Autonomous Bougainville Government (ABG)

PREAMBLE

- (i) Recognizing that this third joint consultation is consistent with the requirements of Section 342 of the National Constitution for both the National Government and the Autonomous Bougainville Government to consult on the results of the Referendum;
- (ii) Acknowledging that both Governments, consistent with agreed decisions of the Joint Supervisory Body meeting of March 12th, 2020, have so far, held two other joint consultations on the Bougainville Referendum results, the first being at Kokopo, East New Britain Province on 18th May, 2021 and the second consultation was held in Wabag on 6th July, 2021;
- (iii) Honoring our joint commitments to Kokopo and Wabag Joint Consultation statements and agreements;
- (iv) Recognizing the role of the Post Referendum Consultation Moderator, His Excellency, the Hon. Bertie Ahern;
- (v) Reaffirming our agreement to determining political settlement or Independence no earlier than 2025 and no later than 2027 and that the Joint Post Referendum Roadmap is the indicative guide to moving forward;
- (vi) Recognizing the constitutional issues involved in that process;
- (vii) Noting the Autonomous Bougainville Government proposal for a Treaty and the National Government's proposal to enact Constitutional Regulations.

WE AGREE TO:

1. Direct officials of both Governments to immediately engage further to determine an appropriate framework consistent with the Wabag Joint Statement, that;
 - a. gives effect to the requirements of Section 342 of the National Constitution, taking into account the Bougainville context;
 - b. expounds on the mechanism to table the referendum results in the National Parliament, including the manner in which the National Parliament may ratify the results;
 - c. will be known as the 'Era Kone Covenant' on the finalization of the Bougainville Referendum on Independence;
 - d. that this work may be undertaken under the guidance of the Post Referendum Consultation Moderator, Mr Ahern, consistent with his Terms of Reference, which includes advice and support as and when required;
2. Leaders direct the proposed framework agreement be presented for their consideration, and the consideration of their respective Executive Councils, by no later than 31st January, 2022;
3. Subject to that agreement being accepted, leaders direct to implement and give legal effect by no later than 31st March, 2022.

Signed this 9th day of December, 2021 at APEC Haus, Port Moresby.

HON. JAMES MARAPE, MP
PRIME MINISTER
PAPUA NEW GUINEA

HON. ISHMAEL TOROAMA, MHR
PRESIDENT
AUTONOMOUS REGION OF BOUGAINVILLE

Appendix 6: Era Kone Covenant

ERA KONE COVENANT ON THE FINALISATION OF THE BOUGAINVILLE REFERENDUM ON INDEPENDENCE

The Government of the Independent State of Papua New Guinea (hereinafter ‘**the National Government**’) and Autonomous Bougainville Government (hereinafter ‘**ABG**’) (hereinafter collectively referred to as ‘**the Parties**’);

Acknowledging that this agreement is a joint creation by the National Government and ABG that encapsulates the outcomes of the consultations sanctioned by Section 342 of the National Constitution, to be known as the Era Kone covenant on the Finalisation of Bougainville Referendum on Independence (hereinafter ‘**the Covenant**’);

Recognising the Constitutional obligation of the Parties to consult on the Bougainville Referendum Results and Implementation before tabling in Parliament under Section 342 of the National Constitution;

Accepting that this Covenant is in addition to and strengthens the Bougainville Peace Agreement 2001 (hereinafter ‘**the Agreement**’);

Acknowledging the final decision-making authority of the Parliament in respect to the Referendum Results and Implementation, as guided by this Covenant, in accordance with Section 342 of the National Constitution and the Agreement;

Recognising Papua New Guinea’s obligations under international law, particularly the Universal Declaration on Human Rights, United Nations International Covenant on Civil and Political Rights and United Nations International Covenant on Economic, Social and Cultural Rights;

Welcoming also the agreement and strong commitment to table the Bougainville Referendum Results following the conclusion of the joint post-referendum consultations under section 342(1) of the National Constitution;

Acknowledging and accepting that the Bougainville Referendum Results were independently assessed as free, fair and credible and conducted in accordance with the National Constitution, the Bougainville Constitution and the *Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum 2002* and internationally accepted standards with an absolute majority of 97.7% in favour of Bougainville Independence;

AGREE as follows:

Article 1 – Outcomes of the Consultations

- i. The joint consultations were held and the outcomes are as reflected in the respective resolutions, namely, the Joint Communiqué on Outcome of the Bougainville Referendum set out in Annex 1, Kokopo Joint Statement set out in Annex 2, Wabag Joint Statement set out in Annex 3 and Port Moresby Joint Statement set out in Annex 4.
- ii. The Bougainville Referendum Results and the outcomes of the joint post-referendum consultations will be tabled in the 11th Parliament.
- iii. The Parties will jointly formulate a report to brief the 11th Parliament on its role to give effect to Section 342 of the National Constitution.
- iv. To assist the 11th Parliament, the Head of State, acting with the advice of the National Executive Council (and the Bougainville Executive Council), may make Constitutional Regulations not inconsistent with Part XIV of the National Constitution, prescribing all matters that are necessary or convenient to be prescribed for carrying out and giving effect to this Covenant in accordance with Section 349 of the National Constitution.
- v. The Constitutional Regulations to be made under paragraph (iv) hereinabove shall not be amended or repealed by the National Government except with the approval of the Bougainville Executive in accordance with the Bougainville constitution and the Agreement.

Article 2 – Timeframe

- i. The Parties reaffirm their solemn commitment to strengthening the implementation of the Agreement and where appropriate, all outcomes of the joint post-referendum consultations, bearing in mind the Referendum Results Implementation Roadmap (‘**Wabag Roadmap**’) that requires:
 - a. Implementation of arrangements for independence/political settlement by no earlier than 2025 and no later than 2027; and
 - b. Reporting to the 11th Parliament, tabling of the Referendum Results and outcomes of the joint post-referendum consultation by not later than the end of 2023.

Article 3 – Final Provisions

- ii. This Covenant shall enter into force following the endorsement of the respective executive councils.
- iii. Any questions on interpretation and implementation of this Covenant shall be undertaken jointly by the Parties through consultations in accordance with Part XIV of the National Constitution and the Agreement.

In witness thereof the undersigned, being duly authorized thereto by the Parties, have signed this Covenant.

Signed at Port Moresby this day of **April 2022**.

Hon. JAMES MARAPE, MP
Prime Minister
Government of Papua New Guinea

Hon. ISHMAEL TOROAMA, MHR
President
Autonomous Bougainville Government

Witnessed by:

Hon. BRYAN KRAMER, MP
Minister for Justice
Government of Papua New Guinea

Hon. EZEKIEL MASATT, MHR
Attorney General & Minister for
Bougainville Independence Mission
Implementation
Autonomous Bougainville Government

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