ABG LEADERS’ JSB PREPARATION BRIEFING

FOR JTT AND JSB MEETINGS, PORT MORESBY
19TH AND 20TH MAY 2016

AUTONOMOUS BOUGAINVILLE GOVERNMENT
PAPERS ON JTT & JSB AGENDA ITEMS
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ABG LEADERS BRIEFING, 20TH MAY 2016

ABG'S PROPOSED AGENDA ITEMS

A) ISSUES FOR JSB DETERMINATION AND ENDORSEMENT

1. Key elements of Referendum preparations:
   a) Determination of Referendum date
   b) Determination of ‘Questions to be asked’
   c) Participation of ‘Bougainvilleans outside Bougainville’
   d) Process for establishing and Resourcing ‘Independent Agency’
   e) Endorsement of JBRTT Referendum work plans
   f) Referendum activity coordination

2. Endorsement of ABG’s Revenue Generation initiatives:
   a) Support for ABG Sponsored Economic Development Projects *(ABG Economic Services Dept.)*
   b) Development of Kangu Growth Centre *(NCOBA)*
   c) ABG drawdown of Powers to collect PNG taxes in Bougainville *(IRC/ABG Chief Collector)*

B) ISSUES FOR JSB DELIBERATION

3. Second Autonomy Review *(PNG and ABG Chief Secretaries)*

4. Implementing PNG Constitutional Laws Implementing the Bougainville Peace Agreement *(ABG)*

5. Issues/disputes on Autonomy Financial arrangements *(Finance Dept)*
   a) Recurrent Unconditional Grant: Arrears, and Future Payments
   b) RDG Calculation: Arrears, and Future Payments
   c) Continuity and short-falls in SIF funding *(Tech Services Dept)*

6. Fisheries issues:
Key issues:
   a) Finalisation and signing of MOU
   b) Determination and endorsement of a process that NFA will pay K5 million ‘Good Faith’ funding to ABG as per the MOU.

C. ISSUES FOR JOINT TECHNICAL TEAM MEETING DISCUSSIONS
(Includes proposed JSB Agenda Items from December 2015 Kokopo JTT)

7. ABG Finance & Treasury issues:
   a) Calculation of IRC remittance to ABG of taxes collected in Bougainville, 2005-2016 *(IRC/Chief tax collector)*
   b) Merging Bougainville Treasury function into ABG Finance Dept. *(Secretary ABG Finance Dept.)*
   c) Service Delivery Mechanism and LLGSIP for Bougainville *(Implementation & Rural Development, Finance, Treasury, Planning, & Local level Government).*
   d) DSIP and PSIP, and ABG laws implementing autonomy.

8. Drawdown of Functions and Powers
   a) Overarching MOU – facilitating drawdown of functions and powers
   b) Implementing ABG “Foreign Relations” Functions (BPA paras 69-83)
   c) Subsidiary Lands MOU *(Secretary Lands Dept.)*
   d) Environment MOU *(Secretary Lands Dept.)*

9. National Government Representation on Bougainville Senior Appointments Committee

10. Reviving JSB Role as Key Autonomy Oversight Body

11. Nurturing law abiding, stable and peaceful society by strengthening Bougainville Police Service and NGOs (CSOs & FBOs) humanitarian rehabilitation programs.
A) ISSUES FOR JSB DETERMINATION AND ENDORSEMENT
AGENDA 1- SUBJECT: REFERENDUM WORK PLAN

AGENDA 1. A: KEY ELEMENTS OF REFERENDUM PREPARATION

a) Determination of Referendum date

BPA *Part C articles 12 a* says Referendum will be held no earlier than 10 years and in any case no later 15 year after the election (inauguration) of the first ABG. Since ABG was inaugurated in 2005 this effectively mans; Referendum can be conducted after 2015 and no later than 2020.

There are various factors (legal and administrative) that worth considering in analysing when (sooner or later) the Referendum date should be determined, and why it should be determined sooner or later.

Prevalence of ‘Good Governance’ which has bearing on full restoration and rehabilitation after the conflict could be argued as required for conduct of referendum. There are few events that could be used as measure of restoring ‘Good Governance’ a complex normative terminology in Bougainville. For example:

1. Conduct of Election.

   As of 2002 after cease-fire before the inception of ABG in 2005, there are seven Elections (3 National Elections & 4 ABG) conducted freely and fairly so complied with international standards. There were no major cases of tempering with election process unlike election in some parts PNG which have serious cases of disruptions even including violence.

2. Law and order and Weapons:

   The law and order situation is improving in Bougainville, particularly after establishment of Bougainville Police Service, in Torokina Wakunai, Arawa and Buin apart from Buka the current HQ. The issue of presence of weapons is actually not same as the magnitude of the threat posed by these guns. There are two reports compiled by UN regarding weapons. UNOMB (UN Observer Mission on Bougainville report which verified Bougainville as gun free and peaceful – and therefore warranted Inauguration of ABG in 2005.

   There is also the Weapons Disposal Assessment conducted Geneva based UN team led by Retired General Valari Masurine in 2012.

   In the normal law and order situation law breakers are arrested by police and charged accordingly.

b) Determination of ‘Questions to be asked’

Regarding the questions to be asked during the conduct of Referendum BPA *Part C article 316* says: The question (s) to be asked in the referendum should be clear and agreed by the National and Bougainville Governments.

Critical thing that needs to be clearly understood is future of BPA after 2020. It is not clear from the laws implementing the Bougainville Autonomy arrangements including; BPA, Bougainville Constitution, PNG National Constitution, Organic Law on Peace Building in Bougainville whether:

1. Whether Autonomy arrangement will also lapse with BPA in 2020?
2. What fall-back options are available if outcome of Referendum will not be Bougainville’s independence?

3. How the selection of questions will have effect on maintaining Referendum vote been free and fair which influences ratification on the referendum processes? Which is more reflective of free and fair referendum vote? Only one question or more questions?

Given that these issues are not clear in the laws implement the Bougainville autonomy arrangements leaders need discuss them and jointly make decisions.

c) Participation of ‘Bougainvilleans outside Bougainville’

Regarding participation of Bougainvilleans living outside of Bougainville BPA Part 315 says; Eligibility to vote in referendum will be the same as for National elections in Bougainville plus non-resident Bougainvilleans. This means; those 18 years and above are eligible to vote. The important consideration is on how non-resident Bougainvilleans will participate, how they shall be qualified to vote. The leaders need to discuss and agree on the detailed criteria to determine eligibility of non-resident Bougainvilleans to participate through consultation.

d) Process for establishing and Resourcing ‘Independent Agency’

The two Electoral Authorities (PNGEC/OBEC) have decided that the Referendum shall be conducted by an Independent Agency. There is now the need for the two governments to clearly define the structure and composition of the Independent Agency. Is it a foreign agency? Or is this National, Regional or local neutral body? The Referendum shall be funded by both Governments (GoPNG/ABG) but the question of how and when needs to be considered. The Organic Law on Peace Building in Bougainville (s.58 (4) provides that the body shall be a body corporate with common seal and capacity to enter into contracts, hold property, and sue and be sued; and s.59 provides that the Independent Agency is not subject to direction by any person including both Governments. So leaders need to discuss this and make a decision on it.

e) Endorsement of JBRTT Referendum work plans

The Referendum Department will do a presentation on Referendum draft work plan that was developed by Joint ABG –PNG Referendum Technical Team from 26 -29 April 2016. This will go before JSB meeting for the purposes of update and endorsement.

Draft Referendum work plan matrix and Summary Resolution of the Special Extra-Ordinary Meeting of the Joint Bougainville Referendum Committee: refer to attachment 1&2
AGENDA 2 - SUBJECT: ABG REVENUE GENERATION

AGENDA 2.A. - SUPPORT FOR ABG SPONSORED ECONOMIC DEVELOPMENT PROJECTS

Background
ABG realises that economic development in Bougainville needs to walk two roads: industrial enterprises (such as large scale mining) economic development initiatives that harness Bougainville’s natural resources in its land and seas.

Thus, the ABG has been actively embarking on:

- Promoting swift, broad based, inclusive, sustainable economic development throughout Bougainville to achieve fiscal self-reliance;
- Stimulating economic development that enhance and promote food security or import substitution and industrialisation;
- Promoting foreign investment activities that meet the conditions under the Bougainville and PNG Investment laws and policies;
- Facilitating Joint Ventures projects that ensure the ownership of natural resources in Bougainville remains in local hands as required by Section 23 of the Bougainville Constitution;
- Establishment of an endowment fund for internally raised revenue;
- Equity partnerships and arrangements through which the ABG can be engaged in joint venture business;
- Identifying, analysing and promoting information on potential commercial opportunities in Bougainville.

Economic Recovery “Quick Win” Projects Identified by ABG

Key impact projects to achieve quicker economic recovery proposed by the ABG are as cited in attachment 4 below. Each project has estimated start-up costs and expected revenue projections to 2019. The projects laid out above amplify the ABG stance in relation to economic development in terms of the focus and political implications. Delivery of tangible benefits to the majority of Bougainvilleans is a high priority. These projects provide an alternative approach to planning and managing the economic development programme and represent a significant shift from the process which the ABG presently uses. For the first time a strategic move is made such that economic development theory and practice come together in a practical catalyst to economic development of Bougainville.

The projects have the potential of greatly improving the revenue generating opportunity for the ABG.
The projects have required Departments to revisit their economic development programmes both in terms of current management and the future planning and management. In some cases this will be a minor exercise, in others, for instance DPI and Commerce, it will require a root and branch reorganisation. A strategic economic planning and monitoring unit will be established from within the economic sector Departments to implement and monitor these projects.

The projects outline specifically seeks to capitalise on the powers which the ABG already holds, or has inherited from its predecessors. ABG will also move to legislate to take account of the interactions of proposed projects with relevant legislation already on the statute book, for instance the Bougainville Inward Investment Act.

PROPOSED JSB RESOLUTIONS

1. The JSB endorses the strategic direction of the economic projects identified herein.
2. The JSB encourages relevant departments of the ABG (e.g. Economic Development, Primary Industries) to work with national counterpart institutions to find ways of supporting the ABG’s economic development initiatives.
AGENDA 2.B: DEVELOPMENT OF KANGU GROWTH CENTRE

*Presentation to be provided by NCOBA*
AGENDA 2.C : ABG DRAWDOWN OF POWERS TO COLLECT ALL PNG TAXES IN BOUGAINVILLE

PURPOSE
The purpose of this paper is to advise JSB on:
1. The provisions of the National Constitutional Laws on the authority of the ABG to collect PNG taxes in Bougainville; and
2. Progress of capacity-building of the ABG Tax Office in preparation for drawdown of tax collection functions and powers; and
3. The ABG proposal that the two governments agree to establish a process for the drawdown of those functions and powers.

ABG AUTHORITY TO COLLECT PNG TAXES

Under the Bougainville Peace Agreement (the BPA) and the Organic Law on Peace-building, the ABG has the right to collect National Government taxes in Bougainville, except personal income and company tax, customs duties and GST.

After ‘restoration’ is achieved, the ABG can impose, set rates of and collect personal income tax. Restoration means ‘the time when Bougainville has returned to a standard of peace and development approximating to that of the remainder of Papua New Guinea’ (Organic Law section 38).

The ABG believes that ‘restoration’ has been achieved already. As a result, it proposes to take over collection of personal income tax. The ABG seeks formal agreement by the National Government that ‘restoration’ has been achieved.

Further, it proposes to seek IRC agreement to collect GST in Bougainville, as it is empowered to do under subsection 45(2)(b) of the Organic Law. The ABG proposes to initiate discussion with the IRC in relation to these matters.

COORDINATION BETWEEN IRC AND ABG TAX OFFICE

The PNG Internal Revenue Commission (IRC) and the ABG Tax Office have entered into an MOU on co-operation to enhance tax administration in the Autonomous Region of Bougainville.

The IRC and ABG Tax office need to start identifying the taxes that the ABG Tax Office should collect, the resources and capacity needed by the ABG to collect those taxes and the steps required for the Tax Office to develop them, and the time-table required.

The MOU between IRC and ABG Tax office needs to be reviewed to make provision in relation to these and related matters.

Proposed Resolution
The two governments:
(a) Recognise that ‘restoration’ has been achieved in Bougainville;
(b) Agree that the IRC will cooperate with the ABG to achieve gradual transfer of responsibility to the ABG to collect personal income tax, GST, customs duties and other National Government taxes collected in Bougainville, beginning from the start of 2017.

(c) Agree that the full amount of all National Government taxes collected in Bougainville (other than Company Tax and Customs Duty) be retained by the ABG, and in particular, the full amount of GST should be retained.
B. ISSUES FOR JSB DELIBERATIONS
AGENDA 3 – SUBJECT: SECOND AUTONOMY REVIEW

PURPOSE OF THIS PAPER

The purposes of this paper are to advise the members of the JSB about:

(a) The purpose of and requirements for Review of the Bougainville Autonomy Arrangements, contained in the Bougainville Peace Agreement and sections 337 and 338 of the National Constitution;
(b) The report of the first Autonomy review, completed in October 2013;
(c) The requirements for the next review, and its significance in relation to the ‘Good Governance’ determination required in advance of the consultation between the National Government and the ABG about setting the date for the Bougainville Referendum.

REQUIREMENTS FOR REVIEW OF AUTONOMY ARRANGEMENTS

The BPA and the National Constitution require that the two governments jointly conduct regular reviews of the design and operation of the autonomy arrangements. A major reason for requiring this is that the autonomy arrangements are unique and complex, and so it was agreed when the BPA was being negotiated that it would be important to evaluate how they worked, so that problems could be fixed. So as the National Constitution indicates, a review is generally ‘intended to improve, clarify and strengthen the autonomy arrangements consistently with the objectives and principles in the Agreement’.

In addition, it was agreed to use the review process as the main means of making the determination of whether the ABG meets the good governance standards set for it. That determination is needed before the two governments can jointly decide the date for the Bougainville referendum (which must be no earlier than the 10th and no later than the 15th anniversary of the election of the first ABG).

The first such joint review had to be held ‘as close as practicable to the 5th anniversary of the establishment of’ the ABG. Subsequent to the first, further such reviews are required ‘every five years’. The Governments can agree to conduct reviews additional to the five yearly reviews. Reports of a review must be ‘presented to’ the National Parliament and the Bougainville House of Representatives’.

A review will usually be done in two main stages. Unless the two governments agree otherwise, the first stage involves separate reviews by ‘independent experts’ (or ‘specialists’) of: the financial arrangements; public administration arrangements; technical and legal arrangements; and any other such matters the governments may agree.

The second stage involves a ‘general review’ that is jointly conducted by the two governments meeting together.

However, the governments can agree to have a single stage ‘joint review’. They would do so if they agreed to ‘defer’ the independent reviews, or to ‘incorporate the issues with which
they deal in the general review’ – that is, the ‘joint review’ conducted by the two governments meeting together.

The ‘terms of reference’ (TORs) for a review are agreed between the two governments, and must ‘specify that, unless otherwise agreed, they are intended to improve, clarify and strengthen autonomy arrangements consistently with the objectives and principles of the Agreement’ (National Constitution subsection 337(3)).

A review can only deal with the autonomy arrangements. It has no constitutional basis for review of the referendum arrangements.

However, reviews are vitally important to the process in the Constitution for the two governments to agree on the date on which the Referendum shall be held. That is because it is the main mechanism for making the determination required by section 338 of the National Constitution of ‘whether the [ABG] … has been and is being conducted in accordance with internationally accepted standards of good governance’. This determination must be made, by the Review process, before the two governments can agree the date for the referendum. However, that date must be no earlier than 10 and no later than 15 years after the first election for the ABG. In other words, the good governance determination is an issue to be considered by the two governments in setting the date in that period, but cannot be used to argue for the referendum to be held either before the 10th or after the 15th anniversary.

**THE FIRST AUTONOMY REVIEW, 2013**

That review was conducted more than three years late – the report being submitted to the two governments in October 2013. The review was conducted by seven ‘independent experts’. They prepared separate reports on:

- ‘Social and Economic’ issues;
- ‘Constitutional and legal’ issues;
- ‘Public Sector’ issues’;
- Grants and Taxation’ issues.

The report consisted of two volumes. One was the general report, apparently prepared jointly by the experts (though that is not entirely clear). The second contained the ‘separate reports of the independent experts’. The first volume was widely circulated. The second volume was not.

On the basis of the discussion of the ‘Purpose of the Review & Methodology’ in the first volume of the report, it’s not clear how the general review was carried out. Perhaps that was the purposes of the meeting of the ‘JSB held at Kokopo on 18 October 2013’, briefly referred to in the Foreword of the Report.

The first volume contained 57 separate recommendations. Although developed by the ‘experts’ and argued for in the first volume of the Report, they are described there (page v) as ‘Joint Resolutions – actions by both governments at the JSB held at Kokopo on 18 October 2013 and refined at the Referendum Committee 26 October 2013’.
The independent experts also had high hopes of implementation of their recommendations, as they stated that: ‘The governments will agree an implementation plan against which we will monitor progress and report to the JSB, and the respective parliaments’.

There is no record, however, of any such implementation plan being developed. The report has been largely ignored since its release late in 2013.

The first volume contains a section discussing and making recommendations about the Referendum, mainly related to implementation of the arrangements for the Referendum. The basis on which the autonomy review process also dealt with the referendum arrangements is not clear.

In terms of an evaluation of ‘Good Governance’, such issues are discussed at pages 62-70. It is not clear that that analysis would be of great assistance for the purposes of making the determination required by section 338 of the National Constitution.

**THE SECOND AUTONOMY REVIEW**

The second review should probably have been undertaken in 2015. It is needed, both for the purpose of keeping the operation of the autonomy arrangements under ongoing review, and for the purposes of making the determination on Good Governance needed before the date of the Referendum can be agreed.

The second review does not have to be carried out using the same kind of process used for the first review. In particular:

(a) It is not necessary to first get reports from independent specialists – that step can be deferred, or the issues with which they deal can be incorporated into the general review;

(b) The review could be carried out simply by the two governments meeting;

However, for the purposes of the determination of Good Governance required by section 338 of the National Constitution, there would be good reasons for using the first stage of the review – that is, the work of the ‘independent experts’ to provide a more focused and detailed assessment of the issues involved in making a determination of Good Governance that takes full account of the requirements of section 338(5) of the National Constitution.

If the review process is to be used for that purpose, careful attention should be given to development of appropriate TORs to guide that aspect of the review process.

The TORs should also review the recommendations of the first review, and examine the extent of their implementation, and whether there are obstacles to implementation of autonomy review recommendations.
PROPOSED RESOLUTION

(a) A committee of the JTT or JBRC should, as a matter of urgency, develop detailed proposals about the TORs, timetable and resources needed for the conduct of the second review;

(b) The JTT or JBRC committee shall report to the two governments by the end of July 2016 with recommendations on these and all related issues needed for the second review to commence as soon as practicable, and in any event, by October 2016;

(c) Before the end of August 2016, the two governments shall make a joint determination on establishing the second autonomy review, either:
   i.   By a resolution of the JSB; or
   ii.  By joint decision of the Prime Minister and the President (or by their nominated ministers).
AGENDA 4 – SUBJECT: IMPLEMENTING NATIONAL CONSTITUTIONAL LAWS GIVING EFFECT TO THE BOUGAINVILLE PEACE AGREEMENT

PURPOSE
The purpose of this paper is to focus attention on:

- the fact that the basis for the detailed Bougainville autonomy and Referendum arrangements is the National Constitution of PNG;
- the fact that the constitutional status of the arrangements is not widely known in PNG; and
- the consequential problem that some National Government leaders and many senior National Government officials believe the ABG has the same status, funding and powers as provincial government elsewhere in PNG, and that as a result there is sometimes resistance to implementing the clear constitutional arrangements.

The paper proposes some ways of changing this situation.

CONSTITUTIONAL BASIS FOR THE PEACE AGREEMENT

The main purpose of the Bougainville Peace Agreement (BPA) was to bring peace to PNG generally, and to Bougainville in particular.

The BPA ended a terrible war – the worst conflict ever between people in PNG. Reaching agreement to end the war was hard. It took over four years – July 1997 till BPA signing, 30 August 2001.

All sides made compromises in finalising the agreement. For example, while many Bougainvillians wanted independence as soon as possible, others opposed independence, or were unsure. PNG opposed independence. The main compromise was to include a referendum on independence, but to defer it for 10 to 15 years after autonomy arrangements began. That gave Bougainvillians time to reconcile while working together. PNG had time to make Bougainvillians satisfied with autonomy.

As a result, Bougainvillians have high expectations of autonomy. They expect strong support from the National Government in fully implementing autonomy.

Bougainville also wanted guarantees that the National Government will implement the BPA in full. So its negotiators insisted that the Agreement be given effect by Constitutional Laws. The National Government agreed that the issues were so important that they had to be protected by Constitutional Laws, which cannot be changed unilaterally by the National Parliament. Any change must also be supported by a vote in the Bougainville House of Representatives.

It is clear, then, that the ABG is not a provincial government. It has functions, powers, funding, and inter-government relations arrangements that are very different from those applicable to provincial governments.
IMPORTANCE OF THE AUTONOMY FINANCIAL ARRANGEMENTS

Adequate funding is essential to Bougainville autonomy. So when the BPA was being negotiated, Bougainville wanted very strong financial arrangements. There was also an important issue of fairness here. Bougainville agriculture and mineral resources supported PNG to prepare for independence and manage the early years after independence. From 1972 to 1989, Bougainville’s mineral wealth contributed about 20 per cent of PNG’s internally generated revenue, and 40 to 50 per cent of total foreign exchange. (PNG revenue from BCL totalled over K1 billion – the equivalent of over K6 billion in today’s kina).

When the BPA was negotiated, PNG was in fiscal crisis. So the National Government was unable to agree to the strong funding arrangements the Bougainville negotiators wanted to support rapid restoration and development. So PNG refused Bougainville’s demand for strong guarantees for funding to rapidly improve services like health and education, and rebuild infrastructure. As a result, the formula for the Recurrent Unconditional Grant did not provide for major increases in funding services etc. provided by the ABG. Initially it provided only for funding of existing services at then current levels.

But the National Government did promise that when the fiscal situation improved, that Bougainville would get a guaranteed share in the increased funding. This was to be through the special grant to fund Restoration and Development. It was agreed that when National Government revenue increased, and flowed through an increased National PIP, Bougainville’s Restoration and Development Grant would be guaranteed to increase proportionately.

If the agreed financial arrangements had been implemented fully since 2005, the ABG would be able to make autonomy work quite well. But the National Government is not honouring the Constitution. Bougainville’s expectations of autonomy are not being met. PNG is throwing away its opportunity to persuade Bougainvilleans of the benefits of staying part of PNG.

It is essential that the constitutional finance arrangements are now implemented in full. PNG and Bougainville face grave risks if they are not implemented.

NON-IMPLEMENTATION OF IMPORTANT FINANCIAL ASPECTS

The need for obeying the National Constitution when calculating and paying the Restoration and Development Grant (RDG) has been a major ABG concern in JSB Meetings since 2011. But the RDG is just part of a wider set of problems with the honouring of the financial arrangements. Other major elements of the provisions for funding the ABG are not being honoured. They include the calculation and payment of the Recurrent Unconditional Grant, and the remittance to the ABG by the IRC of PNG taxes collected in Bougainville and payable to the ABG by the IRC.

The main details of the problems in all these areas are set out in separate papers. But in seeking National Government agreement to deal with the specific issues raised in those (and other) papers, the ABG seeks an assurance from the National Government that it remains
committed to maintaining peace by implementing the Bougainville provisions of the National Constitution.

**OTHER APECTS OF THE CONSTITUTIONAL ARRANGEMENTS**

In the almost 11 years since the ABG was first elected, the ABG has experienced many frustrations about lack of implementation of other aspects of the autonomy arrangements contained in the National Constitution. Some important examples include:

a. The requirement that the Commissioner of the RPNGC appoint only the ABG nominee for head of the Bougainville Police Service;

b. The appointments of National Government members to the Bougainville Senior Appointments Committee when Bougainville Constitutional Office-holders are appointed, something which has prevented the ABG making a substantive appointment to the office of Bougainville Electoral Commissioner for about 8 years now;

c. The arrangements for the transfer of functions and powers to the ABG;

d. The transfer to the ABG of all fisheries revenues derived from waters associated with Bougainville, less costs incurred by the National Government.

**THE REFERENDUM ARRANGEMENTS**

The five year window within which the Bougainville Referendum must be held is mid-2015 to mid-2020. There has been some concern expressed amongst some Bougainvillean groups that the National Government might not be committed to holding the Referendum as required by the National Constitution.

Because the Referendum arrangements are a centrally important part of the agreement that brought peace after the Bougainville conflict, the peace could be seriously endangered if the constitutional arrangements for the Referendum were not honoured in full.

**PROPOSED RESOLUTIONS**

1. **The National Government and the ABG reaffirm their full commitment to implementation of all aspects of the provisions of the National Constitution implementing the Bougainville Peace Agreement.**

2. **The two governments will cooperate in promoting improved awareness of the Bougainville Peace Agreement, and the fact that its incorporation into the National Constitutional Laws results in the status, powers and funding arrangements for the autonomy of the ABG are quite distinct from those of provincial governments elsewhere in PNG.**
AGENDA 5: ISSUES/DISPUTES ON FINANCIAL ARRANGEMENTS FOR AUTONOMY

AGENDA 5.A: RECURRENT UNCONDITIONAL GRANT: ARREARS AND FUTURE PAYMENTS

The Recurrent Unconditional Grant meets the costs of both services the ABG took over in 2005, and new powers and functions transferred by the National Government. The National Government is not meeting the constitutional requirements for this Grant.

(a) Annual Adjustment: The BPA and the Organic Law (S.48(2)(a)) say the Grant must be ‘adjusted annually in the same manner as annual grants for a Provincial Government activity under the Organic Law and Provincial Governments and Local-level Government’. But adjustments to provincial grants since 2005 due to NEFC recommendations have not been applied to the ABG. As a result, the grant has been underpaid ever since 2005.

(b) Unspent Amounts: This is an ‘Unconditional’ grant. As a result, any funds – including salaries – held back by the National Government and unspent by the end of a financial year remain part of the grant. But these amounts are never refunded to the ABG. This is contrary to the Constitution. Because of slower than expected recruitment into the new ABG Public Service, unspent salaries at end of 2015 are expected to be in excess of K5 million.

(c) Timely Payment of the Grant: The Organic Law says this Grant must be ‘paid in such a way that it can be effectively and efficiently used and applied for the purposes for which it was provided in the year for which it was provided’. But in fact payments are very irregular, against the Constitution.

PROPOSED RESOLUTIONS

(1) A joint ABG/National Government Grants Working Group shall be established that shall report to the next JSB on:
   i. The adjustments to the Recurrent Unconditional Grant which should be made to bring the grant in line with increases to similar grants to provincial governments;
   ii. Calculate the arrears of the Recurrent Unconditional Grant since 2005 resulting from failure to make the necessary adjustments to the Grant;

(2) The ABG requests earliest payment of the more than K5 million in unspent salaries from the 2015 Recurrent Unconditional Grant.

(3) The ABG requests implementation of the constitutional requirement that this grant be paid in a timely manner, so that it can be effectively used in the year of the grant.

(4) The two governments shall cooperate to ensure full processing of salaries can be made by the ABG by the end of 2016, so that from then there is no need for retention of salaries by the National Government.
AGENDA 5.B : RDG CALCULATION - ARREARS, AND FUTURE PAYMENTS

The Restoration and Development Grant (or RDG) is intended to provide the funds needed to restore levels of services and development destroyed by the conflict. The formula in section 49 of the Organic Law on Peace Building in Bougainville was intended to ensure that after PNG’s late 1990s fiscal crisis was over, Bougainville would receive a guaranteed share in growing PNG revenues.

REQUIREMENTS FOR CALCULATION OF THE RDG

Section 49 of the Organic Law on Peace-building in Bougainville gives effect to paragraphs 160-161 of the Bougainville Peace Agreement:

“(1) The National Government shall make to the Bougainville Government an annual restoration and development grant no less than the 2001 Public Investment Programme appropriations for Bougainville,
(2) The annual restoration and development grant ... shall be adjusted upwards pro rata in accordance with the National Public Investment Programme averaged over a rolling five year period.”

That grant formula has four main elements:
(a) A minimum amount of K10.13 million – Bougainville’s 2001 PIP figure;
(b) The grant cannot decrease - adjustment each year can only be upwards;
(c) The adjustment each year starts with the previous year’s amount, which is changed by the average percentage increase in the total National PIP for the past five years preceding the year of grant. (In years when that percentage is negative, then the grant cannot be reduced below the previous year’s amount.)
(d) Using the average of the previous five years was intended to:
   a. iron out the impact of any major change in National PIP in just one year;
   b. ensure that the principle of ‘proportionality’ would always apply to the ABG’s share of National PIP. In other words, its proportion of National PIP would be protected – remaining similar to the 2.59 per cent that it was in 2001.

The intention was that the RDG formula would ensure that if the National Government revenue flowing into the National PIP increased, that Bougainville would be guaranteed to maintain its share. Bougainville’s share of the National PIP, starting with the K10.1 million in 2001, was 2.59 per cent. So the ABG expected annual RDG payments to maintain a similar share of total National PIP as the PIP increases. Similarly, if National Government revenues fell, resulting in a reduction in National PIP, then the ABG share would fall too.

This 2.59 per cent share of PIP was certainly never excessive. For example, it is much smaller than Bougainville’s approximately 4 per cent proportion of PNG’s population.

ABG CALCULATIONS OF THE RDG

The ABG has carefully calculated the RDG that should have been paid to the ABG since 2005 using figures for determining the Rolling Five Year Average for the annual change in National
PIP provided by the PNG Departments of Treasury and Finance. The figures used are set out in the Excel tables in the Appendix to this paper. It is evident that from 2008-09 the annual percentage for adjusting the RDG increased quickly. The reasons included opening of new resource projects, rapid rises in commodity prices, and loans obtained by the National Government in expectation of LNG revenue expected to flow from 2014.

The amounts of annual RDG payments calculated in accordance with the formula in the Organic Law on Peace-building as interpreted by the ABG are set out in Table 1. It also shows the actual payments made, and the shortfall each year (between actual and correctly calculated amounts). It also shows cumulative total arrears of payments for each year.

### Table 1
RDG 2005-2016 – ABG Calculations

<table>
<thead>
<tr>
<th>YEAR OF GRANT</th>
<th>ANNUAL RDG PAYMENT per ABG CALCULATION UNDER THE FORMULA</th>
<th>ACTUAL PAYMENT RECEIVED</th>
<th>DIFFERENCE BETWEEN GRANT CALCULATED per FORMULA AND ACTUAL PAYMENT</th>
<th>CUMULATIVE TOTALS OUTSTANDING</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>K13,100,000</td>
<td>K4,000,000</td>
<td>K9,100,000</td>
<td>K9,100,100</td>
</tr>
<tr>
<td>2006</td>
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<td>K10,000,000</td>
<td>K3,600,000</td>
<td>K12,700,00</td>
</tr>
<tr>
<td>2007</td>
<td>K15,100,000</td>
<td>K13,000,000</td>
<td>K2,100,000</td>
<td>K14,800,000</td>
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<tr>
<td>2008</td>
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<td>K1,900,000</td>
<td>K16,700,000</td>
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<tr>
<td>2009</td>
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<td>K15,000,000</td>
<td>K11,900,000</td>
<td>K28,600,000</td>
</tr>
<tr>
<td>2010</td>
<td>K39,200,000</td>
<td>K15,000,000</td>
<td>K24,200,000</td>
<td>K52,800,000</td>
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<td>2011</td>
<td>52,600,000</td>
<td>K15,000,000</td>
<td>K37,600,000</td>
<td>K90,400,000</td>
</tr>
<tr>
<td>2012</td>
<td>K68,800,000</td>
<td>K0.00</td>
<td>K68,800,000</td>
<td>K159,200,00</td>
</tr>
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<td>K81,200,000</td>
<td>K240,400,000</td>
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<td>2014</td>
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<td>K110,400,000</td>
<td>K350,800,000</td>
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<tr>
<td>2015</td>
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<td>K10,000,000</td>
<td>K154,100,000</td>
<td>K504,900,000</td>
</tr>
<tr>
<td>2016</td>
<td>K164,100,000</td>
<td>K0.00</td>
<td>K164,100,000</td>
<td>K659,000,000</td>
</tr>
<tr>
<td>TOTALS</td>
<td>K778,700,000</td>
<td>K127,000,000</td>
<td>K659,000,000</td>
<td></td>
</tr>
</tbody>
</table>

On the basis of ABG calculations, by 2015 the annual RDG payment for that year should have been K164.1 million. Explanation is required as to why the correctly calculated 2016...
RDG payment (in Table 1) is the same as for 2015. The 2016 budgeted National PIP of K$5,095,900,000 (K$5,095.9 Billion), which reduced by 10.51% compared to the 2015 budget of K$6,389.0 Billion. The ABG calculation in the Excel calculation tables in the Appendix therefore shows a negative (-) percentage change in the rolling five year average of 10.51. However, as the RDG formula requires that the RDG only be adjusted upwards, there is no basis for a reduction of the RDG below the RDG paid in 2015. Hence the 2016 RDG should be the same figure as calculated (but not paid) for 2015 – namely K$154.1 million.

Because the amounts of RDG have been under-paid in each year since the ABG was established (2005) the total RDG arrears to end of 2015 were K504.9 million (See Table 1). Assuming that the 2016 RDG of K$154.1 million is not paid, the arrears by the end of 2016 will be K651.7 million (Table 1).

On the basis of the ABG calculations, if the National Government had paid the RDG each year in accordance with the formula, the ABG share of National PIP would have been about 2.57 per cent in 2015. That percentage is slightly less, but very similar, to what it was in 2001. *Maintaining proportionality was the intention of the formula in the BPA and the Organic Law.*

But as Table 1 shows, the National Government in fact paid much less than required by the Constitutional Laws. In most years RDG payments have K15 million or less. There is absolutely no basis for the RDG to be paid at that low level. That level of payment is clearly contrary to the BPA and to the National Government’s own Constitutional Laws.

Even the very low levels of RDG appropriated are often not paid. The 2014 RDG was only received by the ABG in 2015, and the 2015 RDG of K10M, was only received by the ABG in 2016.

**NATIONAL GOVERNMENT CALCULATIONS**

At the 2014 JSB in Kokopo, the National Government put forward its own position on RDG calculations. That position was that the five year rolling average (or FRA) (of annual percentage change in the National PIP) is to be applied only to the 2001 PIP figure of K10,133,400 in each and every year. The new RDG figure each year is simply the 2001 base year amount with the FRA applied to it, with the additional element of the previous year’s grant (which is the percentage increase on the base amount) added in. So in year one (2005) the base figure is K10,133,400. The next year’s grant (2006) is the first year’s figure with the FRA applied only to the base figure of K10,133,400. In the third year (2007) it is the previous year’s figure with the FRA applied only to the K10,133,400 element.

The amounts annual RDG payments calculated in accordance with the formula in the Organic Law on Peace-building as interpreted by the National Government are set out in Table 2. It also shows the actual payments made, and the shortfall each year (between actual and correctly amounts calculated in accordance with the National Government’s interpretation of the formula). It also shows cumulative total arrears of payments for each year payable if the National Government were to make payments in accordance with its calculations.
This method of calculation results in a steady decline in the proportion of the National PIP coming to the ABG through the RDG. The annual RDG payments that should have been made if the National Government was paying in accordance with its own calculations, as advised at the 2014 JSB, are shown in Table 2. The FRA figures used to calculate those annual payments can be seen in the Excel calculation table in the Appendix to this paper.

Table 2
RDG 2005-2016 – GoPNG CALCULATIONS
ESTIMATED ANNUAL PAYMENTS REQUIRED, ACTUAL PAYMENTS, ANNUAL AND CUMULATIVE OUTSTANDING AMOUNTS

<table>
<thead>
<tr>
<th>YEAR OF GRANT</th>
<th>ESTIMATED ANNUAL RDG PAYMENT UNDER FORMULA</th>
<th>ACTUAL PAYMENT RECEIVED</th>
<th>DIFFERENCE BETWEEN GRANT CALCULATED per FORMULA AND ACTUAL PAYMENT</th>
<th>CUMULATIVE TOTALS OUTSTANDING</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
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<td>K4,000,000</td>
<td>8,300,000</td>
<td>8,300,000</td>
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<td>2006</td>
<td>K12,700,000</td>
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<td>2,700,000</td>
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<td>2007</td>
<td>K13,800,000</td>
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<td>800,000</td>
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</tr>
<tr>
<td>2008</td>
<td>K15,000,000</td>
<td>K15,000,000</td>
<td>0</td>
<td>11,800,000</td>
</tr>
<tr>
<td>2009</td>
<td>K21,000,000</td>
<td>K15,000,000</td>
<td>6,000,000</td>
<td>17,800,000</td>
</tr>
<tr>
<td>2010</td>
<td>K25,600,000</td>
<td>K15,000,000</td>
<td>10,600,000</td>
<td>28,400,000</td>
</tr>
<tr>
<td>2011</td>
<td>K29,100,000</td>
<td>K15,000,000</td>
<td>14,100,000</td>
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<tr>
<td>2012</td>
<td>K32,200,000</td>
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<td>24,200,000</td>
<td>120,200,000</td>
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<tr>
<td>2015</td>
<td>K42,500,000</td>
<td>K10,000,000</td>
<td>32,500,000</td>
<td>152,700,000</td>
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<td>2016</td>
<td>K42,500,000</td>
<td>K0.00</td>
<td>K42,500,000</td>
<td>195,300,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>K322,300,000</td>
<td>K127,000,000</td>
<td>K195,300,000</td>
<td>K195,300,000</td>
</tr>
</tbody>
</table>

The ABG’s position is that the National Government’s approach to calculating the RDG is not in accordance with the requirements of Organic Law. The words in section 49 of the Organic Law “shall be adjusted upward pro rata in accordance with the national Public Investment Program averaged over a five year period” mean that the process is cumulative from the K10.133M base, i.e. that the FRA percentage increase is applied to the base to get Year 2, then in the third year FRA percentage is applied to Year 2 and so on.
Even on the basis of the National Government calculations, significant arrears would be owing to the ABG. This is clear from the figures provided in Table 2.

However, the ABG believes that the actual amount of the arrears owing is considerably greater.

The consequences for both governments do not just involve the arrears. In addition, the ongoing annual payments of RDG going forward are also much higher than the National Government has been paying.

When the BPA was negotiated, the National Government was in fiscal crisis. It could not meet Bougainville’s request for significant restoration funding. The National Government offered an annual deferred payment scheme based upon the ABG receiving an annual grant that enabled it to benefit from National Government’s good times when that happened. Hence the indexation to the PIP.

Against this background, the position of the National Government officials makes no sense. The reference to 2001’s PIP in the Peace Agreement and the Organic Law is not intended to be a base that cannot be escaped from. Rather, it is simply intended as a base to ensure that when the ABG was established that it would receive no less than the 2001 PIP appropriated to Bougainville (i.e. K10.133 million). At the time the BPA was negotiated and signed (August 2001) there was no guarantee that National Government’s fiscal position would improve, or when.

The concept of a rolling average is so that the FRA can be applied to a new base figure (the previous year’s amount) so as to smooth out what might otherwise be dramatic changes from year to year.

The critical factor that shows that the National Government officials’ calculations are inconsistent with what was agreed when the BPA was negotiated is that they would result in Bougainville’s share of the National PIP dramatically decreasing.

Such a reduction in Bougainville’s share of PNG national revenue are both:
- Unjust, given the huge contribution of Bougainville to PNG revenue from 1972 to 1989; and
- Against the intention of the RDG Formula of ensuring that the ABG would be guaranteed its share of revenue when the late 1990s fiscal crisis ended.

These considerations alone provide a strong basis for support for the ABG’s approach to calculation of the RDG.

**THE 2014 JSB COMPROMISE PROPOSAL**

After repeated and extended discussions between officials of the two governments, the 2014 Kokopo JSB meeting reached agreement on a partial compromise. The National Government offered to pay arrears on the basis of yet another approach to calculation. Although the amount offered was much less than ABG calculations showed as owing, the ABG was pleased to see at last an admission that some arrears must be paid.
So agreement was reached that:
(a) the National Government would pay arrears of RDG on the basis of its own calculations, but
(b) the dispute about the significant additional balance of arrears that the ABG claims is owing could be resolved by obtaining independent legal opinions.

The text of the 2014 JSB Resolution on the RDG is as follows:

“8. RDG Formula and Arrears
The JSB:
i. noted that the National Government will make a payment of K30 million beginning in 2015. An amount of K96.6 million will be paid over three years but may be adjusted based on the outcome of mediation and arbitration;
ii. agreed that each government will seek three legal opinions on the interpretation of the RDG formula as per BPA paragraph 160 and Section 49 of the Organic Law on Peacebuilding on Bougainville to be coordinated by a high-level Officials Committee, consisting of Acting Chief Secretaries, National Secretary for Justice, Bougainville Government Legal Adviser, and officials from both Governments’ Departments of Treasury, Finance and Planning;
iii. agreed that the Committee will finalise arrangements for referral of matters surrounding the RDG, to mediation and arbitration, the Executive Councils to give final approval prior to referral;
iv. noted that the National Minister for Planning and Monitoring’s acceptance that the concept of proportionality be retained and that an independent assessment will be conducted.”

Several important issues arise from the Resolution:
1. It required payment of arrears to the ABG of K96 million, over three years, with payments of at least K30 million per year, beginning in 2015.

2. By making this commitment, the National Government acknowledged clearly that it had previously failed to calculate and pay the RDG in accordance with the requirements of the Organic Law.

3. As the National Government had agreed that some arrears were owing, it was also assumed that it also now accepted that in future the annual RDG figures would be increased to at least the amounts that the National Government figures showed as payable. The Resolution did not specify what the annual RDG in 2015 should be, because that would depend on two main things:
a. Calculations based on the amount of the National PIP in 2015; and
b. The anticipated legal advice on the dispute on calculation of the RDG. It was completely unexpected, however, that the appropriation for the 2015 RDG was only K15 million (as in previous year) and was not increased in line with the National Government’s own approach to calculations advanced to the 2014 JSB.
4. The Resolution records the Minister for Planning’s acceptance of the vitally important principle of proportionality (i.e. maintaining the ABG’s small percentage share of the National PIP – or ‘capital development budget’).

Under the compromise from 2014, RDG payments under the 2015 and 2016 PNG Budgets should have been:

- **2015 RDG** – at least: K 29.5 million
- **2015 Arrears**: K 30.0 million
- **2016 RDG** – at least: K 29.5 million
- **2016 Arrears**: K 30.0 million

**Total**: K119.0 million

**2014 JSB COMPROMISE NOT IMPLEMENTED**

The 2014 JSB compromise on higher JSB payments, initially based on PNG calculations, was not honoured in the 2015 PNG Budget. It was again not honoured in the 2016 PNG Budget.

The annual RDG for 2015 was again set at K15 million. That is half of the minimum amount that should be paid on the basis of the National Government’s own figures. Yet even that K15 million was not paid to the ABG in 2015. It was received in 2016, and paid mainly to assist the ABG out of fiscal crisis caused by the non-payment of 2016 appropriations payable to the ABG.

An arrears payment of K30 million was included for 2015. But in the recent revised budget, that was cut to K20 million. That K20 million has never been paid.

The 2016 PNG Budget appropriates only K10 million for the annual RDG, and nothing at all for payment of RDG arrears. Nothing of that K10 million has yet been received by the ABG.

The failure of the National Government to honour the compromise agreed in the 2014 JSB is very difficult for the ABG to understand or accept. It suggests that the National Government has no respect of the Constitution, or for the ABG.

**UNDERSTANDING THE INTENTION OF THE RDG**

Any legal opinions on RDG calculations (as envisaged by the 2014 JSB decision) must take account of the original intentions of the BPA provisions. The Peace Agreement and Part XIV of the National Constitution provide for the BPA to be used as an aid to interpretation, and that the Agreement itself be interpreted ‘by reference to its intentions’.

So in July 2015 President Momis wrote to the Prime Minister proposing that ‘as a matter of urgency, the National Government and the ABG cooperate in arranging a meeting of the key negotiators and advisers involved in negotiation of the financial provisions of the BPA with a view to preparing advice on the intentions of paragraph 160’ (the paragraph on calculation of the RDG).
No action has yet been taken to obtain a joint statement from National Government and Bougainville participants in the negotiations of the Peace Agreement on the intentions of the RDG provisions.

**LEGAL OPINIONS OBTAINED BY THE NATIONAL GOVERNMENT**

The National Government has provided the ABG with two legal opinions on the RDG, one from Gadens Lawyers and one from Mr. Zachary Gelu. Those opinions are of very limited value because they were not based on an accurate statement of the intentions of the BPA. One of the opinions did little more than say that the issues involved were political and that the two governments should reach a compromise.

**WHAT NEXT STEPS?**

It sometimes appears that the National Government does not recognise that it is bound by its own Constitution to implement the BPA. It does not even honour its own interpretation of the RDG figures payable to the ABG. It does not honour the promises it made in 2014 for partial payment in 2015. It is again ignoring those promises in the allocations in the 2016 National budget.

At the absolute minimum, the National Government must make the payments promised in the 2014 Kokopo meeting. That includes the payments for 2015 and 2016, in terms of both increased annual RDG payments, of K42.5 million per year, and paying the arrears at a rate of K30 million per year.

That would require RDG payments in 2016 to cover both the amounts unpaid in 2015, and the correct amounts for 2016 - a total of K119 million.

One **compromise** that the ABG could consider is:

1. A clear National Government statement of recognition of the principle of the ABG’s constitutional entitlement to payment of the RDG calculated according to constitutional law, rather than set from year to year according to what suits the National Government;
2. A clear National Government commitment to pay a reasonable amount of RDG in 2016 (significantly greater than the present appropriation of K10 million);
3. A guarantee of future annual RDG payments at correct levels – which must be agreed between the two governments;
4. If points (1) to (3) are agreed, then, taking account of the fiscal crisis currently facing PNG, the ABG could consider agreement on a compromise to resolve the dispute on amounts of RDG arrears owing.
5. An agreed schedule of annual reimbursement of the agreed compromise figure for RDG arrears – e.g. K30 million per year

**Taking the Issue to the Courts:**

Without some clear and binding agreement that the ABG can be assured will be honoured, the ABG will have no choice but to take the issues to court. We have attempted to resolve
this dispute by consultation between agencies and in consultation through the JSB. We have done this in good faith, in a serious effort to resolve this dispute.

The Constitution provides procedures for resolving disputes between two Governments. They include special provision for ‘a dispute involves a point of law’. In such a case either government can go direct to the courts.

The ABG proposes that if the issues cannot be resolved at this JSB Meeting, then the two governments should jointly agree to resolve the matter by jointly taking the issue to the Supreme Court to decide by interpretation of the relevant provisions of the National Constitution and the Organic Law on Peace-building in Bougainville.

PROPOSED RESOLUTION

The JSB:

a. Acknowledges the principle of the ABG’s constitutional entitlement to the RDG, which means that in future, the annual amount of RDG must be calculated according to law, rather than set from year to year according to National Government financial needs;

b. Agrees that if the National Government and the ABG cannot agree on what the Peace Agreement and the Organic Law on Peace-building in Bougainville require in relation to calculation of the RDG, then the two governments should resolve the issues by making a joint approach to the Supreme Court under section 19 of the Constitution for a definitive interpretation of the Organic Law requirements;

c. Agrees that pending the Supreme Court ruling, the RDG payment for 2016 and subsequent years must be at least K42.5 million;

d. Agrees to a compromise figure (to be determined by the JSB) in relation to the RDG arrears to be paid to the ABG;

e. Agrees that if such a compromise on payment of arrears can be agreed, that the Supreme Court application on interpretation of RDG calculations be limited in application to calculating RDG for 2016 and subsequent years.
AGENDA 5.C. – CONTINUITY AND SHORTFALLS IN SIF FUNDING

PURPOSE OF THIS PAPER

The purposes of this paper are to advise the members of the JSB about:

(d) The progress of the Special Intervention Fund (SIF) since its establishment in 2012;
(e) The positive impacts that SIF funding has helped bring about;
(f) Current funding shortfalls which are reducing the effectiveness of the SIF both currently and going forward into the near future;
(g) The impending expiration of SIF funding and the need to develop options for building on the good outcomes of the program.

BACKGROUND

In April 2012, the ABG and the GoPNG entered into an arrangement to facilitate the management of a K500 million Bougainville Special Intervention Fund (SIF), formerly known as the High Impact Project (HIP). The SIF has a five year duration and expires at the end of this year, 2016.

In mobilising the SIF, the ABG and GoPNG wished to achieve three outcomes:

i. SIF has been utilised for high impact projects which improve access to essential infrastructure and services in support of sustainable and equitable development for the people of Bougainville

ii. Been managed efficiently and effectively in accordance with SIF guidelines and financial instructions

iii. Contributed to better understanding, communication and coordination between the ABG and GoPNG through the JSB committees in the lead up to and during the Bougainville referendum on autonomy and independence

Of the 500 million kina agreed for the SIF, only 330 million has been allocated so far, as illustrated in the table below.

<table>
<thead>
<tr>
<th>Year</th>
<th>Appropriation K’million</th>
<th>Status</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>100</td>
<td>Released Oct 2012</td>
<td>K85 was allocated to the HIP and K15 to the recurrent development grant</td>
</tr>
<tr>
<td>2013</td>
<td>100</td>
<td>Released in July 2014</td>
<td></td>
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<tr>
<td>2014</td>
<td>100</td>
<td>Released in Feb 2015</td>
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<tr>
<td>2015</td>
<td>50</td>
<td>No funds released in 2015</td>
<td></td>
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<tr>
<td>2016</td>
<td></td>
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<td>K30 million released in 2016 from 2015 appropriation</td>
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**A LOT DONE ALREADY …..**

The most recent thorough and wide-ranging review of SIF activities prepared by the SIF’s Program Management Unit Secretariat in April 2016 lauds the achievements delivered thus far. (This review builds on an audit of 2012-2014 activities conducted by thePNG Department of Finance) Among the most noteworthy accomplishments recorded in the most recent review are:

- Water and sewerage upgrades in Arawa and Buka
- The reopening of Aropa airport in December 2014
- Substantial restorations to seventeen feeder roads in Bougainville
- Substantial contributions to the commissioning of two boats linking Bougainville with the urban and commercial centres of Lae and Rabaul, and the outer atolls.
- Supporting power (electricity) upgrades in six locations in Bougainville
- Improving livelihoods through a range of economic development projects
- Supporting Panguna negotiations and peace agreement awareness raising
- A wide range of infrastructure projects in the law and justice sector including a new court for Arawa and police housing
- Helping provide practical support to Community Governments, enabling them to be more involved in ABG development planning and service delivery.

The review team found that the SIF has got off to a good start and delivered largely against its short-term objectives. Additionally, the review team found that the SIF has been managed efficiently and effectively in accordance with the guidelines and financial instructions agreed between the two governments.

**…BUT MORE TO DO AND FUNDING NEEDED TO DO IT**

While the findings of the review are broadly positive, the K170 million gap between what was promised for SIF and what has been received is hampering progress. It serves to severely restrict the ability to sustain the good outcomes that have already been achieved through this productive partnership between ABG and GoPNG. Moreover, the lack of certainty over release of funding is having serious downstream effects in terms of mobilising contractors to undertake already scoped work. Whilst recognising that the SIF cannot recognise all the ABG’s development needs, this shortfall has proven harmful in a number of respects.

Among major problems currently besetting the SIF are:

- Insufficient funding to pay for the completion of works on the Buka ring road
- The Bougainville feeder roads rehabilitation program has stopped
- A number of activities planned and scoped out are essentially on hold
- Insufficient finance and technical assistance available to fully complete projects to a satisfactory standard
- There is not one toea in the budget to undertake any significant monitoring of projects or impact assessment as was originally intended.

**FUNDING FOR THE NEW CSTB APPROVED CONTRACTS**

An additional related problem circles around two major roads contracts awarded by the Central Supply and Tenders Board in Port Moresby, namely, the Kieta-Toimanapu and Toimanapu-Buin sections of the East Coast Trunk Road.

The total cost of these contracts is 391 million kina and it is not at all clear who is expected to pay for them. Already SIF funding that had previously been allocated to existing SIF projects properly approved under the jointly approved SIF Guideline has had to be diverted to pay for mobilising for these contracts. An August 2015 Joint Technical Committee of the JSB agreed (endorsed by the ABG’s BEC in September 2015) that this section of the road should be funded from sources other than the SIF.

The flow on impact of these contracts – which are nearly double the value of remaining ABG SIF revenue entitlements, almost all of which has already been allocated to existing projects – are extremely serious and profound. A solution needs to be urgently found.

**BEYOND THE SIF**

The SIF was envisioned as a five-year project and is scheduled to conclude at the end of this year, 2016.

Owing to both delays in mobilising funds and the shortfall identified already in this paper, it is highly unlikely that all projects will be completed before the funding period ends.

There also exists the question of ‘what next’. As well as the need to maintain that what has been built, Bougainville’s needs remain wide-ranging and deep. The ABG’s Technical Services department has already identified a wide range of major infrastructure projects to be scoped and costed for the 2017-2018

This portfolio will build on the momentum generated by the SIF but be integrated into a more strategic and medium-term approach to program planning and budgeting with better communication and coordination between the administrative and parliamentary arms of government and linkages with the national government through the JSB and the ABG’s development partners.

This is a 200 million kina package that encompasses five main portfolio areas:
• Health
• Education
• Transport, Communication and Utilities
• Economic Sector Development
• Governance and Administration

PROPOSED JSB RESOLUTIONS

3. The JSB resolves that the ABG Technical Services Department identify which of the current JSB approved projects are affected by the funding shortfall in the SIF due to the 3 additional High Impact projects approved by CSTB and not part of the JSB approved program of SIF projects, and also identify the estimated cost of the completion of the projects, and submit the details to the National Departments of Treasury and National Planning and Monitoring to identify appropriate funding sources to enable the work on these projects to continue in 2016, and subsequent years until completed.

4. That the National Government, through its relevant agencies, in consultation with the ABG, develop detailed proposals for a funding strategy for submission to the two governments by July 2016 for completing the three CSTB approved contracts.

5. That the National Government, through its relevant agencies, in consultation with the ABG, develop detailed proposals for a strategy for dealing with projects that may ‘roll-over’ until 2017, which shall be submitted to the two governments by July 2016.

6. That the relevant agencies of both Governments, examine and report to the two governments by July 2016 on issues concerning the 2017-2018 SIF Proposed Portfolio, adjusting as necessary.
AGENDA 6 – SUBJECT: FISHERIES ISSUES

PURPOSE

The purpose of this paper is:

a) to provide update on issues related to signing of the MOU for drawdown of fisheries powers and functions.

b) recommend that this controversial issue, now under discussion between NFA and ABG for about 8 years, be decided by the JSB.

FACTS AND CONSIDERATIONS

1. The Bougainville Peace Agreement (BPA) provides for the ‘fishing revenues from fishing’ in ‘Bougainville waters and waters beyond the guaranteed three nautical mile limit and within the Exclusive Economic Zone and the continental shelf associated with Bougainville territory’ to be distributed to the ABG from the National Government (the NFA) on the basis of an ‘agreed formula (based on derivation less costs)’ (see paragraphs 86 and 85 of the BPA).

2. The requirements of the BPA are clear. All fishing revenue derived since 2005 from the waters associated with Bougainville is payable to the ABG.

3. All that is required now to calculate what is owing is the production of data by NFA about:

   (a) such revenue derived since 2005, and
   (b) the costs (if any) to the NFA of deriving that revenue.

4. There is no restriction of any kind in the BPA about how the ABG should use the fisheries revenue it receives. In particular, there is no requirement that it must spend such revenue (or any particular proportion of it) on fisheries development in Bougainville.

5. Since about 2008 there has been a series of consultations between ABG, NCOBA, NFA and the Attorney General’s Office about the issues involved. More extensive consultation occurred from 24 August 2010 when the ABG requested the drawdown of fisheries powers and functions from NFA.

6. A draft MOU on fisheries matters has been developed through consultations between ABG and NFA over several years. Amongst other things it includes a commitment by the NFA to make a ‘good faith’ payment to the ABG of K5 million per year, from 2014, in lieu of the legally required payment of all fishing revenues derived by the National Government from waters associated with Bougainville, less costs to the NFA.

7. As yet, the NFA has not been able to produce the evidence of the actual revenues it has received. In past years it has indicated that the data would be provided ‘soon’. So far, no data has been made available to the ABG by the NFA. This is a matter of growing concern to
the ABG. It appears that the NFA does not believe that the Bougainville Peace Agreement places obligations upon the organisation.

8. After finalisation of the MOU, including approval by NFA Board its first attempted signing was at 2015 March Arawa JSB meeting. This did not eventuate when then Bougainville Affairs Minister, the late Hon Pirika wrote a letter to the National Fisheries Minister disputing it. Subsequently, an attempt at signing was made at the December 2015 Kokopo JSB meeting. In advance of that meeting, the late Hon Pirika wrote to the National Fisheries Minister to rescind his previous objection. Unfortunately the signing again did not eventuate for reasons unknown to ABG. Numerous attempts made by ABG and NCOBA to follow up and get feedback from NFA on the status of the MOU have failed to elicit information.

9. The ABG has been advised that after most recent NFA-ABG Technical Official consultations on 05 April 2016 the MOU was re-submitted to NFA Board on 19 April 2016. The reason as to why this unchanged MOU previously approved by the NFA Board might need to be reconsidered by the Board is unknown to ABG. The ABG has been advised, however, that the 19 April NFA Board meeting decided that NFA lawyers will make amendments to the MOU and the Board will deliberate on it again on 16 May 2016. The date for signing of this MOU is subject to NFA Board approval which is unclear to ABG.

**PROPOSED RESOLUTION**

The JSB agrees that:

1. The MOU between the ABG and NFA, now under discussion for about 8 years, must be finalised and executed as a matter of urgency;

2. The NFA must make the K5 million ‘good faith’ payment, in lieu of actually calculated ‘National Government fishing revenues from fishing’ in waters associated with Bougainville each year from 2014 onwards, until it provides that ABG with the data on actual revenue derived, and the costs involved in deriving that data, and reaches an agreement with the ABG on the formula for paying the ABG its share of the revenue, calculated on the basis of ‘derivation less costs’.

3. The NFA must provide all the relevant data to the ABG as a matter of urgency, and no later than 31 July 2016.

4. The NFA should consult with the Bougainville Public Service, as a matter of urgency, on the steps required for transfer of coastal fisheries functions and powers to the ABG, inclusive of the fiscal and personnel requirements, and associated resources required, and a full joint report by NFA and the ABG Chief Secretary, on progress and outcomes, shall be made to the two governments by the end of October 2016, or to the next JSB, whichever first occurs.
C. ISSUES FOR JOINT TECHNICAL TEAM MEETING DISCUSSIONS
AGENDA 7 – SUBJECT: ABG FINANCE & TREASURY ISSUES:

AGENDA 7.A: CALCULATION OF IRC REMITTANCE TO ABG OF TAXES COLLECTED IN BOUGAINVILLE 2005-2016

Under the BPA and the PNG Constitutional Laws, the ABG is entitled to receive from the IRC, the proceeds of all collections in Bougainville of:

- Personal income tax; and
- All other National Government taxes collected in Bougainville, other than Company Tax, Customs Duties, and 70 per cent of GST.

It also is supposed to receive 30 per cent of GST collected in Bougainville.

The IRC has been working closely and cooperatively with the ABG Taxation Office. As a result it has been established that the IRC is in arrears in payments to Bougainville by at least K37.5 million. The ABG requests the IRC to provide accountability for Bougainville taxes it collects. The ABG’s next step will be to undertake an audit of the IRC figures for collection of taxes in Bougainville going back to 2005. (The ABG has the right under the BPA and the Organic Law, the ABG to conduct such audits.) Once the arrears are accurately calculated, the ABG will seek immediate payment of the arrears. If it is not paid, the ABG will have no choice but to take legal action to recover what is constitutionally due to the ABG.

Proposed Resolution:

*With the cooperation of the IRC, the ABG has established that the IRC is in arrears in payments to Bougainville by at least K37.5 million. Accordingly:

1. The IRC will pay K37.5 million to the ABG by the end of June 2016;
2. IRC will provide full accountability for taxes collects in Bougainville.
3. The ABG will undertake an audit of the IRC figures for collection of taxes in Bougainville going back to 2005.*
AGENDA 7. B: MERGING OF BOUGAINVILLE TREASURY FUNCTION INTO ABG FINANCE DEPT.

In May 2014 the ABG passed the Bougainville Public Finance (Management and Administration) Act 2014. Noting the passing of this law there is a need to merge the Bougainville Treasury Function with the function of the Bougainville Department of Treasury & Finance.

There are substantive matters to be agreed to between the Department of Finance of Papua New Guinea and the ABG Department of Treasury and Finance. The current status remains that activities of staff of Bougainville Treasury is still being directed from the Department of Finance in Waigani.

The ABG Department of Treasury and Finance requests that it be authorized by the National Department of Finance to direct the activities of all Department of Finance Staff in Bougainville in the performance of their official duties, including managing and administering such staff until such time as the Autonomous Bougainville Government has its own Department of Treasury and Finance staff in place under the Bougainville Public Services (Management and Administration) Act 2014.

Other important matters to be facilitated under this process includes but is not limited to;

- Department of Finance to transfer to ABG Department of Treasury and Finance all records, systems and tools that make up the accounting systems of the Bougainville Treasury Office and District Treasury Offices, including the Provincial Government Accounting System (PGAS)

- Department of Finance to provide the ABG Department of Treasury and Finance with all hardware, software, training and technical support services to enable the ABG Department of Treasury and Finance to operate PGAS and any successor accounting system of the Department of Finance

- Department of Finance to transfer to ABG Department of Treasury and Finance all assets of the Bougainville Treasury Office and District Treasury Offices

Additionally to give effect to the smooth operational requirements of the ABG Department of Treasury and Finance, the National Departments of Treasury and Department of Finance are requested to advise the ABG Secretary of the Department of Treasury and Finance in a timely and expedient manner of all Warrant Authorities issued and cash transfers made to Bougainville.
In all these matters, the ABG Department of Treasury and Finance will collaborate in partnership and use their best endeavours to ensure that public finances in Bougainville are managed and reported consistent with law and international good practice.

**AGENDA 7.C: SERVICE DELIVERY MECHANISM AND LLGSIP**

In 2014 the “JSB agreed that the Secretary for Finance will issue finance instructions to enable payment of LLGSIP to COEs in Bougainville at a rate not necessarily equivalent to that paid to other provinces in PNG”. The ABG recognises that to date, nothing much has been progressed on this matter. The commitment by the National Government stills stands and that the national Department of Finance Secretary needs to issue special Finance Instruction (FI’s) so that the LLG SIP is paid to Council of Elders/Community Government on Bougainville. The LLG SIP, like the DSIP AND PSIP, is not necessarily a grant under the auspices of the Organic Law on Provincial and Local Level Government (OLPLLG) which does not apply in Bougainville. It is a development grant and does not need to go to the NEC for approval and ratification.
AGENDA 7.D: DSIP AND PSIP AND ABG LAWS IMPLEMENTING THE AUTONOMY ARRANGEMENTS

1. The DSIP and PSIP funding is authorised under the Organic Law on Provincial Governments and Local-level Governments. But under section 277 of the National Constitution, that Law does not apply to or operate in Bougainville. As a result, it seems highly likely that there is no legal basis for DSIP and PSIP to be paid to the four MPs for Bougainville.

2. The payment of DSIP and PSIP in Bougainville causes, or contributes to, a range of problems for Bougainville. They include:

   a. The fact that, between them, the four Bougainville MPs have much more discretionary funding available than does the ABG in any one year;
   b. The availability of that funding to them seems sometimes almost designed to undermine the credibility of the ABG, almost all of whose funding is tied to delivery of basic services (education, health etc.), especially as the National Government refuses to pay the Restoration and Development Grant (RDG) in accordance with the requirements of the Peace Agreement and the National Constitutional Laws;
   c. The four MPs do not collaborate or coordinate with the ABG in planning and managing expenditure of DSIP and PSIP;
   d. PSIP and DSIP projects often involve infrastructure (for schools and health clinics, including buildings and equipment) which the ABG is not consulted about, and often even not informed about, despite the fact that it is then the ABG that is expected to meet recurrent costs (e.g. staff salaries and other costs, maintenance of buildings and expensive medical equipment, and so on).

PROPOSED RESOLUTION

All DSIP and PSIP funding to Bougainville MPs should cease, and instead the funds saved should be used as the basis for providing a source for funding the correct payment of the RDG.
AGENDA 8 – SUBJECT: DRAWDOWN OF POWERS AND FUNCTIONS

AGENDA 8.A: OVERARCHING MOU – FACILITATING DRAWDOWN OF POWERS AND FUNCTIONS.

PURPOSE

The purpose of this short brief is to advise JSB of the reasons for development of an overarching MOU on facilitating the transfer of functions and powers to the ABG.

FACTS AND CONSIDERATIONS

B. Since the ABG was first elected (mid-2005) gradual progress has been made with the transfer of functions and powers from the National Government. However, progress has been much slower than expected. Some National Government Departments and agencies have understood what was required of them by the Peace Agreement and PNG Constitutional Laws. They have cooperated very effectively with the ABG. Standout examples include the MRA and the Department of Personnel Management.

B. Some other departments and agencies have been much less interested and cooperative. There are many examples. There are many reasons for the lack of interest and cooperation. They can include:

   a. Lack of understanding of the complex arrangements for autonomy and for transfer of powers in particular, which is perhaps not altogether surprising when it is remembered that the arrangements are contained in numerous documents BPA, National Constitution Part XIV, Organic Law on Peace-building in Bougainville, the Bougainville Constitution, JSB resolutions, and so on), and those documents are often expressed in legal terms not readily accessible to non-lawyers;

   b. Some agencies and departments do not understand that the Bougainville Peace Agreement is not just a political agreement, but has also been made legally enforceable by the enactment of PNG Constitutional Laws;

   c. Some officers in some agencies and departments cannot understand why Bougainville should be treated in any way differently from a provincial government;

   d. Some agencies and departments may fear the loss of resources (such as fisheries revenues) to the ABG;

   e. Some fear that if ‘concessions’ are made to Bougainville, that provincial governments elsewhere in PNG will want the same, making governance of PNG difficult or impossible.

B. Not long after the ABG was established, the then Office of Bougainville Affairs developed initial proposals for an ‘overarching MOU on transfer of powers that would spell out the main steps in, and requirements for transfer of functions and powers. The aim was to assist staff of agencies and departments to better understand what was required of them. The MOU was not finalised and used.

B. Concerns about the lack of understanding of the autonomy and the transfer arrangements were discussed between officers of the ABG and NCOBA early in 2015.
As a way of improving understanding, it was decided to re-examine the possibility of an ‘overarching’ MOU. By then, much more experience had been accumulated in the process of developing a range of different approaches to transfer. A more detailed draft MOU on transfer requirements was now developed. It explained the reasons for transfer, and the constitutional basis for and the details of the transfer arrangements. In doing so, it pulled together the different aspects of the transfer arrangements until them located in many different documents.

B. The draft MOU, once executed by representatives of the two governments, will provide clear evidence to any agency or department called upon, under the transfer arrangements, to prepare for transfer, of the commitment of both governments to the transfer process. It will also provide a sort of road map, or check list, for the various steps in and requirements of the transfer process.

B. For example, it will make clear that in the 12 months after the ABG gives notice of intention for transfer to occur, that it will be necessary for consultation on the transfer process, on a plan for transfer that can involve stages, and that it is necessary to consider the capacity and resources required for the effective exercise of the functions and powers by the ABG, and that when transfer occurs, that provision for the costs for the ABG of carrying out the functions and exercising the power must thereafter be included in the annual recurrent unconditional grant payable to the ABG.

C. A draft MoU is being finalised by the ABG and the National Government with a view to having it signed at this JSB.

**PROPOSED RESOLUTION**

The JSB resolves that:

1. **That the final MOU should be signed by the Prime Minister and the President as soon as is practicable and**

2. **The MOU should then be used as a guide to the transfer process in future.**
AGENDA 8.B: IMPLEMENTING ABG “FOREIGN RELATIONS” FUNCTIONS UNDER THE BPA

The Bougainville Peace Agreement (the BPA) deals with ‘Foreign Relations’ matters in paragraphs 69 to 83. The ABG has several roles and functions available, including: ABG representation in international meetings; grant of visas and work permits for non-citizens working in Bougainville; reservation of occupations for citizens; etc. They are discussed in more detail below.

The BPA requires the National Government and the ABG to ‘establish mechanisms for consultation’ about the agreed areas of foreign relations (para.69). On ABG roles on visas, work permits and reserved occupations, the BPA requires the ABG to ‘establish appropriate machinery for implementation, including the sharing of information’ (para. 83).

Since 2012, President Momis and the ABG Chief Secretary have written many letters to the Minister for Foreign Affairs and the Chief Migration Officer (CMO) seeking to establish cooperative arrangements facilitating the ABG’s use of its roles and functions on visas etc. Although the Minister has been fully supportive, there was no response from the CMO until the ABG acting Chief Secretary met the acting CMO on Friday 22nd April. They agreed to urgent action to develop an MOU on ABG roles in relation to visas, etc.

THE ABG “FOREIGN RELATIONS” ROLES AND FUNCTIONS

Several aspects of “Foreign Relations” are covered by the BPA.

B. Regional Organisations
ABG representatives:
- to regional meetings/organisations, with NEC approval, or
- in PNG delegations to regional meetings etc. of special Bougainville interest, costs to be carried by ABG.

b. International Agreements

1. ABG may request PNG (through an agreed mechanism) to participate in negotiating international agreements on subjects relevant to Bougainville
2. Future international agreements altering autonomy arrangements to have effect only if ABG agrees.

c. Border Agreements

1. ABG representation in PNG negotiation of new Solomons border agreements;
2. Border agreement affecting ABG jurisdiction operates only if ABG agrees.

B. Sporting and Trade Missions

Two governments to consult on cooperation for ABG participation in: international cultural exchanges; trade/investment/tourism promotion; sport.
e. Immigration – Visas and Work Permits

1. ABG recommends names ‘for inclusion or removal from the visa warning list;’
2. All ‘applications for work permits or employment visas for Bougainville’ to be referred to the ABG;
3. ABG to submit lists of occupations to be reserved for Bougainvilleans (no work permits or employment visas for non-citizens for such occupations);
4. An ‘appropriate mechanism for implementation (including sharing of information)’ in relation to immigration matters to be established by the ABG.

MOUs TO IMPLEMENT “FOREIGN RELATIONS” ARRANGEMENTS

The ABG Chief Secretary and the acting CMO have agreed to develop an MOU on cooperation to implement the BPA visa and work permit provisions. This may include, among other things, the ABG providing a PNG Immigration and Citizenship Services Authority (ICSA) officer a Buka office, sharing information, agreeing time limits within which ICSA will respond to ABG visa warning list recommendations or reserved occupation submissions, etc. For work permit and reserved occupation matters, other National Government agencies may need to be included, e.g. Department of Labour and Industrial Relations (DLIR).

MECHANISM FOR INTER-GOVERNMENT CONSULTATION ON AGREED AREAS OF FOREIGN AFFAIRS

As provided under the BPA para.69, the National Government and the ABG are required to ‘establish mechanisms for consultation in agreed areas of foreign affairs’ (i.e. the areas covered in BPA paras. 70-83). No such mechanism has ever been established. In the absence of such a mechanism, there have been breakdowns in communication about international meetings in which the ABG should be involved. For example, a few weeks ago, the PNG Solomon Islands Border Cooperation Committee met in Rabaul. The National Government did not extend to the ABG an invitation to attend nor even notice that the meeting was to be held. That is a serious breach of the understandings between the Governments.

PROPOSED RESOLUTIONS

(1) The JSB endorses the ABG, ICSA and DLIR work to develop an MOU about cooperation on visa warning list, employment visas, reserved occupations etc.
(2) Subject to approval of the MOU by relevant PNG and ABG ministers, the heads of ABG Public Service, ICSA and DLIR may execute the final MOU.
(3) Officials of governments consult through the JTT to develop proposals for a mechanism for inter-government consultations on the foreign affairs areas covered by BPA paragraphs 70-83 (regional organisations, international and border agreements, and sporting and trade missions).
AGENDA 8.C: SUBSIDIARY LANDS MOU

ABG Lands department is adopting a two-road strategy in dealing with transferring the powers and functions. First is delegation of powers and function via this subsidiary MOU. Second is the development of the Bougainville Lands Law.

This is a subsidiary MOU to the Lands MOU that was signed a Holiday Inn in 2011. The purpose of this MOU is an interim arrangement where ABG Lands department will assume powers and functions to immediately exercise in Bougainville. One of such powers critical to Bougainville is the establishment of the Land Board so issues over land titles/ownership can be dealt with accordingly. There are two aspects to this delegation arrangement. The MOU itself which outlines working relationship between ABG and National Lands and Physical Planning departments. The intention is that National Lands department will assist it ABG counterpart in developing necessary capacity to assume and exercise the delegated powers and functions. The other aspect is ‘the Instrument of Delegation’ through which the National Lands Minister will delegate key powers and functions to his ABG counterpart.

AGENDA 8.D: ENVIRONMENT MOU

This MOU is one aspect of the drawdown of Environment powers and functions strategy which simultaneously involves ultimate legislation of ABG’s on law in this regard. Essentially the MOU is an arrangement where the PNG’s Conservation Environment Protection Authority will participate in dealing with environment related issues on Bougainville, until such time the Environment Bureau with in ABG lands department acquires human resource capacity and technical expertise.
AGENDA 9 – SUBJECT: NATIONAL GOVERNMENT REPRESENTATION ON BOUGAINVILLE SENIOR APPOINTMENTS COMMITTEE

PURPOSE

1.1 The purpose of this paper is to seek a JSB resolution calling for the appointment of the National Government’s representatives to the Bougainville Senior Appointments Committee.

FACTS AND CONSIDERATIONS

1.2 The Bougainville Senior Appointments Committee (BSAC) is established under Section 102 of the Bougainville Constitution. It is responsible for appointing holders of constitutional and senior office. It is ordinarily comprised of 5 members: the President (as Chair); the Speaker of the House of Representatives; a member appointed to represent the interests of women in Bougainville; a member appointed to represent the interests of the churches in Bougainville; and a member appointed by the Law Society.

1.3 However, when the BSAC is considering appointments to certain constitutional offices, Section 321(3) of the National Constitution (reflecting paragraph 43 of the Peace Agreement) requires that it have an additional 2 members, representing the National Government. The body with responsibility for appointing the National Government’s representatives to the BSAC varies, depending on the particular office that is under consideration.

1.4 Under Section 106(1) of the Bougainville Constitution, when appointing the Electoral Commissioner, the BSAC must include 2 persons appointed by the Electoral Commission Appointments Committee (ECAC). Under Section 78(1) of the Constitution, when appointing the Clerk of the House of Representatives, the BSAC must include 2 persons appointed by the National Executive Council (NEC).

1.5 At the July 2014 JSB meeting held in Kokopo, the National Government delegation gave verbal advice that its representatives on the BSAC for the appointment of the Electoral Commissioner would be Mr Andrew Trawen and Mr John Kali. The ABG asked that it be provided with written confirmation from the ECAC of its appointment of Mr Trawen and Mr Kali. Confirmation is yet to be received.

1.6 There has been no advice from the NEC as to the names of its nominees to the BSAC for the appointment of the Clerk of the House of Representatives, despite a formal request for this information having been made to the former Chief Secretary.

1.7 The ABG is keen to see substantive appointments made to the offices of Electoral Commissioner and Clerk, but cannot do so until the BSAC is properly constituted.
Proposed Resolutions

1.8 The Joint Supervisory Body should adopt the following resolutions:

a. *acknowledge* the importance of the BSAC being properly constituted, in accordance with paragraph 43 of the Peace Agreement, Section 321(3) of the *National Constitution*, and Sections 78(1) and 106(1) of the *Bougainville Constitution*, to enable the appointment of the Clerk of the Bougainville House of Representatives and the Bougainville Electoral Commissioner; and

b. *request* the Electoral Commission Appointments Committee and the National Executive Council, as a matter of urgency, to formally advise the Bougainville Senior Appointments Committee of the names of its representatives to the Committee.

Hon. Chief Dr John L Momis GCL MHR
President of the Autonomous Region of Bougainville
AGENDA 10 – SUBJECT: REVIVING THE JSB’S ROLE AS THE KEY AUTONOMY OVERSIGHT BODY

PURPOSE

The purpose of this paper is to:

a. Review the goals and roles of the Joint Supervisory Body (JSB) as provided in the Peace Agreement (BPA) and the PNG Constitutional Laws; and

b. To note aspects of the ways in which arrangements for JSB operations in recent years have diverted the JSB away from its intended goals and roles; and

c. Propose some approaches intended to revive the role of the JSB as the main body for oversight of the autonomy and referendum arrangements, and for consultation and resolution of disputes between the two governments.

FACTS AND CONSIDERATIONS

The National Constitution establishes the JSB for the following three main purposes:

1. ‘to oversee the implementation of the Agreement’ (both the autonomy and the referendum arrangements);
2. ‘to provide a consultative forum at which consultation between the National Government and the Bougainville Government and their agencies can take place’, and an important goal of consultation is to avoid the problems cause by disputes between the two governments;
3. to provide a forum for resolution of disputes between the two governments, in accordance with the ‘dispute resolution procedure’ in the National Constitution (section 333).

These vitally important goals and roles give the JSB central importance as the joint agency that handles inter-government relations between the National Government and the ABG.

For the JSB to effectively achieve its goals by carrying out its roles, there must be ample opportunity for direct engagement between the National Government and ABG political leaders appointed to the JSB by both the NEC and the BEC.

Since the JSB first met in 2005, arrangements and practices have developed that are seriously reducing, and getting in the way, of direct engagement between the leaders. These include:

1. The large numbers of leaders and officials from both governments that attend JSB meetings;
2. The large number of observers (including international community representatives) that attend the whole of JSB meetings (rather than just opening and closing sessions) which is a major reason why leaders do not openly engage on matters of controversy or dispute (for fear of causing embarrassment or misunderstanding etc.);
3. The large number of JSB agenda items, that often include largely administrative matters, rather than issues of great significance;
4. The practice of the Joint Technical Team (JTT) developing draft resolutions for adoption by the ABG, and in case of issues where the JTT cannot resolve key issues,
of simply recommending further work by officials to resolve the issues rather than referring matters to the leaders to resolve them (in their capacity as the JSB);

5. The very infrequent JSB meetings held – the procedures adopted by the JSB under subsection 332(4) of the National Constitution call for at least two meetings per year, but it is increasingly common for more than 12 months to elapse between meetings;

6. Because it tends to be assumed that only the JSB can approve almost any aspect of implementation of autonomy, there is a tendency to overload JSB agendas with many relatively minor matters, that could readily be dealt with through agreements between the governments made in other ways;

7. The short duration of most JSB meetings between leaders – usually no more than 2 or 3 hours of direct engagement.

The tendency to think most matters about autonomy arrangements need to be dealt with through the JSB when combined with the frequent long delays between JSB meetings often results in long delays in getting simple matters agreed and progressed.

In addition, the JSB does not do anything in terms of reviewing and overseeing the implementation of the autonomy and referendum arrangements in the BPA. It does not even, as a matter of course, have an agenda item to review the resolutions passed at the immediately previous JSB meeting. Further, it does not ever review implementation of JSB resolutions going back to when the JSB was first established in 2005.

Beyond that, the JSB has never had a discussion in which it generally reviews the operation of the autonomy and referendum arrangements. Further, it has not even reviewed the extent of implementation of the recommendations of the 2013 report of the autonomy review.

PROPOSED RESOLUTIONS

The JSB should decide that:

1. Numbers of attendees at JSB meetings should be drastically reduced;
2. Observers (including from the international community) should attend only formal opening and closing sessions, so as to ensure leaders are able to engage freely, and deal with matters of controversy and dispute;
3. JSB meeting agenda should provide ample time for political leaders to engage directly.
4. The topics on JSB meeting agendas should be limited, and mainly restricted to major issues about implementation of the BPA, and dealing with resolving disputes between the two governments, but should also include:
   a. An item to review resolutions at the previous meeting, and issues arising; and
   b. Semi-regular reviews of implementation of both JSB resolutions going back to establishing of the JSB and recommendations of the five-yearly autonomy reviews, and also reviews of the operation of the autonomy and referendum arrangements generally,
5. The JSB should meet at least twice a year;
6. Where issues between the two governments cannot be resolved by officials or between ministers, then in general they should be referred to leaders in the JSB, rather than to further processes by technical officers;

7. The JSB should record in clear terms that the JSB is not the only means by which matters can be agreed between the governments, and that where appropriate, matters can be agreed by ministers and senior officials (where necessary with appropriate authorisation from NEC and BEC).
AGENDA 11: SUBJECT: NURTURING LAW ABIDING, STABLE AND PEACEFUL SOCIETY BY STRENGTHENING BOUGAINVILLE POLICE SERVICE AND NGO’S (CSOs & FBOs) HUMANITARIAN REHABILITATION PROGRAMS

The purpose of this paper is to advise the JSB about:

a. A new strategic development plan for the Bougainville Police Service (BPS)

b. Continuing financial impediments that impact upon the performance and service of the BPS

Background and Recent Developments

The Bougainville Police Service (BPS) was established in 2006 in compliance with the Bougainville Peace Agreement. The Peace Agreement provided a mandate for the BPS to develop a more community focused approach to policing on Bougainville.

The current personnel strength of the BPS is 624: 264 regular police and 360 Community Auxiliary Police (CAP). Most of the regulars continue to be centered at the three regional centers and ten district centers whilst the CAP serves within their local rural communities.

In September 2015 Deputy Commissioner Francis Tokura was appointed as Chief of the BPS with Assistant Commissioner Joanne Clarkson as the Deputy Chief (Commander) of the BPS.

The transitional organizational structure of the BPS was approved in 2015 and the force is expanding in terms of personnel. A total of 62 senior positions from the rank of Chief Superintendent to Sergeant have been approved and will shortly be advertised in the Police Gazette. Additionally, twenty six recruits passed out from Bomana Police college last month. This will increase the police to a total of 646, 286 regulars and 360 CAP.

The BPS has recently developed a new strategic plan that provides the direction for policing in Bougainville. The BPS Strategic Development Plan 2016-2020 – endorsed by the BEC in April 2016 - provides the strategic direction in order for the BPS to evolve into a police service aspired to in the Bougainville Peace Agreement and the Bougainville Constitution.

Contained in the plan is a series of six outcome groups that once achieved will lead to the capacity of the BPS to effectively draw down police powers and functions. The plan will be supported by Australian and New Zealand police and justice sector programmes in Bougainville.
Issues and Challenges

These positive developments notwithstanding, a number of major problems weigh down on the effectiveness of the BPS.

The ABG has and continues to raise concerns (through the BEC) about the lack of policing across Bougainville. The concerns relate specifically to command and control with discipline and poor response being major issues.

Infrastructure remains a challenge. The BPS has insufficient office and housing accommodation for current serving members. The BPS will be unable to meet the logistical needs of the new officers. Even with donor funding, there continues to be insufficient support for police housing.

The BPS SDP 2016-2020 if effectively implemented will provide the necessary road map to improve service delivery to the people of Bougainville. However sufficient funding is needed to fully implement all the elements of the BPS’s strategic vision.

PROPOSED JSB RESOLUTIONS

1. That the JSB welcomes and endorses the strategic direction of the 2016-2020 BPS plan
2. That relevant parts of the National Government and ABG develop detailed proposals for a funding strategy that would marshal support for the 2016-2020 BPS plan
ATTACHMENTS
Summary Resolutions of the Special Extra-Ordinary Meeting of the Joint Bougainville Referendum Committee

Day 1: 19th April, 2016

Official Opening of the meeting made by ABG Vice President Honourable Patrick Nisira and the National Minister for Bougainville Affairs Hon. Joe Lera.

Day 2: 20th April, 2016

Agenda Items:

1. Referendum Management Body:

   The Meeting resolved to:
   Reaffirm the JSB decision of both government’s on Option 4 – independent agency and for both Electoral Authorities in joint consultations to further detail the work on the Agreement, Administrative Arrangements and Charter of the Referendum Management Body and that both Electoral Authorities withdraw the proposed plan for an Independent study on options of the Referendum Management Body.

2. Process for Setting the Referendum Date:

   The Meeting:

   • Notes both the Electoral Commissions’ timeline for 2019 as the target year and to use the schedule as the basis to develop the process to set the date and agrees that there are significant issues that need to be addressed correctly and that a joint targeted working group comprised of the Department of Justice & Attorney General (GoPNG), Department of Law & Justice (ABG), technical advisors, both Electoral Authorities, Department of Referendum (ABG) and NCOBA convene to jointly consult on recommending to the JBRC the process for Setting the referendum date.

   • Noted the importance of continuous political dialogue between both governments to further discuss in detail issues of weapons disposal, good governance, important
national events (eg. National Election, APEC, etc), voting for non-resident Bougainvillean's voter eligibility and the establishment of independent agency amongst other issues and ensure appropriate budget is tied to these process.

3. **Coordination of Referendum Preparations:**
The meeting:
- Recommend that NCOBA and the ABG Department of Referendum, Veterans’ Affairs & Peace in close consultation, provide to the JBRC and Development Partners, a way forward on proper coordination mechanisms.

4. **Referendum Work Plan**
The meeting:
- Agreed that a working group comprised of relevant counterpart departments of Finance and Treasury, Departments of Planning, Department of Attorney General and Law and Justice, Electoral Commissions, Department of Referendum, Veterans’s Affairs, NCOBA to convene two additional days workshop on Thursday 21st and Friday 22nd April, 2016 to develop a preliminary draft of the Referendum Work Plan capturing activities, time frames and costing to meet the 2017 budget cycle.
- Noted and acknowledged the further assistance by the UN PBF to fund the additional expense for the extended stay of the Bougainville delegation.

5. **Other Issues:**
The meeting:
- Noted informational statements on Joint Awareness Issues and the need to better manage related issues.
- Noted the need to build in the awareness plans into the overall referendum work plan.

6. **Next Steps:**
The meeting:
- Agreed to recommend to the JBRC that the committee schedule its meetings every two months and that the joint technical working group meetings be held according to the established Referendum Work Plan.
- Notes that the meeting proper of the JBRC will be on May 3, 2016 in preparation for the JSB proposed for the 6th of May 2016.

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Mr. Trevor Meauri
Deputy Secretary
Department of Prime Minister and NEC
Co-chair representing the Chief Secretary to Government

----------------------
Mr. Paul Kebori
Acting Chief Secretary
Department of the President & BEC
Co-Chair
ATTACHMENT II: REFERENDUM WORK PLAN

JOINT BOUGAINVILLE REFERENDUM WORKPLAN 2016 – 2020

(DRAFT 27th APRIL, 2016)

PREAMBLE:

<table>
<thead>
<tr>
<th>PROGRAMMES</th>
<th>ACTIVITIES</th>
<th>LEAD AGENCIES</th>
<th>TIMELINE</th>
<th>BUDGET (total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>ELECTORAL PROCESS</strong></td>
<td>● Preparations, development and agreement on: the Agreement, the Administrative Arrangement and the Charter for establishment of the independent Agency to conduct the Referendum (completed before 31st December 2016).</td>
<td>PNG Electoral Commission/ABG Electoral Office, supported by other key stakeholders of both Govts.</td>
<td>2016 – 2019</td>
<td>K35 million</td>
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<td></td>
<td>● Consultation and dialogue with other stakeholders concerning Referendum arrangements, including the matters to be agreed between the two governments.</td>
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<td>● Working with other stakeholders to ensure all necessary administrative arrangements for the conduct of the referendum are in place.</td>
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<td>● The two governments to support the Independent Agency that will conduct the referendum.</td>
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<td></td>
<td>● The two electoral commissions to report regularly to the two governments on progress of the electoral aspect of the referendum preparations.</td>
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<td>2. <strong>WEAPONS DISPOSAL</strong></td>
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</table>
Components:
- Review outcomes of the BPA Weapons Disposal Plan under UNOMB.
- Review existing ABG weapons disposal policy and current MOUs with Me'ekamui on Weapons Disposal.
- Consultation with Ex-Combatants, Me'ekamui and relevant stakeholders to develop new weapons disposal plan.
- Reconciliation and Unification processes.
- Law & Order
- Veterans engagement on Weapons Disposal.
- Consultations with GoPNG for support to the Weapons Disposal Plan.
- Implementation and Coordination.
- Review and Assessment to meet Referendum Preparation requirements.

- Determination of whether the weapons plan under the BPA has been completed and whether there is any other mandatory weapons disposal benchmark under the BPA.
- Review previous JSB decisions on weapons disposal.
- Development of a new agreed process for weapons not disposed of under the BPA Plan (ABG to report to July JBRC with proposal).
- ABG to develop new strategies to address law and order issues associated with illegal firearms not disposed of under the new disposal process, including possible legislation on firearms and other weapons.
- Explore with relevant authorities option to avoid threat of prosecution when weapons handed in under the new process.
- Explore possible options for clean-up by combatant countries of WWII weapons, munitions and landmines.
- Explore possible UN assistance.
- Report on weapons disposal implementation to support referendum preparation.

<table>
<thead>
<tr>
<th>3. GOOD GOVERNANCE ASSESSMENT</th>
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<tbody>
<tr>
<td>Components:</td>
</tr>
<tr>
<td>➢ 2nd Review on Autonomous Arrangements.</td>
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<tr>
<td>➢ Agreement on the role that the Good Governance</td>
</tr>
<tr>
<td>• Establish and complete arrangements for 2nd Review of Autonomous Arrangements by end of 2016.</td>
</tr>
<tr>
<td>• Development of TOR for review team for submission to JSB meeting</td>
</tr>
<tr>
<td>ABG Department of Referendum, Veterans’ Affairs &amp; Peace, 2016 – 2018</td>
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</table>
### Determination plays in determining the date of the referendum no later than mid 2020.

- Awareness on Good Governance and the role it plays in setting the date.

<table>
<thead>
<tr>
<th>on 6th May, 2016.</th>
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</thead>
<tbody>
<tr>
<td>• Agreeing the role that the Good Governance determination play in determining the date for the referendum no later than mid 2020.</td>
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<tr>
<td>• Development and conduct of awareness in relation to good governance and the role it plays in setting the date for the referendum.</td>
</tr>
</tbody>
</table>

#### 4. CIVIC EDUCATION AND ENGAGEMENT (AWARENESS)

**Components:**
- Development of Joint Awareness and Communication strategies/programmes for audiences in Bougainville, the rest of PNG and Internationally, appropriate to the then current stage of the referendum process.
- Consultation with Bougainvilleans in advance of decisions on referendum matters required to be agreed between the two governments.
- Administrative Process & Management of Programmes/Standards

<table>
<thead>
<tr>
<th>Establish Joint Coordination Agency on Referendum Awareness (NCOBA/ABG Department of Referendum, Veterans' Affairs &amp; Peace) to monitor progress of programme through periodic review.</th>
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<tbody>
<tr>
<td>• Review audience research and conduct audience research on an ongoing basis.</td>
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<td>• Review past awareness strategies and programmes.</td>
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<tr>
<td>• Joint development of Joint Awareness and Communication strategy and programmes under the strategy.</td>
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<td>• Determination of audiences and most appropriate means of communication with particular audiences.</td>
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<tr>
<td>• Development of Post Referendum consultation and Awareness strategy and programmes on the referendum outcome and related matters.</td>
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<table>
<thead>
<tr>
<th>NCOBA, ABG Autonomy Bureau, supported by UN.</th>
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<tbody>
<tr>
<td>ABG Department of Referendum, Veterans’ Affairs &amp; Peace, ABG Bureau of Media &amp; Information, NCOBA, National Department of Communication, supported by other key stakeholders including UN Peace Building Fund.</td>
</tr>
</tbody>
</table>
- Regular reporting to the two governments by the Joint Coordination Agency on Referendum Awareness.

## 5. ONGOING CONSULTATION AND DIALOGUE BETWEEN POLITICAL LEADERS, MEMBERS OF BOTH GOVERNMENTS AND OTHER KEY STAKEHOLDERS PARTICULARLY ON REFERENDUM MATTERS REQUIRED TO BE AGREED BETWEEN THE TWO GOVERNMENTS.

<table>
<thead>
<tr>
<th>Components:</th>
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<tbody>
<tr>
<td>- Strengthening the current Consultation &amp; Dialogue Process between the governments and with other stakeholders.</td>
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<td>- Deciding the roles that the determinations on weapons disposal and good governance play in determining the date of the referendum no later than mid-2020 Criteria for enrolment of non-resident Bougainvilleans to vote in the referendum.</td>
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<tr>
<td>- Processes for determining options for, and Questions to be asked in, the Referendum, and for setting the date of the referendum no later than mid-2020.</td>
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<td>- Linkages with Parliamentary Bipartisan committees of both Governments</td>
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<tr>
<td>- Examining relevant international experiences of referendums,</td>
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<td>- strengthening international linkages</td>
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<td>- Setting the start and end date, including consultation on Options, Questions, Choices and Pre and Post referendum dialogue</td>
<td>Office of Chief Secretaries of both governments (ABG/GOPNG), Department of Referendum/NCOBA and supported by PM&amp;NEC, DJAG, OBEC, PNGEC, ABG Department of President &amp; BEC, and Political Leaders and members of both governments</td>
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<tr>
<td>- Agreement on Weapons Disposal and Good Governance Threshold/benchmarks</td>
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<td>- Agreed Eligibility for Bougainville and Non Resident Bougainvilleans voters including possible lowering age limit to 15 years</td>
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<td>- Operationalizing arrangements for engagement of Parliamentary Bipartisan committees including the presenting of Parliamentary reports</td>
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<td>- Explore on international experiences on referendum targeting leaders</td>
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<td>- Process for strengthening internal dialogue in Bougainville and PNG respectively</td>
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<td>- International assistance on Referendum process</td>
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<td>- Consulting and agreeing on international observers for the Referendum</td>
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<td>- Developing code of conduct for observers</td>
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<td>- Report on Progress</td>
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</table>
6. **PROCESS FOR DETERMINING REFERENDUM QUESTIONS**

**Components:**
- Consultation on the main options, Questions, formulation of ballot paper(s), possible criteria for determining results
- Awareness and consultation
- Awareness

- Research on the main possible options
- Consultations between the two governments to agree on the main likely options (if any) in addition to separate independence
- Consultation with Bougainvillean communities inside and outside Bougainville on the option/s
- Consultation between the governments on option/s.
- Consultation between the government on the question/s to be asked.
- Reaching agreement on the question/s to be asked.
- Formulation of the ballot paper
- Consideration of whether there should be agreed criteria for determining results.
- Awareness and consultation at all relevant stages.
- Report on progress to the JSB through the Joint Bougainville Referendum Committee.

| ABG, Department of Referendum/NCOBA and Independent Agency | 2016 – 2017 |

7. **DETERMINING ENROLMENT CRITERIA FOR NON-RESIDENT BOUGAINVILLEANS**

**Components:**
- Consultation/dialogue with Bougainville communities in and outside Bougainville and between government
- Defining non-resident Bougainville.
- Determining Criteria

- Consultation with Bougainville communities in and outside Bougainville
- Consultation(s) between government
- Rules for enrolment and voting including the link(s) with Bougainville
- Defining non-resident Bougainville
- Defining evidence to establish criteria including use of material from village

| PNGEC, OBEC & Independent Agency, ABG Department of Referendum and NCOBA | 2016 – 2018 |
for enrolment of non-resident Bougainvilleans (link(s) with Bougainville)
- Defining evidence required to establish criteria
- Providing the criteria in Legislation or electoral procedures

records under the Bougainville Community Government Act (forthcoming), questions to be asked during the enrolment process about Bougainville links (including clan membership) in order to justify enrolment.
- Develop Legislation or electoral procedures providing for criteria to be met and evidence to be provided.
- Awareness and consultation at all relevant stages.
- Report on Progress by relevant agencies to JSB.

### 8. PEACE & STABILITY

**Components:**
- Pre, during and Post Referendum Peace and stability framework.
- Capacity of Law and Order/enforcement agencies/Border management of Customs & quarantine & Immigrations
- Awareness

- Development of a Peace and Stability Framework for Pre, during and Post Referendum stages.
- Develop, strengthen, manage and maintain capacity of law and order and other enforcement and policing agencies such as border, customs, quarantine and immigations.
- Seek assistance from international partners
- Post referendum relationship between both governments
- Awareness and consultation at all relevant stages.
- Report on Progress by relevant agencies to JSB.

**Department:**
ABG Department of Referendum, Veterans’ Affairs & Peace, NCBOA, Department of Law & Justice, RPNGC/BPS, ABG Department of Community Development

**Period:**

### 9. SECURING EX-COMBATANT AND ME’EKAMUI SUPPORT FOR THE REFERENDUM PROCESS

**Components:**
- Awareness and Consultation on current progress on BPA and Referendum implementation.
- Securing agreement on new Weapons Disposal Plan
- Implementing the new Weapons Disposal Plan
- Implementing the new Weapons Disposal Plan

- Awareness and Consultation at all stages with former combatants and with youth of Bougainville that have inherited crisis related behaviour.
- Reconciliations between Ex-combatants, between Ex-combatants and communities, between Ex-combatants and PNG security forces, between PNG and Bougainville and between Australia and Bougainville.
- Internal unification of all factions.
- Re-integration of all Ex-combatants.
- Recovery of the remains of the missing from all sides and factions and all communities.

**Department:**
Department of Referendum, Veterans’ Affairs and Peace, NCBOA, Police, PNGDF, both Chief Secretaries and support from the international donor

**Period:**
2016 – 2021
Securing support for orderly and peaceful conduct of the Referendum
Securing support for the Referendum outcome (whatever it is)

10. PROCESS FOR DETERMINING PARTICIPATION OF BOUGAINVILLE WOMEN AND PERSONS WITH DISABILITIES

Components:
- Consultation and dialogue process
- Legal framework for women and person with disabilities participation
- Awareness

- Determine legal, regulatory and procedural framework that promotes women participation
- Ensure gender balance in staffing of the independent agency at all levels including at management/decision making levels
- Encourage collection of sex-disaggregated data including on voter registration and turnout
- Encourage women participation in civic education making them aware of their crucial role
- Encourage persons with disabilities to participate in the process
- Report on progress

Department of referendum. Department of Law and Justice, NCObA PM&NEC Department of community development

11. POST REFERENDUM TRANSITION AND PEACE BUILDING AND POLITICAL SETTLEMENT

Components:
- Consultations between governments (ABG & PNG) and relevant stakeholders
- Managing post referendum situations both in Bougainville and PNG
- Awareness

- Ongoing consultation and dialogue between Governments and other stakeholders
- Consultation between the governments over the results of the referendum and to determine the next steps.
- Managing post referendum situations on Bougainville and the rest of Papua New Guinea
- Conduct awareness
- Report on Progress

GOPNG & ABG to decide on lead Agencies

BUDGET 2016 – 2020

<table>
<thead>
<tr>
<th>PROGRAMMES</th>
<th>(K millions)</th>
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<tr>
<td></td>
<td>2016</td>
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<td></td>
<td>2019</td>
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<tr>
<td>1. ELECTORAL PROCESS</td>
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<td>2. WEAPONS DISPOSAL</td>
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<tr>
<td>3. GOOD GOVERNANCE ASSESSMENTS</td>
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<td>4.</td>
<td>CIVIC EDUCATION (AWARENESS)</td>
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<td>5.</td>
<td>ONGOING CONSULTATION AND DIALOGUE BETWEEN POLITICAL LEADERS, MEMBERS OF BOTH GOVERNMENTS AND OTHER KEY STAKEHOLDERS PARTICULARLY ON REFERENDUM MATTERS REQUIRED TO BE AGREED BETWEEN THE TWO GOVERNMENTS.</td>
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<td>6.</td>
<td>PROCESS FOR DETERMINING REFERENDUM QUESTIONS</td>
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<td>7.</td>
<td>DETERMINING ENROLMENT CRITERIA FOR NON-RESIDENT BOUGAINVILLEAN</td>
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<td>8.</td>
<td>PEACE &amp; STABILITY</td>
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<td>9.</td>
<td>SECURING EX-COMBATANT AND ME’EKAMUI SUPPORT FOR THE REFERENDUM PROCESS</td>
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<tr>
<td>10.</td>
<td>PROCESS FOR DETERMINING PARTICIPATION OF BOUGA'INVILLE WOMEN AND PERSONS WITH DISABILITIES</td>
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<td>11.</td>
<td>POST REFERENDUM TRANSITION AND PEACE BUILDING AND POLITICAL SETTLEMENT</td>
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AGREEMENT BETWEEN THE PAPUA NEW GUINEA ELECTORAL COMMISSION AND THE BOUGAINVILLE ELECTORAL COMMISSION

Pursuant to Organic Law on Peace-Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum 2002, Section 56 Intergovernmental Agreement Relating to the Agency

The Agreement is made on the X day of X 2016.

Between

the Papua New Guinea Electoral Commission (hereafter the PNGEC), a constitutional office established under the Organic Law on National and Local-Level Government, as amended:

and

the Bougainville Electoral Commissioner (hereafter the BEC), Autonomous Region of Bougainville, a constitutional office under Section 106 of the Bougainville Constitution.

WHEREAS, the PNGEC is an independent constitutional office responsible for organizing and conducting all elections for the Parliament and the legislative arms of the local-level government in Papua New Guinea;

WHEREAS, the OBEC is an independent constitutional office in the Autonomous Region of Bougainville responsible for organizing and conducting the elections of the President, members of its House of Representatives and representation to the community governments;

WHEREAS, the parties recognize that the mandate given them by the Organic Law to actively consult and agree on the administrative requirements for conducting the Referendum in Bougainville;

NOW, THEREFORE, in consideration of the above recitals, and relevant laws, the signatory parties hereby agree to the following:

B. DEFINITION OF TERMS. It is hereby understood between the Parties that when the following terms are used, they mean:

“Electoral Authorities” means the Papua New Guinea Electoral Commission and Bougainville Electoral Commissioner.

“OBEC” means the Office of the Bougainville Electoral Commissioner.


B. MUTUAL UNDERSTANDING. It is the mutual understanding of both parties that:

1. The Agreement is to exercise the joint responsibility of the Papua New Guinea Electoral Commission (PNGEC) and the Office of the Bougainville Electoral Commissioner (OBEC) under s. 56 of the Organic Law for the organization and conduct of the referendum on the future political status of Bougainville in accordance with the Bougainville Peace Agreement, the Constitution of Papua New Guinea, the Bougainville Constitution and Organic Law:

2. The two (2) Parties agree to uphold the Constitutions of Papua New Guinea and the Bougainville Constitution and the Organic Law to meet the requirements of conducting the Referendum on Bougainville and the provisions that are set down as the terms and conditions of this Agreement herein, signing the Agreement and affixing their respective Common Seals and signatures as evidence of the Agreement.

3. The two (2) parties agree under section 57 of the Organic Law to consult and agree on a draft arrangement to implement this agreement (s 56).

4. They have agreed to meet formally at least once every three months, and as necessary, to monitor the implementation of the undertakings contained in this MOA.

1. PRINCIPAL AGREEMENT

The electoral authorities agree that:

- The joint responsibility of the electoral authorities for the conduct of the Referendum shall be implemented through an Independent Administrative Agency established under the Organic Law, Section 58 Optional Administrative Agency;

- The financial and budgetary arrangements of the Independent Administrative Agency shall be subject to Part VIII of the Public Finances (Management) Act 1995;

- The electoral authorities may create administrative structures within one or both electoral authorities for the implementation of this Agreement;

- The electoral authorities may second staff from one electoral authority to the other for the implementation of this Agreement;

- The electoral authorities may second staff to the Independent Administrative Agency.
One or more members of the management of the Independent Administrative Agency may be a constitutional office-holder or a Bougainville constitutional office-holder.

Signed on this day, Day of, 2016.

The signatures and seal to this Agreement are;

On behalf of the Government of Papua New Guinea and the Autonomous Bougainville Government, we the undersigned agree and endorse that the Bougainville Referendum shall be administered by an Independent Agency established in accordance with section 58 of the Organic Law on Peace Building in Bougainville.

HON. PETER O’NIEL
Prime Minister
Government of Papua New Guinea

HON. JOHN MOMIS
President
Autonomous Bougainville Government

On behalf of PAPUA NEW GUINEA: COMMISSION

PATILIAS GAMATO, ML
Electoral Commissioner – PNG

On behalf of the OFFICE OF ELECTORAL BOUGAINVILLE ELECTORAL COMMISSION

GEORGE MANU
Acting Electoral Commissioner – OBEC
## ATTACHMENT IV

List of projects identified Economic Service Department for ABG’s revenue generation

<table>
<thead>
<tr>
<th>Sector</th>
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<th>Returns in Millions (K)</th>
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Source: ABG Department of Economic Development (2016)