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Acknowledgement

The PNG National Research Institute would like to thank all who accepted our invitation and contributed to the discussions, others who participated physically and remotely, and also to those who supported in many different ways to the hosting of the National Conference on Decentralisation of Government in PNG on the 16th and 17th of February 2022.

We especially acknowledge Grand Chief John Momis who spoke and opened the conference. Grand Chief Sir Peter Ipatas, Sir Puka Temu, Sir Philip Kapal, Mr Pedi Anis OBE, and late Mr Ben Micah who also participated and contributed to the discussions. We also acknowledge the presentation by HE Jonathan Philp the Australian High Commissioner to PNG at the opening of the conference.

We appreciated the contributions by Researchers; Professor Cheryl Saunders and Dr Anna Dziedzic of Melbourne University for the Keynote Paper, Dr Karl Kossler of EAURAC (Italy), Mr Stephen Pokawin and Michael Kabuni of UPNG and Professor Satish Chand of the UNSW ADFA College. Presentations were also made by Mr. Pedi Anis of the New Ireland Provincial Autonomy Working Group and by Mr. Xavier Winnia from the Constitutional Law Reform Commission.

Others spoke as panel members and included the Autonomy Pilot Provinces, Enga, New Ireland and East New Britain and their Provincial Administrations, who spoke about the challenges and progresses they have made relating to autonomy and decentralisation of government on day one. Chairman and CEO of the National Economic and Fiscal Commission (NEFC) Patrick Painap, IRC Commissioner of Taxation Samuel Loi, Auditor General Mr Gordon Kega and PNG NRI Research Fellow Logea Nao were also panel members who spoke on Day Two.

The East New Britain Autonomy Working Group, the Enga Provincial Administration, the West Sepik Provincial Administration and Simbu Provincial Administration also organised groups to participate. We understand that many more participated remotely in small groups as well as others who participated individually.

The NBC provided excellent coverage of the two-day event live on its network and the feed provided by SpiderTek who did a fantastic job connecting electronically to participants within the country as well as those externally. EMTV, TV Wan, The National, Sunday Bulletin and other members of the media fraternity are also acknowledged for their coverage of the event.
Introduction to the Report

The Conference Report presents a summary of the discussions and contains copies of the papers, presentations and the discussions that were had over two days by key stakeholders at the ‘National Conference on Decentralisation of Government in PNG’.

This conference was held on the 16th and 17th of February 2022 at the APEC Haus in Port Moresby. It brought together researchers, policy makers and policing implementers and past and present leaders to discuss the issue of decentralisation in PNG.

The following is a brief explanation of the layout of this report.

Key Points of Agreement that Emerged from Conference Presentations and Discussions

The report opens with a listing of the five key consensus recommendations that emerged at the conference. These are placed upfront for the convenience of the reader.

Key Points from Each of the Conference Presentations and reference/links to papers, PowerPoint presentation and Youtube video clips

This section presents what the rapporteurs considered as key points from the speeches, presentations and discussions that were had in the two days of the conference. These points are intended to provide the reader with an indication of the points made and would advise the reader to look at the full contents for more information.

The points are organised in order of the conference sessions in which the presentations were made. A copy of the Conference Program precedes these Summary Points and can be used as a guide to help the reader locate speeches or presentations that they may be particularly interested in.

Links have been placed at the beginning of each section of the Summary points to guide the reader to either:

- The video of the full presentation (that have been posted on YouTube)
- The full speech or/and papers (that can be found in this report)
- The PowerPoint Presentation (that can be found in this report)

Complete Speeches, Presentations and Papers - as Appendices

This final section contains copies of all complete speeches, PowerPoint presentations and the papers that were presented at the conference.

These are also organised in the order in which they were presented at the conference.

All the papers presented have been placed together with their accompanying PowerPoint presentations. The PowerPoint presentations are placed upfront to be used as a guide by the reader when going through the main paper.
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Key Points of Agreement that Emerged from Presentations and Discussion

At the end of the two-day conference, a synthesis emerged of the key points from the presentations and the discussions that followed, indicating agreements on the following key areas for consideration and follow up action.

1. Decentralisation of Government has been a vision captured in the PNG Constitution to enable people in a diversified country to participate in decision making hence every effort must be made to continue exploring how to organise an Effective Decentralised System of Government in PNG. The Current Decentralised System of Government is clearly not working according to Government sanctioned reports as well as on evidence from the broader community.

2. A three-tier system of government seems to be the most effective means to decentralise government as demonstrated in most other democracies around the world. A local community-based government to address local participation and needs, a central government for national responsibilities and a regional (provincial) government to take responsibilities for areas at a broader level that community governments will be unable to attend to, size wise.

3. Directly Elected Representatives at each of the three-tier government system mentioned above seems to be a common feature of decentralised governments in most other countries, enabling improved effectiveness and greater accountability.

4. A Phased in Implementation of Provincial Autonomy Governments is a more appropriate strategy for moving forward. Implementation of autonomy for three pilot provinces in; ENBP, NIP and Enga should be vigorously pursued. Autonomy government for other provinces can be progressed depending on their capacity and readiness. There are examples of how these have been done from other parts of the world such as in Italy and so National Government and Agencies should actively pursue a phased in approach to Decentralisation of Government in PNG.

5. The conference proposed to adopt the use of the Eight Key Areas proposed by Professor Cheryl Saunders and Dr Anna Dziedzic in the keynote paper as a guide for the thinking and discussions on arrangements for Decentralisation of Government in PNG.
Day 1:
Brief on Conference Program by Dr Thomas Webster
Professorial Research Fellow and ADRP Project Leader
Watch video here: (https://youtu.be/8bDiYbhqg0Q)

Explanation of program structure and arrangement of topics

- Program Focus: Facilitating discussions around our governance arrangements, particularly the decentralised governance systems not working as well as we would like them to in providing basic services to our people
- Work on trying to improve the decentralised governance system has reached a stalemate.
  - Reference to 2015 CLRC and DPLGA report which states that the current Organic Law on Provincial and Local Level Government is not working, and a new Organic Law is needed. The new Organic Law Bill has been before Parliament for the past eight (8) years. Three provincial governments – Enga, East New Britain and New Ireland were asked to pilot autonomy arrangements. There has not been much progress from their proposals and working papers
- NRI through establishing the ADRP and organizing the Conference and commissioning papers is trying to understand what the problems are, what our aspirations are and to find a way forward.

Address by Dr Osborne Sanida

Director of the PNG National Research Institute
Read Full Speech here: (Page 31)
Watch video here: (https://www.youtube.com/watch?v=l5vgfBIVEwo)

- In his welcome note, Dr Osborne Sanida highlighted the importance of the Autonomy and Decentralisation Research Project.
- Dr Sanida also acknowledge the presence of a few special participants including; Dr John Momis, Sir Peter Ipatas, Sir Philip Kapal, Mr. Pedi Anis OBE, Sir Puka Temu and Mr. Ben Micah and the Australian High Commissioner His Excellence Jonathan Philp.
- Since Independence the level of basic service delivery has been very slow and poor.
- Now our people are calling for improvement in basic service delivery. Hence, we need an effective service delivery system through an effective decentralised system of government.
- This is not the first time PNG NRI has drawn the country’s attention to this important topic of organizing government for effective service delivery.
- Some of the NRI’s early reports of 1972 looked at the work of the LLGs and later, when the provincial government were established, NRI research began to analyse the work and functions of the provincial government of the first premier led system of government.
- After the 1995 reform on the OLPGLLG under the leadership of Mr. Ben Micah, the NRI researchers looked at the issues and challenges of that time.
- When CLRC and DPLGA commenced the review resulting in their 2015 report, the NRI also commission reports to contribute to the thinking and discussions on that review process.
- We have had so many useful and insightful research report with many recommendations that would have resulted in improvement over the last 50 years on the subject on Decentralisation of government.
- However, one of the challenges now is, how do we use the expert knowledge and information to inform, influence and generate change for the better?
- And this two – days national conference is bringing together some very important people, the researchers, academia,
technical people from government departments and others who have many years of experience.

- And most importantly we have invited the politicians who could discuss, analyse and contribute ideas in this discussion and propose to the broader public for support and implementation.
- We have also called on some of our senior leaders who worked along with other founding fathers to set up the government system we have today.
- Improving service delivery through the development of an effective decentralised system of government is an important topic for PNG today. I would encourage the people of Papua New Guinea to listen, understand and to participate in a robust discussion.
- Every citizen of this country is encouraged to call on your leaders and push for changes that will lead to improvements in the current system of government we have. If we don’t do this, then our political leaders and public servants will think that we are all fine.
- We need to have sound reviews, understand the weaknesses, identify good systems and plan to implement sound government administrative systems that will work effectively to provide good governance and improve provision of basic services in the country.
- PNG has been independent for nearly 47 years and within this period we have tried three (3) different forms of decentralised system of government.

Address by H.E Jonathan Philp
Australian High Commissioner to Papua New Guinea
Read Full Speech here: (Page 33)
Watch video here: (https://www.youtube.com/watch?v=1nhHN0doOG8)

Governance in PNG

- All Papua New Guineans have a right to expect the government to deliver development and services in a way that is fair and equitable for all citizens.
- This obligation poses a major challenge for PNG leaders – how can you satisfy competing demands in a structured and orderly way in a country as geographically and ethnically as diverse as PNG? Successive PNG governments have recognized that the key is effective decentralisation.
- Decentralisation connects communities to their government, so the government is more responsive to their needs. It gives communities a degree of control over their local affairs.
- When you give people a say in their own health, education, and economic development, they feel more secure, and they are more willing to accept the legitimacy of the government.

The Australian System of Government

- In Australia, there is a three-tiered system of government with a clear delineation of responsibilities between the national, state and local levels.
- The federal government is responsible for national issues including foreign affairs, social security, industrial relations, trade, immigration, and defence. State and territory governments responsibilities include justice, consumer affairs, health, education, public transport, and main roads. And local governments are responsible for things like local road maintenance, building regulations, land subdivisions, and recreation facilities.
- All levels of government raise money, through collecting of taxes, to pay for services provided to Australians. State governments also receive about half of their money from the federal government, and local councils receive grants from both the federal and state governments.
- Importantly, separate representatives are elected to each of the three levels of government.
- The division of roles and responsibilities has evolved over decades and is well understood and generally efficient and
Decentralisation in PNG

- In PNG, as the Conference’s keynote paper points out, nationally elected representatives are asked to take on responsibilities that are divided amongst three levels of elected officials in Australia.
- This places an enormous burden on the Member – it is too much to expect one individual to debate national policies, pass national laws, and represent their electorate’s view in national parliament, while at the same time manage development and service delivery in their district or province.
- Both in PNG and around the world, decentralisation is sought from the grassroots, and is being embraced for its potential to enhance the depth and legitimacy of democracy.
- Subnational levels of office can constitute an arena for training and recruiting new political leaders, including women and young people who have not previously had a role in political life.
- And these subnational levels of democracy provide a more accessible means for citizens to become active in public affairs: to question their local officials, monitor what they do, present their interests and concerns, and learn the skills and values of democratic citizenship.
- Typically, it is difficult for most citizens and organised groups to get access to the national parliament or central ministries. They need decentralised opportunities for access to decision-making power. These points can be well appreciated in PNG, and PNG is to be commended for its efforts towards decentralisation.
- Decentralisation is part of an ongoing project in every democracy – in Australia, the debate about our three levels of government is ongoing. This debate really came to the fore when the Australian states and the national government struggled to agree on respective roles and responsibilities in responding to COVID. It’s been a clear demonstration that decentralisation is a challenging thing to get right – it’s a debate that will never really be fully settled.

Final Thoughts

- Both Australia and PNG have a national election due very soon. This doesn’t happen very often – the last time both countries had an election in the same year was 2007. The Comprehensive Strategic and Economic Partnership between PNG and Australia makes it clear that Australia and PNG share strong traditions of participatory democracy, and that their democratic institutions form the foundations of their security and stability. And there is no more important democratic institution than a national election. Papua New Guineans can be deeply proud that at every national election, they work hard to overcome these challenges so that they can exercise their democratic right to choose their government. And Australia is proud to once again lend a hand to that process.
- In a country like PNG, where the youth make up such a large proportion of the population, it is important that young people are educated and informed about democracy – what it means, and how it works. Democracy must be properly nurtured by those with responsibility today, so that it is passed on in good health to the next generation. Everyone has a part to play. So, let’s all be proud of what we have already achieved so far as democratic countries, and let’s renew our efforts to improve them for future generations.

Keynote Address by Dr John Momis

A Founding Father of PNG and Deputy Chair of the PNG Constitutional Planning Committee
Read Full Speech here: (Page 35)
Watch video here: (https://www.youtube.com/watch?v=weZR2B1krEo)

Engagement with Decentralisation

- Nearly 50 years since the establishment by the then Territory of Papua and New Guinea (TPNG) House of Assembly of the Constitutional Planning Committee (CPC).
- Through the work of the CPC, centralised political and administrative control was dismantled in a very short time, but not without serious political conflict, in large part because politicians and senior public servants resisted decentralisation.
• Since 1976, deeply involved in observing, debating, and involvement in decentralisation policy-making in PNG, including many years as minister for decentralisation, overseeing the implementation and operation of the decentralised provincial government system.

• Throughout the early to mid-1990s, together with my friends and colleagues, John Kaputin and the late Bernard Narokobi, I was a strident critic of the proposed dismantling of the elected provincial governments, and the imposition of a new form of highly centralised governance system.

**Deputy Chair of the CPC and CPC Considerations.**

• In mid-1972, The CPC was charged with the responsibility of formulating the country’s constitution prior to independence from Australia.

• I was made deputy chair of the CPC, but as it was understood the chair (Somare) would not be an active member, I became de facto chair.

• The CPC included members of both sides of the House of Assembly, CPC members toured the country, engaging comprehensively with people, seeking their views on the content of the new Constitution.

• In order to preserve and cultivate the diversity of the nation, and, at the same time, forge a union of the groups, the CPC recommended a system of decentralised government, with the then colonial administrative districts being symbolically renamed, as provinces.

• Elected provincial governments would be established in accordance with the principle of subsidiarity - that the central authority should have a subsidiary function, performing only those tasks which cannot be performed at a more local level.

• The CPC decided that to create a united country out of PNG’s conglomeration of disparate peoples, it must reject uniformity and regimentation, which would stifle the rich diversity of cultures and languages inherent in the country.

• In PNG, as elsewhere, it is important to empower the people by way of education and training and by decentralisation of political/governmental power and responsibility, so that they become active agents of change and development, not passive recipients of benefits/goods and services. Participation is an essential element in the development of the whole person, who is both the subject and the object of development and governance.

**Implementation of Decentralisation Policy in PNG and Key Issues**

• Model of decentralisation as envisaged by the CPC was suitable for such a highly diversified country as PNG.

• Unfortunately, due to a total lack of ideological commitment, which was the product of opposition to change from both national government politicians and senior bureaucrats happy with the centralisation of power they inherited from the colonial ‘masta’, decentralization was never fully accepted and implemented.

• Many leaders then, in the 1970s, and still today, think that it is wrong to devolve political power to the PNG provinces, and that we need only a strong centralized government, uniform for the whole country, like the colonial regime. It should be designed to effectively deliver goods and services without the need for representative subnational political bodies. There are several points that make that view inappropriate for PNG.

  o One point is that the views contradict the principles of self-determination and self-reliance. Those important principles motivated many of us to call for PNG to gain political independence from Australia. We did that despite being aware that the TPNG was not adequately prepared, and despite the fact that the Australians were certainly better in the business of government and administration than we were. It was not on the basis of our professional skills and capability that the decision was made for this nation to become independent – it was the vision of a prosperous democratic nation, that, despite our many shortcomings at the time, drove our leaders to seek independence in line with the principle of self-determination. The leaders and people of PNG were prepared to risk everything because of the important value of self-determination inherent in the dignity of the human person. Those same principles remain just as important today to people at the provincial level.

  o The second point about what is wrong with that view is that it fails to take account of the great diversity of our nation, and the need for different policies and programs in different areas to meet differing needs.
The third point is that it is a view that assumes that effective delivery of services can only occur under highly centralised administrative arrangements. In fact, as I will discuss later, the problems PNG has with declining delivery of services since independence has very little to do with decentralisation.

- The experiences and developments in Bougainville also influenced and shaped PNG decentralisation of government.
- From 1974, the Bougainville leaders put much effort into establishing a new provincial government for Bougainville and was encouraged by the CPC’s recommendations on decentralisation.
- National Government politicians and senior officials were clearly more and more uncomfortable with the strong push for real decentralisation in Bougainville.
- The July 1975 Somare government decisions to remove the provincial government provisions from the draft constitution when it was before the constituent assembly was the straw that broke the camel’s back for the Bougainville leaders.
- Bougainville leaders recalled Raphael Bele and myself from the House of Assembly, an order with which we reluctantly complied, resigning our seats in the House of Assembly.
- In an initiative I have described elsewhere, early in 1976 I contacted then Prime Minister Somare, and encouraged by him we initiated negotiations with PNG for a compromise.
- The main outcome was the Bougainville Agreement of August 1976, where PNG agreed to restore modified provisions on provincial government to the Constitution. The Agreement envisaged provincial governments for the whole of PNG, but with the possibility of special, more highly autonomous arrangements for Bougainville, and by implication possibly for other parts of the country with the capacity and the resources that would be required for such arrangements to work
- Rabbie Namaliu, who had recently been appointed Chair of the Public Service Commission was a supporter of the provincial government system. In 1997 he engaged consultants, McKinsey and Co. who recommended administrative arrangements needed to implement decentralisation arrangements across the country. While the consultants did a good job in developing a strategy for establishing the provincial governments, they overlooked one of the CPC’s most important recommendations about establishing the new provincial government in stages.
- A phased in implementation would have given the individual provinces time to build capacity and increase financial capability and political responsibility. Instead, it was soon clear that many provinces were ill-prepared at the time they were granted provincial government status in 1977 or 1978.
- Opponents of decentralisation capitalized on the inability of these new governments to mobilize against the opposition to decentralisation and, as a result, many of the embryonic decentralised provincial governments were effectively emasculated.
- Despite these problems, one thing was undeniable – the people in the provinces became thoroughly engrossed in having, for the first time, their own governments. As the CPC had anticipated, decentralisation motivated the diverse peoples, especially in the rural areas, to feel a sense of belonging to one PNG.

The Undermining of the Provincial Government System:

- Moves against the provincial government system surfaced intermittently. As a result of constant complaints about the provincial government system from members of the national government, three parliamentary select committees were established to evaluate the system.
  - In mid-1985 under the chairmanship of the MP for the National Capital District, Tony Siaguru,
  - The second committee, in 1990–1991, was under the chairmanship of Henu Hesingut, the MP for Finschafen.
  - The third parliamentary select committee established in November 1992 under the chairmanship of the MP for Kavieng Open, Ben Micah, toured the country to consult, and in March 1993 presented an initial report. It claimed widespread disenchantment with provincial government, and blamed declining standards of delivery of government services on elected provincial governments unable to administer services efficiently because of political pressures on decision-making. The report recommended the abolition of elected
provincial governments and their replacement with non-elective political bodies made up of members of parliament, chairmen of local level governments and representatives of non-governmental organisations.

- It is no surprise that this abolition of elected provincial governments occurred in the 1990s, when the North Solomons Provincial Government, the government of Bougainville, the province that had largely led the pre-independence demand for decentralisation, had been under suspension from mid-1990, as a result of the Bougainville crisis.

**The Disadvantages of the Reformed (1996-) Provincial Government System**

- Prior to the 1995 ‘reforms’, provincial governments had legislative and financial powers, and local level governments came under their jurisdiction. In the so-called reformed system, provincial authorities have much reduced power – in essence they are merely an extension of the national government in Waigani.

- Provincial governments are now, in essence, made up of ex officio members, headed by regional MPs who are now called governors and Members of Parliament from representing an electorate in Parliament. The role of governor places significant financial and personnel resources in the hands of the regional MPs (governors), and so gives them great sources of patronage.

- The OLPGLLLG changed the boundaries of what had previously been administrative districts within provinces – the boundaries were now defined as the same as Open electorate boundaries, and Open electorate MPs were made heads of committees administering distribution of funds in the districts. But jealous of the powers of regional MPs as provincial governors, Open MPs demanded more and more control over finances and affairs in their districts (or Open Electorates).

- This control of funds and administration at both provincial and district level clearly distracts many MPs from being actively involved in their primary roles, which should be to represent their people in the National Government. Further, without being answerable to elected bodies at the provincial and district level, MPs are largely unaccountable in their roles as provincial governors and as heads of DDAs.

- Encourages a culture of dependence, which undermines self-reliance and encourages attitudes in which poverty and exploitation flourish.

**Declining Public Sector Capacity**

- I must comment critically on the main justification advanced at the time for the 1995 reforms, which was that the elected provincial governments had not been effective in delivering services to the people.

- The key problems are not caused by elected governments. Neither are they caused by ‘provincialisation’ of the public service – something which in fact aided early trends towards improved service delivery in a few provinces, such as Bougainville and East New Britain, as it facilitated the return to those provinces of young and educated people to work for their home provincial governments, in a sort of nationalistic spirit.

- The real problem with declining services concerns largely unrelated factors about policymaking and administrative capacity in the public service declining since before independence, and the extreme difficulty experienced in so many low and middle-income countries in increasing capacity of that kind.

- The problems in the public service relate back to the failure of the colonial government to provide education for the so-called ‘natives’ until the 1950s and 1960s, and the closely associated lack of Papua New Guineans in the colonial public service until the 1960s, when there were just a handful. With the first university graduates emerging in the late 1960s, it is no surprise that when localization of the expatriate dominated public service began in the late 1960s and early 1970s, that grossly inexperienced young people in their 20s found themselves departmental heads. The incredibly rapid localization of the public service in the 1970s ensured that a large proportion of the new senior and middle managers never had the opportunity to learn their tasks through gradual promotion and constant mentoring. From a severely weakened administrative base in the 1970s, the situation has steadily declined. Once there has been such a severe decline, it has been shown all over the world that re-building public sector capacity is an incredibly difficult task.

- In PNG the situation has been made far worse by the dramatic increase in political control of the public service at provincial and district levels by largely unaccountable regional and open MPs.
Overview of Paper

• Aim is to present a picture of issues for decentralisation globally in a way that is relevant to the PNG context.
• Most of the presentation (and the paper) focusses on eight (8) issues for the design and operation of a comprehensive system for decentralised governance.
• We begin with some preliminary observations as a basis for discussion of the issues.

Idea of Decentralisation

• Arrangements for decentralised governance can be seen as ranging along a spectrum something like this:
  Delegation → Devolution → Regionalism → Federation
• There are differences, but no bright lines between these various ‘types’ and plenty of scope for innovation.
• The main distinguishing feature between them is the depth of decentralisation.
• Many factors contribute to depth, but two that are particularly important are:
  o The extent to which power is decentralised and;
  o The autonomy of each level of government in exercising the power allocated to it, in a way that is responsive and accountable to its own people.
• How these arrangements operate in practice is at least as important as how they are designed.

Mapping Decentralisation

• Decentralisation is now established as significant for good governance. Most countries have decentralised governance arrangements in some form.
• The advantages of decentralisation for governance potentially include:
  o Quality of government at all levels, including the design and delivery of services
  o More inclusive government
  o De-concentration of public power
  o Local self-reliance
• The precise goals for decentralisation are an issue for discussion in PNG to inform any changes made.
• Decentralisation has been significant in PNG since independence. It has had three distinct phases:
  o from 1976;
  o from 1995;
  o and from the development of districts in the 2000s.
• Current distinctive characteristics include the use of national MPs at multiple levels of government, the fragmentation of particular powers and of the funding for them, significant political, administrative and fiscal centralisation and a complex legal and constitutional framework.

Challenges for Decentralisation

• Some of the challenges concern design. For example:
  o Which powers?
  o Which resources?
• Others concern operation in practice. For example:
  o Capability of governments at all levels
  o Potential for resistance to decentralisation, particularly from central institutions
  o Lack of understanding of decentralisation, including by the public.

• All these challenges need to be met, in a review of decentralisation

Overview of the Issues
The rest of the paper/presentation focuses around 8 key issues for decentralisation and they are:

1. Levels of government
   • How many levels of government should PNG have?

2. Political institutions
   • How should the legislative and executive institutions of each of the sub-national levels of government be constituted?

3. Division of legislative and executive power
   • How are powers divided between the levels of government?

4. Administrative support
   • How can the public service and independent institutions be organised in a system of decentralisation to promote good governance and effective service delivery?

5. Revenue raising and allocation
   • To what extent can and should sub-national governments be reliant on their own financial resources?
   • How are decisions best made about revenue transfers to subnational levels of government and between governments at each level, to enable them adequately to fund programs and services?

6. Intergovernmental relations
   • What structural intergovernmental arrangements might be useful to advance the goals of decentralisation? What purposes should they serve and how should they work?

7. Legal framework for decentralisation
   • Is the framework for decentralisation appropriately distributed between the different categories of legal instruments?

8. Implementation in practice
   • What should be included in a plan for the implementation of decentralisation?

Presentation by Dr Karl Kössler
Senior Researcher and Group Leader at the Institute for Comparative Federalism at Eurac Research Bolzano/Bozen (Italy)
See PowerPoint Presentation here: (Page 46)
Read Full Paper here: (Page 92)
Watch video here: (https://youtu.be/bAK4mhzpTe8)

Why are Entrenchment and Intergovernmental Relations (IGR) Key Issues?

Entrenchment
   • Reasons for Entrenchment (Using Italy as a case study):
Cultural Diversity, location from the centre and fear of Secession, leads to regions negotiating different responsibilities (autonomy).

Different responsibilities negotiated by regions and so each requires statues of autonomy requiring constitutional rank

- Entrenchment can be done using constitutional, organic or ordinary law with differing degrees of legal protection and flexible adaptability.
- Asymmetrical decentralisation would make sense for territories that have varying economic and administrative capacities to be able to take on more responsibilities and tasks.

Inter-Governmental Relations (IGR)

- IGR is the “oil” in the political machinery helping with the integration of the territories into the country as a whole, adaptation of decentralisation and political conflict management.
- Goals of IGR:
  - Integration into country as a whole (complement to autonomy),
  - adaptation of decentralisation arrangement and
  - political conflict management.
- Elements:
  - Intergovernmental councils (politicians and/or civil servants, permanent or ad hoc) and;
  - intergovernmental agreements.
- Two key issues for councils (as a mechanism for IGR)
  - horizontal cooperation for the benefits of joint policymaking and;
  - Formalisation (legal regulation) may reduce marginalisation of councils. Legally regulate the frequency of meetings and other inner workings of the council.
- Principle of Subsidiarity and Interdependency and Cooperation rather than Hierarchical;
  - See South Africa Constitution as an example: The Emblem with three interlocked rings (representing the three levels of government) is intended to demonstrate a call for interdependency rather than hierarchy within the various levels of government.

Presentation by Mr Stephen Pokawin
Senior Law Lecturer and Former Premier of Manus Province
See PowerPoint Presentation here: (Page 47)
Read Full Paper here: (Page 103)
Watch video here: (https://youtu.be/5aptUE6f_JM)

Background

- Centralisation was the legacy that we inherited, and decentralization is our aspiration. However, 50 years later, centralisation remains.
- Decentralisation is attractive for the following reasons: political participation and power-sharing. It allows subjects to become active citizens.
- The CPC was deliberate in its intent, recognising our diversity and the need for unity.
- The CPC saw that the country was “highly centralised” and dominated by the bureaucracy. It was this highly centralised bureaucratic government that was given the task to decentralise itself.
- The CPC, seeing that there would be pushbacks against decentralization recommended that emphasis must be on politicising the institutions. That is political power is needed to push for decentralisation because the bureaucracy is
not in a position to do that.

• The CPC recommended that decentralisation be entrenched in the Constitution however the Constituent Assembly decided to make it an Act of Parliament.

Decentralisation in PNG

• The first provincial government system was introduced with the first amendment ever to the PNG Constitution in 1977 (Amendment to Part 6). This system was in place from 1975 - 1995
• In order for the new system to be put in place the former was repealed and a new provision replaced it in 1995.
• Part 14 of the Constitution was later inserted to provide for Bougainville’s autonomy.
• In 2015 another wave of reforms has surfaced. The proposal is for removal of the current system and for a new system to be designed and implemented. CLRC is currently leading the work on this front.

Prevailing Dissatisfaction

• Prevailing dissatisfaction with the current system revolves around the following: ineffective service delivery, the high costs of operating the system, the implementation of the system and the politicisation of it.
• Under the current system, there is a general lack of knowledge about the roles and responsibilities of the various levels of government. Not only is the current system not implementing service delivery, but the system itself is not known or understood enough to be implemented.
• Perhaps it is not the system but rather the implementation of the system that is the problem.

The Pursuit of Autonomy

• Various disjointed efforts have been made to pursue autonomy in PNG. From provincial government constitutions, islands pursuing greater autonomy, the “autonomous” financial responsibilities of provincial governments, the Bougainville Peace Agreement, the proposal to insert Part XV to the Constitution and the proposal for a new system of Decentralisation.

Conclusion

• The unitary system of governance has created a “centralised decentralisation”.
• We have existing systems that perhaps need to be worked. The issue may be of implementation.
• Perhaps not enough time has been given to make the system work. Is 20 years adequate for the system to be entrenched and made to work?

Panel Discussion of Key Players of Decentralisation in PNG
Watch video here: (https://youtu.be/V88-ZzM-QwI)

Ben Micah:

Former MP and Chair of Parliamentary Bi-Partisan Committee that recommended the abolishment of 1976-1995 Provincial Government system and introduced current system in 1996

• As a young graduate, worked with Provincial Governments, first in Morobe and later on in New Ireland and developed a deep affinity and appreciation of decentralised governance systems.
• Institutional knowledge and experiences are required for a stable society
• Recent changes were for political conveniences and not effective decentralised systems of government.
• When he came to Parliament as MP there were deep political differences between National MPs and Provincial Governments, where Prime Ministers had even advocated for abolishing Provincial Government System.
• Chaired Bipartisan Parliament Committee
Members of National Parliament did not work well with provincial governments.

Challenges - LLGs, some very large ones such as Mt.Hagen, Kainantu etc. established before Independence also did not work well with Provincial Governments.

Recommended Reforms supposed to be an “Integrated Cooperative Provincial Government system” with National MPs, Presidents of LLG and the Regional Member of Parliament all members of the Provincial Assembly and working together

- Over the last twenty (20) years, the changes and political culture are quite different to that envisaged.
- The Joint District Budget Priorities Committee (JDBPC) was supposed to be a consultative committee, not an administrative body. Very much against the proposals when put forward in 2007.
  - MP’s role is as a legislator, not as Chairs of DDA’S and Project Managers.
  - Totally opposed to idea of District Development Authorities, another administrative arm of government.

Sir Philip Kapal:
Former Premier - Western Highlands (Including now Jiwaka) Provincial Government

- Abolishing of provincial government system in 1995 was because of a problem between Pangu Party and National Party in Western Highlands.
- Current Provincial Government system have no powers to make laws. All legal matters now revert to National Government.
- Current system restricts taxing powers, hence limiting provincial governments from raising revenues.
- Provincial Governments must have elected officials, not nominated MPs and LLG Presidents.
- Would like previous provincial government system to be reinstated with all the relevant administrative, legal and financial powers.
- The previous system worked effectively to provide services to rural population.

Mr. Pedi Anis, OBE:
Former Premier, New Ireland Provincial Government

- Everything rises and falls with good leadership.
- His experiences working as a Premier in a very good relationship with the National Government and the Prime Minister (Sir Julius Chan).
- It was a good provincial government system. Any system is good. We have to make it work.
- District Development Authorities are now not working closely with Provincial Governments and Local Level Governments.
- Role of National Politicians has now changed to being public servants implementing projects.
- We must have autonomous provincial government systems in a united Papua New Guinea.

Sir. Peter Ipatas:
Former Councilor and President Wabag LLG and since 1997, Regional Member and Governor of Enga Province

- Has had 43 years of combined experience, working first as councilor and President of LLG and, since 1997, as Regional Member of Parliament and Governor of Enga Province.
- Decentralisation of Government is a real sticky issue and needs to be resolved soon.
- Laws have been changed for self-serving interests and political expediency.
- We are at the crossroads now. We must have good and sound government systems.
- We need honest leadership at political levels focusing on the development of people.
Since 1997, it's been a dangerous trend of "Money! Money!". Focus should be on people and good systems of government.

Why are we afraid to change the current provincial government system? We should not compromise effective government.

There are supposed to be three distinct levels of government.

- Local Level Government Councilors provide leadership at community level.
- Regional Members are Provincial Governors taking care of provincial government and administrative issues.
- Open MPs should focus on providing leadership at the national level, setting the national vision and focusing on national issues. They are supposed to be legislators providing national leadership, national vision as prime ministers, ministers etc. Why do they want to have a narrow mind-set involved in district and community development interests? Who is going to provide leadership at the National Level?
- If Open MPs want to look after districts, then we should look at swapping places, letting the Governors be involved in national leadership.

Provinces must be allowed to have legislative, financial, and administrative powers to determine their own priorities, with their own development agendas. Each province is different. Let provinces challenge each other in development and be part of a stronger PNG, rather than relying on Waigani.

For instance, Enga Province would not be where it is now, if Enga did not have Education as a provincial priority.

There is a politicisation of the Public Service; that is not healthy for PNG and for provincial governments. We must have a strong independent national public service with a clear demarcation between the role of politicians and the role of public servants.

Panel Discussion of Key Players of Decentralisation in PNG: Q&A and Comments

Sir Puka Temu:
Abau MP

- Sir Puka notes the need for information such as this presented at the conference to be made available to those at the national decision-making level.
- Forty-seven years is not a long time to be an independent state. And PNG has come a fair way in this short time.
- PNG will be turning 50 come 2025. There are long term plans that have been written that should be revisited and implemented to allow for the structures of governance that we want to be created.
- Provincial government system must be allowed to remain in PNG. This should be entrenched in the constitution. The challenge then would be how to structure a system that would allow for public goods and services to be delivered to the people? The various reforms and agencies that have been created have all tried to address this question.
- Sir Puka quoted the Asian Development Bank's statement that a developing nation needs three things to go forward:
  - Widespread public infrastructure,
  - Strong state institutions and;
  - Innovativeness
- Instead of changing the system every 18 – 20 years, we should build and strengthen what is already existing.
- The current system is burdening leadership. The leader today is performing too many roles and that makes them inefficient doing many things.
- We must build up the capacity of the public service.
Presentation by Mr. Xaiver Winia
Director of Research at the Constitutional Law Reform Commission
See PowerPoint Presentation here: (Page 48)
Watch video here: (https://youtu.be/cKJMZlZlksA)

Issue of Decentralisation
- The issue of Decentralisation has already been resolved before independence and what we are looking for now is not decentralisation but the best model that can suit the PNG context.

Review of the OLPGLLG
- The O’Neil-Dion coalition partners agreed in the Alotau Accord I Manifesto to review the provincial government system. The Government then directed the CLRC and the DPLGA through the Head of State to review the OLPGLLG.
- CLRC and DPLGA travelled the entire country and consulted with the people. Since this was a very important constitutional review, getting views from people on the ground to identify what their thoughts were was important.
- There were three broad Terms of Reference (TORs) that government issued to CLRC and DPLGA, namely:
  a. A relevant and effective political and administrative structure that suits the demands of the country in the 21st century
  b. Greater empowerment of the people at the provincial and local levels
  c. Strengthening and firmly unifying Papua New Guinea
- CLRC and DPLGA simplified these broad TORs to the following four areas: (1) Political, (2) Administrative, (3) Financial, and (4) Legal – pillars of the OLPGLLG.

Key Issues and Challenges within OLPGLLG
- There were some challenges and key issues identified by CLRC and DPLGA after the OLPGLLG review was conducted.
  o Political Issues
    b. Establishment of the Discretionary Funds. This has created a political rivalry between politicians (national and provincial MPs).
    c. Changing role of MPs- toward service delivery rather than Policy makers.
    d. 1995 political structure fermented a dependency syndrome.
    e. The issue of one size fits all (symmetry vs asymmetry).
  o Administrative Issues
    a. Multi – layered and complex administrative system
    b. Huge administrative cost, trying to keep the system running.
    c. High staffing cost – just to keep too many chickens who do not lay eggs.
    d. No technical manpower for frontline service facilities to provide services
    e. Long turnaround times to execute decisions/funds/project on the ground
  o Financial Issues
    a. Horizontal Equalization – rich provinces sharing wealth with Poor provinces, e.g., Enga province
    b. Vertical Equalization – revenue raising powers. Most of revenue raising powers are centralised at the National Level
    c. Maintaining the administrative system consumes a lot of money whilst less money is used for the
intended purpose – the service delivery.

d. High cost of running election

- Legal Issues
  a. Most provinces (subnational level) lack capacity to draft their enabling legislations
  b. OLGPLLG has been amended more than 15 times (about 159 sections amended)

- The Final report by CLRC contains 10 recommendations. The recommendations were to simplify the system, establish clear demarcation of roles between National MPS and provincial MPs and design a system of funding that is based on functions so that money diverted to districts must be directly used by the districts and vice versa with provinces.
- The CLRC also proposed asymmetrical autonomy based on performance. That is capacity and powers are transferred based on performance.

Presentation by Autonomy Pilot Provinces Representatives (New Ireland and East New Britain)

See PowerPoint Presentation here: (Page 52)
Read Full Paper here: (Page 106)
Watch video here: (https://youtu.be/vTqYFwcc3eg)

New Ireland Representative, Mr. Pedi Anis, OBE

- New Ireland and East New Britain called for autonomy of the highest kind. According to the Constitution, autonomy of the highest kind refers to Substantial Decentralisation.
- Section 42 of the OLPGLLG clearly calls for the devolution of more powers and functions to the provinces.
- Most Papua New Guineas do not understand autonomy, since the word autonomy is used in reference with Bougainville, most think that it refers to breaking away from PNG.

- Political Autonomy:
  - Autonomy pilot provinces asking for some level of independence in relation to decision making powers and processes, funding control and control of the development.

- Administrative Autonomy:
  - Maintenance of province as an integral part of Papua New Guinea
  - Establishing relationship with national government in the administration and governance of the country
  - There are a lot of national government functions and responsibilities that can be taken care of by provincial government thus relieving the national government and allowing them the focus on national issues.

- Financial Autonomy
  - The autonomy pilot provinces asked for sharing of powers in relation to wealth, grants aid (through development co-operation) and borrowing.

- What Autonomy Pilot Provinces Done So Far?
  - Drafted constitution (amendment), law on autonomy, which inserted a new Part XV in the constitution to authorised granting of autonomy to the pilot provinces.
  - Drafted organic law on the autonomy government. This gives effect to the Part XV (autonomous government) of the constitution. It specifies in detail the systems, powers and processes that can enable granting of autonomy.

- Hindrances to implementing autonomy
  - Relevant government departments and state agencies have been delaying the process of reviewing the preparation processes to grant approval for the beginning of the implementation autonomy arrangements.
Political commitment is clear for the three autonomy pilot provinces but there is lack of support from government institutions in the preparation phase.

The national government minister responsible for autonomy has failed to facilitate NEC submission of proposed laws for autonomy to be enacted by parliament.

Government has also failed to establish an independent body with its own secretariat to look at Autonomy issues.

**Way Forward**

- NEC should consider and approve the autonomy submissions including the proposed constitutional laws for enactment by parliament.
- Progress by granting autonomy to the pilot provinces to avoid disunity and disintegration.
- Set up a National Autonomy Coordination body to oversee and guide the implementation process.

**East New Britain Representative, Sir Sinai Brown**

- On behalf of the East New Britain (ENB) Provincial Government, Sir Brown made the following remarks and requested that:
  - ENB be allowed to have/establish its own constitution adopted by the provincial government,
  - Financial regulations by and for the province and approved by the provincial government through its own constitution and,
  - Its own assembly structure as it was in the past.

- The current governance and administrative structure for ENB is ineffective and confusing.
- ENB proposes that its own public service structure be developed and accepted instead of the one that is approved in Waigani.

**Day 2**

**Presentation by Prof. Satish Chand**

*Professor of Finance in the School of Business at the University of New South Wales*

See PowerPoint Presentation here: (Page 50)
Read Full Paper here: (page 119)
Watch video here: ([https://youtu.be/zkMkI5wJ6Ew](https://youtu.be/zkMkI5wJ6Ew))

**Theory and Practice of Fiscal Decentralisation**

- Fiscal decentralisation involves devolution of powers from the National government to subnational governments to:
  a. Raise money and
  b. Spend Money
- The main goal of raising and spending money is to ensure that basic services are delivered to the people.
- Subnational governments in PNG may include, provincial governments, LLGs and DDAs. It is difficult to fit in DDAs in the existing three-tier government system in PNG.

**Designing Fiscal Decentralisation**

- Three key issues to take note of by policy makers when designing fiscal decentralisation.
  a. Subnational government must have access to adequate revenue to exercise their roles (Applying funding follows functions principle).
  b. Funding transfers must be fair/equitable and sustainable.
c. Subnational government must also have the incentive to raise their own revenue.

- **There are five guiding principles for Fiscal Decentralisation. The principles are:**
  a. **Subsidiarity principle** – assigning functions to subnational government. The central/national government should only perform the functions/tasks that lower levels of government cannot. Functions that they (subnational governments) can perform, should/must be assigned to them.
  b. **Asymmetrical decentralisation** – not one size fits all. The level of decentralization must be tailored depending on the capacity of the subnational government.
  c. **Fiscal Equivalence** – For efficiency, local services should/must be financed locally. In PNG there is no fiscal equivalence. Local services are not funded locally through local taxes.
  d. **Fiscal equalization** and ensure there is equity in all subnational levels having access to basic services.
  e. **Taxes with rates that are mobile should be enforced and collected at national level while immobile taxes should be assigned to subnational levels.**

- **Five common mistakes associated with Fiscal Decentralisation**
  a. **Under funding of functions** – more functions being allocated to subnational level with less funding allocation.
  b. **Overspending** – subnational government have often gone out overspending money allocated under their budgets and creating a macro-economic problem for the nation as a whole.
  c. **Over Dependence** - The Subnational Government is so dependent on the National government budget. The subnational government does not have revenue generating options that can be able to fully or counter fund their budget instead of too much dependency on National government.
  d. **Economies of Scale**: Failure to recognise that some services can be provided at the national level at a least or lowest cost possible rather than trying to divide it across subnational government.
  e. **Change Adaptability**: We also have a rigid structure that does not have room to accommodate changes when conditions changes.

- **Recentralisation through Practice: DDAs & DSIP**
  o The creation of DDA has undermined the previous system not through legislation but through practice.
  o Through the DDAs much of the financing has been recentralised (both revenue and expenditure)
  o 40% of funds from National Government flows through the DDAs to the district level. The remaining 60% goes to the Provincial government. (This point refers to the current GST sharing arrangements where the National Government retains 40% and distribute 60% to provincial Governments)
  o The real expenditure power rests on the DDAs through the Members of the national parliament. In other words, most of these funds are considered to be discretionary funds when it goes through the DDA.
  o But at the Provincial government there is little discretion for the provincial governors to use the funds. Most of the money goes to administrative costs and deciding on what or where to spend money is minimal at Provincial level.
  o Provincial government have very little discretion over expenditure.

- **Fiscal Decentralisation in PNG**
  o All levels of government in PNG have followed/practised subsidiarity but there has been very little expenditure and even less revenue decentralisation in PNG.
  o We have talk so much about decentralisation, yet in terms of revenue and expenditure we have centralised them over time.
Currently the National government has complete control over all recurrent expenditure in the provinces.

- **Solution to Fiscal Decentralisation Issues**
  - Change the incentive and try to improve grassroot democracy both through revenue generation and expenditure autonomy through:
    - Decentralise more revenue raising power to the subnational government (provincial government). For instance, return all of the GST (100%) revenues to the Provincial government
    - Devolve more powers to spend revenue raised locally.
    - National Government can use incentive funds to provide incentives for subnational governments to do what it wants done.
    - Powers to use local taxes (GST) as collateral for subnational borrowing or for investment purposes.
    - The idea is to improve grassroot accountability where revenue is generated and have powers to spend without abusing the financial management system.

- **Community Empowerment – (Grassroot Accountability)**
  - Suggestion was made to have an independent National Services Monitoring Authority (NSMA) that is independent of politics, of any self-vested interest and is trustworthy.
  - The role of the authority is to ensure that there is effective monitoring of the services delivery in the province and districts and report to the national government and also at the subnational levels.

- **Important Questions for Further National Conversation**
  - There are five important questions that needs to be ask for further national conversation under the issue of Fiscal Decentralisation;
    - How do DDAs fit into the overall structure of Decentralisation?
    - How much of the GST collected should be returned to the source provinces?
    - What portion of royalties and dividends should be accrued to the source province?
    - What additional revenue raising powers (if any) should be granted to the provinces?
    - Should the provinces be allowed to borrow to fund the shortfall in revenue, and if so, then by how much?

Panel Discussion with representatives from the National Economic Fiscal Commission (NEFC), Internal Revenue Commission(IRC), Auditor-General and PNG NRI Properties Research Team
Watch video here: [https://youtu.be/ng0OKeP_4Dg](https://youtu.be/ng0OKeP_4Dg)

Mr. Patrick Painap
NEFC Chairman

**Roles**
- The NEFC is established under Section 187 (H) and also under the Organic Law on Provincial & Local Level-Government (Section 117). The broad mandate is to assess and monitor the economic and fiscal policies of all levels of government (NG, PG & LLG) and independently provide the assessment and advice to the government.
- Amongst its other functions, the NEFC also has a crucial role to play in the area of Fiscal Decentralisation in Papua New Guinea.

**Review on the Intergovernmental Financing Arrangements**
- The national government has tasked the NEFC as part of its mandate under the Intergovernmental Relations (Functions & Funding) Act and as directed by Provincial & Local-level Services Monitoring Authority (PLSSMA) in 2020 to undertake a comprehensive review of the current sub-national financing systems in PNG.
This will be the first review since NEFC undertook a change in the system of intergovernmental financing arrangements in 2009.

As the trends have shown there is currently less decentralisation on fiscal matters in the country. Most of the responsibilities are still controlled at the National Level. Furthermore the expenditures at the subnational level are also subject to national government conditions with less discretion for subnational levels.

To date, Fiscal decentralisation remains a big challenge.

Historically, the financing system was changed in 2009 when the parliament approved the intergovernmental financing arrangements.

Prior to that, funding to sub-national levels were based on Kina Per Head basis then changed to a “Needs Based” system, which is based on equalization principles.

The old system (kina/head) was based on the land – mass and the population, which was unaffordable for the government to implement.

However, the new system (equalization principle) is based on five principles
  a. Affordability – government must have funds available to be given out to the subnational levels.
  b. Funding Follows Functions – there must be functions at the subnational level to fund.
  c. Responsibility Specification
  d. Transparent and Accountability
  e. Consistency in Funding the System. Currently there is inconsistency in providing funds to the subnational levels.

In partnership with key stakeholders, the review aims to improve and build on from the current financing system by adopting the key principles of fiscal decentralisation and also exploring options on how to accommodate the financial arrangements for Autonomy in PNG.

Mr. Gordon Kega
Auditor General of PNG

- Under the West Minister system, office of the Auditor General is very important office. Its role and reports need to be known by the public.
- The establishment of the office of the Auditor General is listed under the Audit Act and also under the OLPGLLG. The constitution provides that there shall be an office established in all the provinces.
- However, lack of funding support after initial establishment of provincial offices, has led to closing all, except for four regional offices.

Challenges Faced by Auditor General

- There are about 1500 government entities that Auditor General office is assigned to conduct audit and provide the audit report to the National Parliament every year.
- This is a mammoth task, and due to lack of funding by government, the auditor general is unable to undertake financial and governance audits as required.
- For instance, there have been no audits conducted of DSIP and PSIP funds since their establishment. So, the funds allocated (K10m to all MPs annually) amounting to hundreds of millions of kina have not been audited.

Ms. Logea Nou
NRI Research Fellow

GST Revenue And its Expenditure

- GST revenue generated in each province should be used to grow their respective towns and cities aside from
redistributing these funds for services to rural areas of the country.

- Two main points to underpin the usage of GST:
  - GST revenue is generated from the residents of towns and cities and other visitors to those same towns and cities. Hence, the revenue should be used for their benefit.
  - GST revenue can be specifically used to develop town transport infrastructure, provide basic services such as city lights, public toilets, public parks, rubbish collection and maintaining law & order issues.

- The current GST Distribution ratio is 60:40, where 60% of the GST goes to the provincial government and 40% is retained by the National government.

- But for discussion purposes, it was suggested that this arrangement has to be changed and allow 30% GST to National government, 30% be allocated to towns and cities and 40% to be given to the provinces.

**Mr. Sam Loi**
IRC Representative

**IRCs experience as an Agency of State**

- IRC is already in the process of devolving fiscal powers to different levels of government. For instance, IRC has devolved fiscal powers to ABG in terms of Tax collections.
- Political will is very important for devolution of powers to happen, and an enabling legislation in which you pass on the powers from national government to subnational level is also important.
- There must be enabling laws in which the fiscal functions need to work at the subnational level after devolution of fiscal powers.
- In terms of GST, it is a consumption-based tax so wherever you consume goods and use services, that is the place where you pay GST tax. So, the GST tax has to be used where it is collected as well.
- IRC has already signed MOAs with some provincial governments to devolve this function under fiscal decentralisation. Lae is a good example of this. Agreement was signed between provincial government and Lae City Authority and split the GST between the two. Some funds from the GST will be given to the Lae city as the municipal authority while national and provincial government takes their portion.
- The revenue generated through GST must be used to develop and improve the basic services of the city or town where GST is collected.
- IRCs model now is that funding is top down and accountability is bottom up. IRC will decentralise its functions to all the provinces by setting up offices in all centres.

**Presentation by Michael Kabuni**

**PhD Candidate at the Australian National University**

See PowerPoint Presentation here: (page 53)
Read Full Paper here: (page 141)
Watch video here: (https://youtu.be/72LV5vOQb3A)

- The three main responsibilities of the Parliament include:
  - To debate public policy and pass laws (including appropriating the National budgets)
  - Provide checks and balances to the government or the executive, and to represent the people

These powers are provided for and protected by the constitution.

- The national parliament cannot permanently delegate its responsibilities.

- The functions of the parliament are not subject to the courts. This means that the courts cannot interfere in parliament decisions. However, there are two exceptions to this rule. The Supreme Court can intervene when the decision by parliament is;
• Inconsistent with the Constitution or;
• Violates procedures prescribed by Constitutional Laws

This monopoly of law-making powers by the parliament means that if the parliament neglects its law-making powers, no other entity outside of the parliament can compensate for this vacuum.

• How has parliament performed in its first function? As per the Secretary of the CLRC (2018), 370 of PNG’s laws are outdated by at least half a century and had “no practical application in the modern era”.

• Parliamentary Committees:
  o Currently 34 committees have been set up and each is delegated a specific function
  o Set up to scrutinize the operation, laws, policies, budget and decisions made by parliament.
  o Many a time, these positions are not filled and not funded.

• Keeping the Executive Arm of the Government accountable:
  • The PNG Parliament is almost always dominated by the government. This “executive dominance” results in the government side being able to bulldoze through laws and policies. The legislative arm of the government becomes a mere rubber stamp for the government proposals.

• Providing Representation:
  o One would assume that MPs would remain in parties that they feel represent the ideals of the people they represent. However, MPs have been very fluid in their movements across parties.

• The Dual Role of Members of Parliament: The 1995 and 2014 reforms made MPs service deliverers and project managers, in addition to their roles as law makers, providing representation, and holding the executive accountable. MPs have since then focused on service delivery at the expense of the other important roles of MPs

• Direct access that MPs have to millions of kina, and the discretion over it, creates an expectation among voters that they can transact their votes for direct personal gain. Instead of judging MPs by their performance on national priorities, voters judge MPs on their ability to meet immediate and local needs. MPs on the other hand, focus on meeting these personalised needs of their voters whilst neglecting national priorities.

• The costs are too high for MPs to neglect national priorities. Reform is needed to ensure MPs are prioritising national issues.

Closing Session
Watch video here: (https://youtu.be/oA0Rzh8r6ro)

Dr John Momis

On Solidarity and Subsidiarity:

• One way that we can ensure that we have a government that is strong, committed, visionary and accountable to create greater awareness amongst the people on the principle of solidarity. If we are working in solidarity, then nobody is left out. But how does one achieve solidarity in a nation as highly diversified as ours?

• Solidarity comes with subsidiarity. Subsidiarity means that the larger authority recognizes and respects the role of the smaller authority and does not usurp their power. Subsidiarity maintains the role and the participation of the smaller groups.

• People develop grievance because they are not participating.

• We have a great nation, but it is not uniform; it is a highly diversified nation and that makes it better. But the people in the periphery must be brought in and included also. The leader is just one man, to bring the nation forward it requires all the people to work together as a team.
On the Leadership Code:

- We must elect leaders who abide by the leadership code. The leadership code requires that the leader have some qualities that other members of the society may not necessarily have, because a leader is a role model.
- Stringent laws must be put in place for leaders to abide by. Otherwise, they must not be in the place where laws are made for all of us.
- The politician that fails in his/her responsibilities is responsible for the demise of the entire population of the nation.

Sir Arnold Amet

On Levels of Government

- Referring to the eight points as highlighted by Prof. Saunders, Sir Amet made the following remarks with regards to the first point (Levels of Government):
  - How many levels of government? The Consensus is that three-tier system suits our population diversity and geography. However, representatives in each of the levels should be separately elected as was done in the old system. Under the current system introduced in the 1995 reforms, the intermediate government level is largely a non-elected body.
  - The National representatives need to be confined to the national functions and the same goes for the other levels of government. The provincial level needs to revert to the old system also where there is an elected premier or a governor chairing the provincial assembly.
  - Sir Amet reflected on his own experiences when elected as governor for Madang and then later in his term being given the role of Attorney General. He had to relinquish his powers as governor, and another was elected in his stead and took up the role. With the change of government and with his removal from office he was then in limbo and served as an ordinary MP with no powers and functions for a year before elections.
  - The composite structure of the current system of governance has national MPs playing multiple roles in different levels of government. This makes the system fundamentally flawed.
  - We must revert to the conventional model that is universally used in democracies; that is a three-tier system with representatives of each being elected separately. The levels should also be independently administered and funded to function without duplicity.
  - In his personal experience on sitting on the DDA board of Madang with Minister Kramer, Sir Amet witnessed first-hand the conflicts and complications the DDA caused for the provincial, district and local level governments. It is also especially complicated when the MPs who is chair of the DDA is also a Minister of the National Government. Multiplicity of functions is not good for government and must be done away with.

- Sir Amet also referenced the second and seventh points put forward by Professor Saunders and stated that the current system must be overhauled with separately elected representatives to each of the three levels of government. The DDA is not an appropriate model as it is in competition with the provincial level of government.

Mr. Pedi Anis:

- On being asked what he would like to see happen in terms of decentralization, especially for the three autonomy provinces, Mr. Anis responded that ideally the three autonomy provinces would like government to have the necessary laws amended and the powers to be given to the provinces so that they can start trialling autonomy.
- In the proposed model by the NIP, Unity of PNG is paramount. But a system of government must be developed to enable this unity to continue.
- Intergovernmental relations are important for a well-functioning three-tier system of governance. There must be political and administrative intergovernmental relations. The Governors’ Council and the intra-provincial Presidents’ Councils must meet respectively and work together.
Sir Philip Kapal:
- Elected officials are urged to deliver in their roles and responsibilities because their life in office depends on it. Appointed officials on the other hand, do not have a sense of urgency to deliver. Bring back the system of electing leaders at the different levels of government.

Matilda Pilacapio:
- Resource sharing, especially from those with more to those with less should be encouraged.
- Start somewhere and try to build capacity.

Logea Nao:
- Ms Nao re-emphasised the point that taxpayer funds with the city should be made available to the city authorities to ensure that basic services within the city are provided for.

Jimmy Morona
- Decentralisation for service delivery.
- The councillors at the ward levels are the ones closest to the people. Therefore, the wards should be utilised to truly connect to the people and improve service delivery.
- Social accountability: people need to demand the leaders to carry out their responsibilities. They can only be able to do that if they are well-informed.
- Social accountability from the bottom-up and services from the top-down.

Ricky Fugunto
- A paper produced by the NIP are available for the public to read on the autonomy model.
- The bureaucratic machine in Waigani is not ready to progress the idea of autonomy.
Welcome speech by Dr. Osborne Sanida, Director, PNG National Research Institute

On behalf of the Council, Management and Staff of the PNG National Research Institute (PNG NRI), I extend to you all a very warm welcome to this “National Conference on Decentralisation of Government” in Papua New Guinea (PNG).

Welcome to this gathering that we have called to discuss an important issue facing our country, “Improving Basic Service Delivery through identifying and coming up with an effective Decentralised System of Government in PNG”. Our people and our country are calling for improvements in Basic Service Delivery. We need an effective service delivery system through finding effective systems of Government, an effective Decentralised System of Government.

This is not the first time, the PNG NRI has drawn the country's attention to this important topic; organising government for effective service delivery. Some of the NRI's early reports of 1972 looked at the work of Local Level Governments. Later on, when Provincial Governments were established, our researchers turned to analyzing the work and functions of provincial governments of the first Premier-led systems. Later on, when the Ben Micah led committee report and recommendations led to the reforms of 1995, our researchers turned their attention to the issues and challenges at that time. When the CLRC and DPLGA commenced their review resulting in their report of 2015, the NRI also commissioned research reports to contribute to the thinking and the discussions of that review process.

We have had so many useful and insightful research reports with many recommendations that could have resulted in improvements over the last fifty years on the subject of Decentralisation of Government. However, one of our challenges has been the question of how do we use these expert knowledge and information, to inform, influence and generate change for the better.

This is something that I hope we can all work together to see how we may use expert analysis and research information. Let us reflect on what we are doing and how we can improve on the current systems of decentralised government over the next two days of this conference.

We have therefore invited to this gathering researchers and academics, some of whom we have invited to analyze and contribute information to inform our thinking and discussions. We have also invited technical persons involved in government departments and agencies who have many years of experience, who can help us to analyze and distill ideas and proposals. Most importantly, we have invited our political leaders to participate in the discussions, listening to the in-depth discussions and coming up with workable ideas that they could propose to the broader public for support and implementation.

We have also especially called on some of our senior citizens. Some, who as leaders at the time of the founding of our nation, set up the government systems we have today. Others helped to shape it along the way. I hope we can contribute to the discussions on lessons from the past, our current challenges and our views and aspirations for a future with a more effective Decentralised System of Government.

It would take me quite a bit of time to acknowledge all of you who have come today and I do not want to take a lot of our valuable time. However, there are a few here who certainly need to be acknowledged.

I acknowledge and accord a special welcome to Dr. John Momis, a distinguished son and a founding father of our nation. Following a distinguished public service, he is now retired and living in Buin. He has been passionate about the need for Decentralised Systems of Government and articulated this well as Deputy Chair and De-facto Chair of the Constitutional Planning Committee. He was the first Minister for Decentralisation after Independence, and had a long career as a Member of Parliament from 1972-2003. He served as a Minister of State in many Governments and some years as Deputy Prime Minister. Dr Momis resigned as a Member of Parliament in 2003 to serve as President of the Autonomous Region of Bougainville, a post he retired from in 2020.

We are also privileged to have former premiers of the 1976-1995 Provincial Government system; Sir Philip Kapal, Mr Pedi Anis and Mr Stephen Pokawin.

One special person who needs special acknowledgement is Grand Chief, Sir Peter Ipatas, someone who has experienced decentralised government at all levels. As a Local Government Councillor, President of Wabag Local Level Government
Council, a deputy premier of the old provincial government system, and now since 1997 as Governor of Enga Province, with the distinction of being the longest serving Governor of a Province in PNG.

We also welcome Mr. Ben Micah former MP and Minister but especially his role as Chair of the Bipartisan Parliamentary Committee that proposed and put in place the reforms of 1995. We look forward to his contributions, his views at that time and reflections now on the implementation of the changes his committee proposed.

We have our political leaders, Members of Parliament who are political party leaders and Governors of Provinces who we have invited to the conference. You are involved in the current decentralised system of government and have better understanding of the challenges and possibilities for improvements. We hope that by sharing these experiences, we can better appreciate the challenges you face and those insights may also offer us opportunities for improvements.

We also have senior public servants and technical experts with many years of experience dealing with government and especially challenges working within the parameters of the current system. Many will be invited to speak in various presentations, panel speakers and in the general discussions. I hope you also will be able to bring your expertise to the fore and contribute to the discussions.

I want to thank and welcome our academics and researchers who have developed specialist insights, studied and focus on specialist areas. We have international researchers and domestics researchers who will be contributing research papers to the discussions. Many others will be participating and contributing to thinking and the ensuing discussions.

Improving service delivery through the development of effective decentralised systems of government is an important topic for PNG. I know many would have wanted to have a physical presence and participate in the discussions. Unfortunately, in keeping with Covid 19 protocol restrictions, we can only accommodate a restricted number of people at this facility.

The NRI technical team have worked together with specialist service providers Spider Tek to use electronic media platforms. The NRI will be organising presentations and discussions through Zoom around PNG and internationally. Our partners, the National Broadcasting Commission are also broadcasting live the sessions over these two days, bringing the information to the length and breadth of PNG. The NBC will also use their Facebook account to relay the proceedings to those who are familiar with this technology.

Other media institutions have also been stakeholders in the NRI activities and we hope that they will also be communicating and bringing this information to the wider public.

I would encourage the people of Papua New Guinea to listen, understand and participate in a robust discussion to call on our leaders and push for changes that will lead to improvements in the systems of government that we have.

If we don't talk and push for change, our political and public service leaders will think that all is fine.

We all know that service delivery systems are weak and non-functioning in many instances. We need to have sound reviews, understand the weaknesses, identify good systems and then plan to implement those sound government administration systems that will work effectively to provide good governance and basic services for us all.

Papua New Guinea has been independent for nearly 47 years. We have been tried three different forms of decentralised systems of government and yet we do not seem to have the ideal one.

I do hope that the discussions over the two days will eventuate with some consensus on the way forward.

This conference and the research coordination work that has been undertaken by Dr Webster and his team at the National Research Institute would not have been possible without the financial support from the Australian people through the Government of Australia.

On your behalf, I would like to say thank you through the Australian High Commissioner, His Excellency Mr. Jonathan Philp.

Thank you all and I look forward to a fruitful two days of discussions.
Opening speech by Australian High Commissioner, H.E Jonathan Philp

Thank for the opportunity to speak at this National Conference on Autonomy and Decentralisation.

I am here this morning on behalf of Australia because we recognise how important is it for Papua New Guinea’s government to deliver development and services in a way that is fair and equitable for all citizens.

Whether you live on the coast, in the highlands or the islands, in a village, town or city – as a Papua New Guinean citizen you have a right to expect that your government will provide a level of support.

This obligation poses a major challenge for PNG leaders – how can you satisfy competing demands in a structured and orderly way in a country as geographically and ethnically as diverse as PNG?

Successive PNG governments have recognised that the key is effective decentralisation.

Decentralisation connects communities to their government, so the government is more responsive to their needs.

It gives communities a degree of control over their local affairs.

When you give people a say in their own health, education, and economic development, they feel more secure, and they are more willing to accept the legitimacy of the government.

In Australia, we have a three-tiered system of government with a clear delineation of responsibilities between the national, state and local levels.

The federal government is responsible for national issues including foreign affairs, social security, industrial relations, trade, immigration, and defence.

State and territory governments responsibilities include justice, consumer affairs, health, education, public transport, and main roads.

And local governments are responsible for things like local road maintenance, building regulations, land subdivisions, and recreation facilities.

All levels of government raise money, through collecting of taxes, to pay for services provided to Australians.

State governments also receive about half of their money from the federal government, and local councils receive grants from both the federal and state governments.

Importantly, separate representatives are elected to each of the three levels of government.

The division of roles and responsibilities has evolved over decades and is well understood and generally efficient and effective. But it is by no means perfect and is still subject to debate and calls for further reform.

In PNG, as the Conference’s keynote paper points out, nationally elected representatives are asked to take on responsibilities that are divided amongst three levels of elected officials in Australia.

This places an enormous burden on the Member – it is too much to expect one individual to debate national policies, pass national laws, and represent their electorates view in national parliament, while at the same time manage development and service delivery in their district or province.

Both in PNG and around the world, decentralisation is sought from the grassroots, and is being embraced for its potential to enhance the depth and legitimacy of democracy.

Subnational levels of office can constitute an arena for training and recruiting new political leaders, including women and young people who have not previously had a role in political life.

And these subnational levels of democracy provide a more accessible means for citizens to become active in public affairs: to question their local officials, monitor what they do, present their interests and concerns, and learn the skills and values of democratic citizenship.

Typically, it is difficult for most citizens and organized groups to get access to the national parliament or central ministries. They need decentralised opportunities for access to decision-making power.

I think that these points are well appreciated in PNG, and PNG is to be commended for its efforts towards decentralisation.
Decentralisation is part of an ongoing project in every democracy – in Australia, the debate about our three levels of government is ongoing.

This debate really came to the fore when the Australian states and the national government struggled to agree on respective roles and responsibilities in responding to COVID.

It’s been a clear demonstration that decentralisation is a challenging thing to get right – it’s a debate that will never really be fully settled.

It is our hope that this conference will help PNG on its journey toward a more effective form of government by promoting a rigorous, open and honest discussion on the issue.

And it is our wish that through this discussion, you may help create a better future for all Papua New Guineans.

I would also like to take this opportunity to recognize that this is an exciting year for both our countries – we both have a national election due very soon.

This doesn’t happen very often – the last time we both had an election in the same year was 2007.

The Comprehensive Strategic and Economic Partnership between PNG and Australia makes it clear that we share strong traditions of participatory democracy, and that our democratic institutions form the foundations of our security and stability.

And there is no more important democratic institution than a national election.

I haven’t been here for an election before, but I know that they are logistically challenging, complex affairs.

Papua New Guineans can be deeply proud that at every national election, they work hard to overcome these challenges so that they can exercise their democratic right to choose their government.

And Australia is proud to once again lend a hand to that process.

Finally, I’d like to make a particular mention of how important it is in PNG, where the youth make up such a large proportion of the population, that young people are educated and informed about democracy – what it means, and how it works.

Democracy must be properly nurtured by those with responsibility today, so that it is passed on in good health to the next generation.

I urge everyone here to think about that – we all have a part to play.

So let’s all be proud of what we have already achieved so far as democratic countries, and let’s renew our efforts to improve them for future generations.

I would like to thank the National Research Institute, in particular Dr. Sanida and Dr. Webster, for the opportunity to speak here today and look forward to learning of the outcomes of this important conference.

Thank you.
From well before 1972, I was deeply interested in issues about empowering of people to participate in government decision-making about matters of importance to the people. Much of that interest developed through being educated about social justice issues through my training to become a Catholic priest. That training helped me to critically evaluate the impacts of the imposition by the Australian colonial government of highly centralised control of the TPNG.

Through the work of the CPC, centralised political and administrative control was dismantled in a very short time, but not without serious political conflict, in large part because politicians and senior public servants resisted decentralisation. But beginning from 1974, a system of decentralized political and administrative governance through elected provincial governments was established in a series of reforms, beginning in Bougainville. Constitutional entrenchment of the new system was not achieved until December 1976, over 15 months after independence, and only through political conflict.

Since 1976, I have remained deeply involved in observing, debating, and involvement in decentralisation policy-making in PNG. This has included many years as minister for decentralisation, overseeing the implementation and operation of the decentralized provincial government system.

Throughout the early to mid-1990s, together with my friends and colleagues, John Kaputin and the late Bernard Narokobi, I was a strident critic of the proposed dismantling of the elected provincial governments, and the imposition of a new form of highly centralised governance established in two main stages, the first in 1995, when power was given to the regional MPs to head appointed provincial governments. At the same time, Open MPs were given limited authority over the distribution of funding in their electorates, from then defined as the districts in each province. Over subsequent years, Open MPs gained much more control of districts, culminating in the establishing in 2014 of the District Development Authorities, which are of course headed by Open electorate MPs.

From the late 1990s, as the peace process in Bougainville developed, I became a key Bougainville leader in the negotiation of the first serious example of high autonomy in PNG. I was one of the joint leaders of the Bougainville negotiating team which in August 2001 reached agreement with PNG on constitutional change giving Bougainville very high autonomy for 10 to 15 years, followed by a referendum on independence.

So, I have been privileged to be at the centre of many of the key stages in public debate and policy making about decentralisation and autonomy in PNG. I want to draw on that experience today. I will focus first on the reasons for adoption of the original decentralisation policy in the 1970s, and why the concentration of subnational political power in a few hands since 1995 needs to be opposed for much the same reasons that centralised colonial control needed to be opposed in the 1970s.

I will also comment briefly, but very critically, on the constant, and still current, demands for more autonomy for various parts of PNG. I shall also comment critically on the commonly advanced view that the decline in public sector service delivery since independence has been a result of decentralisation. In my view declines in service delivery have little relationship to the various changes in decentralisation policy.

**Bougainville as an Influence on the Origins of Decentralisation Policy**

I grew up in Buin, in the south of Bougainville, and in 1969, during a year away from Catholic seminary training as a priest, I taught at the Catholic high school in central Bougainville, close to where the giant Panguna copper and gold mine was being established by Conzinc Riotinto Australia (CRA). In January 1970, I was ordained a priest in Bougainville, and became Catholic Education Secretary. In the process of these activities, I learned much about the concerns and aspirations of Bougainville. Then in 1972, a number of Bougainville leaders approached the Bishop of Bougainville, asking him to support my being elected to the then colonial House of Assembly as regional member, to represent the views of ordinary Bougainvilleans. Surprisingly, given widespread Church attitudes to involvement of clergy in politics, the Bishop agreed, and I was elected with an overwhelming majority in mid-1972.

The people of Bougainville sent me to parliament with an agenda. They were so angered by the ongoing process of marginalization and alienation effected by the then policies of the Australian administration and the huge multinational company CRA that many wanted to secede, for Bougainville to become independent. Revenue from Bougainville copra
and cocoa had contributed to the national economy long before the huge revenues from the Panguna Mine started filling the national government’s coffers from 1972. The relatively well-educated Bougainville population contributed a significant number of senior officers in the colonial police and public service. Despite such contributions Bougainvillians had felt ignored by the colonial government, especially in comparison with development being promoted in many other districts. And quite apart from their disappointment with the authorities, many Bougainvillians felt ethnically more akin to the people of the neighbouring Solomon Islands.

The way the Australian administration collaborated with CRA to railroad through their ideas and policies on mining and related activities further confirmed the people’s fear that their future livelihood was under threat of foreign economic and political/ideological incursion. Furthermore, the people were aware of many powerful individuals and institutions standing quietly by while the government dismally failed in its duty to support the people, and particularly the resource-owners, in their struggle to secure an equitable deal.

Unfortunately, the Catholic Church on Bougainville was suspected of – and by some even blamed ¬for – stirring up popular opposition to the company and the government. In fact the Bishop of Bougainville and some of his priests understood the deep concerns of Bougainville land-owners impacted by mine development, and publicly explained the concerns of the people. This was unacceptable to senior officials in the colonial regime.

As a priest I took a plunge into the abyss of human affairs, finding myself in the midst of the people in central Bougainville as they experienced powerlessness in the face of foreign ideological confrontation imposed by a central government over which they had no real influence. It was this experience that remained uppermost in my mind when the people of Bougainville elected me to represent, protect and promote their welfare in parliament. And this experience drew me to the conclusion that the best way of serving the people was by empowering them.

While it is good to persuade government to distribute goods and services equitably throughout the country, I maintain it is more important to pressure them to empower the people by providing equitable access to political power.

For when people are so empowered, they can become active agents of change and development. When the power that distributes goods and services is monopolised at the centre, as it was in Konedobu under the Australian administration, people become vulnerable to manipulation and exploitation by those who have excessive political power.

**Why Did PNG Decentralise in the 1970s?**

In mid-1972, the newly elected Coalition government led by Michael Somare – the first TPNG government to be headed by a Papua New Guinean - set up the Constitutional Planning Committee (CPC). The CPC was charged with the responsibility of formulating the country’s constitution prior to independence from Australia. As newly elected regional member for Bougainville, I was made deputy chair of the CPC, but as it was understood the chair (Somare) would not be an active member, I became de facto chair.

At the time, the new government was well aware of long-standing and deeply felt demands of Bougainvilleans for independence Bougainville and for substantial autonomy coming from East New Britain, but appeared to give them little recognition. But it did include ’central-regional-local government relations and district administration in the terms of references it gave to the CPC.

A broadly representative BSPC was soon established and consulted widely in Bougainville about Bougainville’s political future. It helped generate consensus about significant autonomy as an alternative to secession. But tensions soon developed again, as was evident when Somare sacked Hannett after he publicly criticised the two Bougainville ministers (Paul Lapun and Donatus Mola) for failing to support the BSPC proposal for the establishment of a Bougainville District Government as an alternative to independence.

At the same time as these developments were occurring in Bougainville, the CPC was developing its proposals for the
constitutions, including for subnational government. Of course, it was influenced by what was happening in Bougainville and East New Britain. But the proposals it eventually developed for decentralisation took account of far more than that.

The CPC included members of both sides of the House of Assembly. CPC members toured the country, engaging comprehensively with people, seeking their views on the content of the new Constitution.

In order to preserve and cultivate the diversity of the nation, and, at the same time, forge a union of the groups, the CPC recommended a system of decentralised government, with the then colonial administrative districts being symbolically renamed, as provinces. Elected provincial governments would be established in accordance with the principle of subsidiarity - that the central authority should have a subsidiary function, performing only those tasks which cannot be performed at a more local level. Such arrangements both suited the diverse nature of PNG, and were in line with the wishes of the people.

Of all the suggestions received during the extensive CPC public consultations, the proposals for district governments (provincial governments) were the strongest and most universal.

The CPC decided that to create a united country out of PNG’s conglomeration of disparate peoples, it must reject uniformity and regimentation, which would stifle the rich diversity of cultures and languages inherent in the country. The CPC firmly believed that the people’s participation in governments at the provincial level would inculcate in their minds a sense of real ownership of government, which would be a powerful incentive for national self-reliance and integrity. It would also result in provincial policies that would respond to the particular needs of the people of each province.

On the other hand, recognizing that there were very different levels of interest in and readiness for provincial governments in different provinces, the CPC strongly recommended that decentralisation be implemented gradually, in stages, taking account of differing levels of preparedness in different parts of the country.

In PNG, as elsewhere, it is important to empower the people by way of education and training and by decentralization of political/governmental power and responsibility, so that they become active agents of change and development, not passive recipients of benefits/goods and services. Participation is an essential element in the development of the whole person, who is both the subject and the object of development and governance.

In my view, the model of decentralisation as envisaged by the CPC was suitable for such a highly diversified country as PNG. Unfortunately, due to a total lack of ideological commitment, which was the product of opposition to change from both national government politicians and senior bureaucrats happy with the centralisation of power they inherited from the colonial masta, decentralisation was never fully accepted and implemented.

Many leaders then, in the 1970s, and still today, think that it is wrong to devolve political power to the PNG provinces, and that we need only a strong centralised government, uniform for the whole country, like the colonial regime. It should be designed to effectively deliver goods and services without the need for representative subnational political bodies.

**There are several points that make that view inappropriate for PNG.**

One point is that the views contradict the principles of self-determination and self-reliance. Those important principles motivated many of us to call for PNG to gain political independence from Australia. We did that despite being aware that the TPNG was not adequately prepared, and despite the fact that the Australians were certainly better in the business of government and administration than we were. It was not on the basis of our professional skills and capability that the decision was made for this nation to become independent – it was the vision of a prosperous democratic nation, that, despite our many shortcomings at the time, drove our leaders to seek independence in line with the principle of self-determination. The leaders and people of PNG were prepared to risk everything because of the important value of self-determination inherent in the dignity of the human person. Those same principles remain just as important today to people at the provincial level.

The second point about what is wrong with that view is that it fails to take account of the great diversity of our nation, and the need for different policies and programs in different areas to meet differing needs.

The third point is that it is a view that assumes that effective delivery of services can only occur under highly centralized administrative arrangements. In fact, as I will discuss later, the problems PNG has with declining delivery of services since independence has very little to do with decentralization.

**Decentralisation and the National Goals and Directive Principles**

Closely related to its decentralisation proposals were the CPC efforts to enshrine in the ‘National Goals’ and ‘Directive
Principles’ (NGDPs) in the Constitution, as recording the needs and aspirations of the people expressed during our public consultations.

Decentralisation through the proposed provincial government system meshed well with the five NGDPs that were incorporated into the Constitution.

An egalitarian community, in which both benefits and responsibilities would be equitably shared amongst the people – deliverable through the provincial government system – would support the first goal of the NGDPs: the development of the whole person, not just their economic or material aspects.

Decentralisation empowers people by distributing governmental power and responsibility in accordance with the second NGDP, which calls for equitability in the distribution of benefits and also of power, the source of benefits. It addresses the root cause of the problems of exploitation and poverty that are symptomatic of powerlessness.

The Political Struggle Over the CPC Proposals, 1975-76

From 1974, the Bougainville leaders put much effort into establishing a new provincial government for Bougainville, and was encouraged by the CPC’s recommendations on decentralisation. Amongst other things, the CPC view would see provincial government arrangements entrenched in PNG’s new national Constitution, offering Bougainville and other provinces some protection from unilateral National Government action to change the system.

However, the negotiations between National Government and Bougainville leaders over the establishing and operation of the new Bougainville government in late 1974 and early 1975 became more and more difficult. National Government politicians and senior officials were clearly more and more uncomfortable with the strong push for real decentralisation in Bougainville.

Major disputes developed over funding arrangements, which came to an impasse in May 1975, when the Bougainville leaders expressed support for independence of Bougainville. In spite of this, negotiations continued, but only until July 1975.

The July 1975 Somare government decisions to remove the provincial government provisions from the draft constitution when it was before the constituent assembly was the straw that broke the camel’s back for the Bougainville leaders. They recalled Raphael Bele and myself from the House of Assembly, an order with which we reluctantly complied, resigning our seats in the House of Assembly. Even though in our cultures, mediation is the accepted strategy for resolving differences and conflicts between rivals, many bureaucrats and ministers failed to grasp the creative opportunity that would have enabled them to share in the big vision of forging a partnership between the national government and the provincial governments.

In an initiative I have described elsewhere, early in 1976 I contacted then Prime Minister Somare, and encouraged by him we initiated negotiations with PNG for a compromise.

The main outcome was the Bougainville Agreement of August 1976, where PNG agreed to restore modified provisions on provincial government to the Constitution, something achieved by December 1976. The Agreement envisaged provincial governments for the whole of PNG, but with the possibility of special, more highly autonomous arrangements for Bougainville, and by implication possibly for other parts of the country with the capacity and the resources that would be required for such arrangements to work.

Rabbie Namaliu, who had recently been appointed Chair of the Public Service Commission was a supporter of the provincial government system. In 1997 he engaged consultants, McKinsey and Co., to recommend administrative arrangements needed to implement decentralisation arrangements across the country. While the consultants did a good job in developing a strategy for establishing the provincial governments, they overlooked one of the CPC’s most important recommendations about establishing the new provincial government in stages. A phased in implementation would have given the individual provinces time to build capacity, and increase financial capability and political responsibility. Instead, it was soon clear that many provinces were ill-prepared at the time they were granted provincial government status in 1977 or 1978.

Opponents of decentralisation capitalised on the inability of these new governments to mobilise against the opposition to decentralisation and, as a result, many of the embryonic decentralised provincial governments were effectively emasculated. There was so much opposition to the decentralised system of government from government ministries and senior bureaucrats that, had some of us not been around at the time, the provincial government system would probably not have been introduced at all.
Despite these problems, one thing was undeniable – the people in the provinces became thoroughly engrossed in having, for the first time, their own governments. As the CPC had anticipated, decentralisation motivated the diverse peoples, especially in the rural areas, to feel a sense of belonging to one PNG. I believe that the decentralised government system held the country together; without it the national government would have been faced with the massive task of pacifying disgruntled peoples in the rural areas who felt isolated from the source of power.

In my view, PNG missed the boat when it failed to implement in an appropriate manner the decentralised system of government.

As long as the national government has a monopoly on power — as does a centralised government — there can be no real improvement in the quality of life of the people in the villages and settlements because they are dependent on a government that may well not be accountable to them.

Had the national government transferred commensurate funding and personnel with the functions and responsibilities transferred to provincial governments, over time and with technical assistance, they would have become effective, responsible and creative in meeting the challenges that confronted them.

There is no doubt that there was corruption and mismanagement in quite a number of provincial governments, something that I recognised when as minister for decentralisation by taking action to suspend a number of provincial governments. But a major part of the reason for such problems was the failure to follow the CPC recommendations about establishing the new provincial government system in stages, for a large proportion of the corruption and other problems that led to provincial government suspensions occurred in provinces which were not ready for fully operational provincial governments in the first place.

Nevertheless, despite the difficulties, I treasure happy memories of working with pioneer premiers and other provincial leaders who blazed the trail of nationhood through unity in diversity. Despite all the problems, much about the system worked quite well, as was shown in the comprehensive analysis published 30 years ago in the longest monograph IASER or NRI monograph, the 1992 volume by Yash Ghai and Anthony Regan, The Law, Politics and Administration of Decentralisation in Papua New Guinea.

The undermining of the provincial government system

Moves against the provincial government system surfaced intermittently. In 1983, a proposal to do away with the institutional protection provided by the system was strongly opposed by both the national Premiers' Council and the New Guinea Islands (NGI) Premiers, as well as by some of the senior members of Parliament from the region. A letter with their signatures was dispatched to the Prime Minister, informing him of their unanimous opposition to the move. In 1984, it was again proposed that a referendum on the future of provincial government be held. Once again, the NGI Premiers strongly opposed the move; this time succeeding in persuading the Government to drop the idea.

Nevertheless, as a result of constant complaints about the provincial government system from members of the national government, three parliamentary select committees were established to evaluate the system. The first, set up in mid-1985 under the chairmanship of the MP for the National Capital District, Tony Siaguru, began touring the country to gauge the views of the people. The Siaguru Committee tried to be fair in its engagement with the people, even though Sir Pita Lus, who was member of the committee, made it quite clear that there was only one option and that was to abolish the whole system. Regardless, the efforts of the Siaguru Committee were terminated prematurely, when a new Prime Minister (Paias Wingti) took office, who did not want his rival, Siaguru, to use the committee to promote himself as a credible alternative prime ministerial candidate.

The second committee, in 1990–1991, was under the chairmanship of Henu Hesingut, the MP for Finschafen. The Hesingut committee recommended the abolition of provincial governments. In their place, new political bodies made up of chairmen of local level governments would be created. Under this arrangement, the national government would regain control of both local governments and provincial government public service structures, and all provincial funding. Simultaneously, a proposal by a private member recommended the establishment of district level development authorities chaired by open electorate members. It was clear from discussions and debates that the members of the national parliament wanted to have direct control of funds and direct influence over the planning of development projects in their constituencies. The committee's report generated political controversy, and contributed to the island provincial government's calls for more autonomy and possible secession.
The report was put to one side and instead a third parliamentary select committee was established in November 1992 under the chairmanship of the MP for Kavieng Open, Ben Micah. The Micah committee toured the country to consult, and in March 1993 presented an initial report. It claimed widespread disenchantment with provincial government, and blamed declining standards of delivery of government services on elected provincial governments unable to administer services efficiently because of political pressures on decision-making.

The report recommended the abolition of elected provincial governments and their replacement with non-elective political bodies made up of members of parliament, chairmen of local level governments and representatives of non-governmental organisations. A final report late in 1993 made similar but more detailed recommendations.

The provincial governments in the four regions opposed the Micah committee proposals. Opposition continued to be particularly strong from the New Guinea Islands (NGI) region provinces. In April 1994 the four NGI premiers were reported to have prepared a constitution for a new country, called the Federated Melanesian Republic, comprising four states – East and West New Britain, Manus and New Ireland, with Bougainville having an automatic right to join.

In mid-1994, Sir Julius Chan replaced Wingti as Prime Minister, but he continued support for abolition of elected provincial governments. Then in September 1994, a massive volcanic eruption of the Rabaul volcanoes occurred, and the obvious need for National Government support gradually helped undermine NGI provincial government opposition to the reforms.

In October 1994, the four NGI premiers, namely Stephen Pokawin, Sinai Brown, Bernard Vogae and Samson Gila, and the then NGI Forum Chairman and MP for Talesea, Patterson Lowa, were all charged with treason by the Chan Government. The government further ordered that the staff of the New Guinea Islands secretariat be arrested, that expatriates involved with the secretariat be deported, that provincial secretaries be suspended and charged, and that grants and loan guarantees to Manus Province (part of NGI) be frozen.

A succession of drafts of constitutional amendments and a new organic law for the re-designed system of provincial governments and local governments were tabled in Parliament from February 1994, before the final version Organic Law on Provincial Government and Local Level Governments (OLPGLLG) was passed in votes in March and June 1995. In debate I acknowledged to the Parliament that there was a need for reform of the system, this could be achieved by amending the existing Organic Law on Provincial Government. I opposed the new bill very strongly, predicting it would be ‘an administrative nightmare’, and that the provincial government system would ‘become a giant Electoral Development Fund’.

I was one of five of Chan’s own cabinet who voted against the bill or abstained from voting, and we were sacked by the prime minister. The prime minister did not want to sack me because of my consistent principled pro-provincial government stance. However, on principle and in support of my dismissed colleagues I declined his offer to stay in cabinet.

The NGI opposition to the reforms ebbed away, and the treason charges were eventually discontinued.

It is no surprise that this abolition of elected provincial governments occurred in the 1990s, when the North Solomons Provincial Government, the government of Bougainville, the province that had largely led the pre-independence demand for decentralisation, had been under suspension from mid-1990, as a result of the Bougainville crisis. The absence of the North Solomons Provincial Government from the debates gave the Wingti and Chan governments much more latitude than would otherwise have been the case in doing away with elected provincial governments.

Disadvantages of the ‘reformed’ provincial government system

Prior to the 1995 ‘reforms’, provincial governments had legislative and financial powers, and local level governments came under their jurisdiction. In the so-called reformed system, provincial authorities have much reduced power – in essence they are merely an extension of the national government in Waigani, controlled and stifled of any creative local initiatives that may enhance multilateralism by the octopus-like tentacles of the all-powerful central government.

Provincial governments are now, in essence, made up of ex officio members, headed by regional MPs who are now called governors. Other MPs and heads of local governments are members, as are representatives of traditional chiefs and women. The role of governor places significant financial and personnel resources in the hands of the regional MPs (governors), and so gives them great sources of patronage.

The OLPGLLG changed the boundaries of what had previously been administrative districts within provinces – the boundaries were now defined as the same as Open electorate boundaries, and Open electorate MPs were made heads of committees administering distribution of funds in the districts. But jealous of the powers of regional MPs as provincial
governors, Open MPs demanded more and more control over finances and affairs in their districts (or Open Electorates). But from 2014, authority of the Open electorate members was consolidated through establishing of District Development Authorities (DDAs), which are chaired by the Open MPs, and allocate a K10 million District Service Improvement Program in each district, and increasingly control administration in districts.

As a result, between them, regional and Open MPs control provincial governments, and administration and funding of districts. This control of funds and administration at both provincial and district level clearly distracts many MPs from being actively involved in their primary roles, which should be to represent their people in the National Government. Further, without being answerable to elected bodies at the provincial and district level, MPs are largely unaccountable in their roles as provincial governors and as heads of DDAs.

Inability to participate in decisions about needs and aspirations encourages a culture of dependence, which undermines self-reliance and encourages attitudes in which poverty and exploitation flourish.

Mere injection of capital and distribution of benefits without distribution of the source of the benefits, which is power, induces the adoption of a cargo cult mentality. In PNG, those who are against the provincial governments basically do not believe in power-sharing even though they may support distribution of goods and services and capital injection. They are quite happy to distribute benefits as long as they are in the control of power at the centre where important decisions about people’s needs and aspirations are made. In their view, what matters is that goods and services are delivered, whether the recipients participate in the appropriate decisions or not – a patronising approach worthy of all colonial administrations.

**Declining Public Sector Capacity**

Before I finish, I must comment critically on the main justification advanced at the time for the 1995 reforms, which was that the elected provincial governments had not been effective in delivering services to the people. The argument was essentially that in some way never clearly spelt out, that it was the existence or operation of elected provincial government had cause the decline in services. But in fact, the reform away from elected provincial governments made no difference, and the decline in service-delivery has continued after 1995.

Then, more recently, the push by Open Electorate MPs for control of district administration, including the establishing in 2014 of the DDAs, has been based largely on the argument that service delivery by unelected provincial governments headed by regional MPs as governors was falling. The claim has been that service delivery would be improved by bringing district administrations under DDAs headed by the MPs. But once again, the evidence appears to be that declining delivery of services continues.

In my view, these claims and counterclaims miss the real point about why standards of delivery of services by provincial and district administrations are falling. The key problems are not caused by elected governments. Neither are they caused by ‘provincialisation’ of the public service – something which in fact aided early trends towards improved service delivery in a few provinces, such as Bougainville and East New Britain, as it facilitated the return to those provinces of young and educated people to work for their home provincial governments, in a sort of nationalistic spirit.

No, the real problem with declining services concerns largely unrelated factors about policy-making and administrative capacity in the public service declining since before independence,

and the extreme difficulty experienced in so many low and middle-income countries in increasing capacity of that kind. The problems in the public service relate back to the failure of the colonial government to provide education for the so-called ‘natives’ until the 1950s and 1960s, and the closely associated lack of Papua New Guineans in the colonial public service until the 1960s, when there were just a handful. With the first university graduates emerging in the late 1960s, it is no surprise that when localisation of the expatriate-dominated public service began in the late 1960s and early 1970s, that grossly inexperienced young people in their 20s found themselves departmental heads.

The incredibly rapid localization of the public service in the 1970s ensured that a large proportion of the new senior and middle managers never had the opportunity to learn their tasks through gradual promotion and constant mentoring. From a severely weakened administrative base in the 1970s, the situation has steadily declined. Once there has been such a severe decline, it has been sown all over the world that re-building public sector capacity is an incredibly difficult task.

In PNG the situation has been made far worse by the dramatic increase in political control of the public service at provincial and district levels by largely unaccountable regional and open MPs.
The Ongoing Demands for Increased Autonomy

Demands for more autonomy for the better resourced and managed provincial governments were being made even in the 1970s, and are reflected in the CPC proposals for staged introduction of the system, and in the provisions of the Bougainville Agreement of August 1976 which indicated that mineral-rich and relatively well-educated Bougainville could be treated as a special case in the provincial government system.

Such demands were still evident in the 1980s, when some provincial governments objected to the uniform system of decentralisation introduced from 1976-77, arguing that the few provincial governments with relatively high capacity to deliver services and more financial resources than others should be able to get higher autonomy.

The possibility of enhanced autonomy for the provincial governments with highest administrative capacity was then considered in 1989 to 1990, and was the subject of a report to the National Government recommending that as a response to the then unfolding Bougainville conflict.

In the early 1990s, as pressure for abolition of elected provincial governments grew, the islands region provinces demanded autonomy, and threatened secession if they did not get it. As we have seen, the 1994 Rabaul volcanic eruption ended that push from the islands provinces.

However, ever since the 1995 reforms, there has been a stream of calls, generally from the provinces with highest levels of financial resources, for much greater autonomy for those provinces. Even architects or major promoters of the 1995 reforms, including former prime minister, Sir Julius Chan, are now supporters of much greater autonomy for their provincial governments.

Since the 1995 reforms, of course, the Bougainville people have won the right to both Autonomy, and a referendum on independence. This has provided the way to end a nine-year conflict that in many ways originated in rejection by Bougainvilleans over centralised control of mining, land and internal migration, and was only intensified by central government violence in response to expressions of Bougainville grievances in 1988 and 1989.

Then in 2015, the CLRC review of the Organic Law on Provincial Governments and Local-level Governments has given clear expression to much wider demands for rejection of centralised control of provincial governments and DDAs through MPS, and the re-establishing of elected provincial governments.

Clearly there is a demand for provincial government arrangements more in line with what the CPC recommended in its Final Report in 1974.

Concluding remarks

The CPC was at the cutting edge of democratization and good governance. Despite this, the leaders who were supposed to translate the people's dream of being empowered into a reality, either did not share the dream or found themselves in the company of those who didn't. Deterred by teething problems associated with the new system of decentralised elected governments, the leaders opted to take the easy way out –and recentralise governmental power to Waigani. Thus, we have come full circle in making the people powerless and dependent on hand-outs from a highly centralised and bureaucratized government.

The concept of power-sharing, especially when it involved structural distribution of government power and responsibility, was so novel and radical at the time of independence that those supporting its introduction should have thought of embarking on a nation-wide program of education for the people.

Perhaps we should have sought means of legally enforcing the Constitution's National Goals and Directive Principles, rather than leaving them to be enforced by moral persuasion.

Even today it is not too late to empower the people through program of awareness-raising and social analysis of issues. These programs ought to be conducted by our tertiary institutions, trade unions, churches and NGOs – agencies with the common objective of combating disempowerment, injustice, ignorance, deprivation of human rights and freedom, marginalisation, exploitation and corruption.

I am convinced that it is only the decentralisation of political power that will empower our diverse peoples and, paradoxically, create a community in which the people share a national consciousness. We need to embark on an education program that will inculcate a new vision of egalitarianism, multilateralism and interdependence and forge a collaborative strategy to address the problems and prospects that challenge us in the future.
Decentralised Governance Arrangements in PNG

CHERYL SAUNDERS AND ANNA DZIEDZIC
CONSTITUTION TRANSFORMATION NETWORK

Overview
- Presentation based on a paper written for UNDP’s project on Autonomy and Decentralisation
- Project is designed to assist an informed national conversation on decentralisation in PNG
- Presentation is in 5 main segments
  1. Arrangements for decentralisation governance can be seen as ranging along a spectrum something like this:
     Delegation → Devolution → Regionalism → Federation
  2. There are differences, but no bright lines between these various ‘ops’.
  3. The main distinguishing feature is the depth of decentralisation
  4. Many factors contribute to depth, but two that are particularly important are:
     a) the extent to which power is devolved
     b) the autonomy of each level of government in exercising the power allocated to it in a way that is responsive and accountable to its own people
  5. How these arrangements operate in practice is at least as important as how they are designed.

Challenges for decentralised governance
- Some of the issues concern design, e.g.:
  1. Which powers?
  2. Which resources?
  3. How administered?
- Lines of accountability:
  a) exists between levels of government
  b) The need for coherence between decentralisation, particularly from central institutions
- Lack of understanding of decentralisation, reducing the profits
- All of these challenges need to be met, in a review of decentralisation

Idea of decentralisation
- Arrangements for decentralised governance can be seen as ranging along a spectrum something like PNG:
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- There are differences, but no bright lines between these various ‘ops’.
- The main distinguishing feature is the depth of decentralisation
- Many factors contribute to depth, but two that are particularly important are:
  a) the extent to which power is devolved
  b) the autonomy of each level of government in exercising the power allocated to it in a way that is responsive and accountable to its own people
- How these arrangements operate in practice is at least as important as how they are designed.

Mapping decentralisation
- Decentralisation is now established as significant for good governance. Most countries have decentralised governance arrangements, in some form.
- The advantages of decentralisation for governance are potentially include:
  1. Quality of government at all levels, including the design and delivery of services
  2. More inclusive government
  3. Democratization of public power
  4. Local self-reliance
- This goal is achievable and is an issue for discussion in PNG
- Decentralisation has been significant in PNG since independence. It has had these distinct phases:
  a) From 1979 to 1991 and from the development of Districts in the 2000s.
  b) The current decentralisation provides an effective use of resources to promote meaningful integration of government, fragmentation of particular powers and the funding for them, significant public administrative and internal evaluation and a complex legal and constitutional framework.

Overview of the issues
- The next part of the presentation focuses around key issues for decentralisation, ranging from the number and organization of levels of government to the implementation of decentralisation
- The paper deals with each of these issues in some detail in these parts:
  1. Why is it relevant to PNG?
  2. How should it be achieved and maintained?
  3. How are governments at different levels related?
  4. How should relations between governments work?
  5. Constitutional and legal frameworks
  6. How to ensure that the legal framework between decentralization and flexibility works and is consistent and clear

The eight issues for decentralisation
- Levels of government
  1. How many?
  2. How interrelated?
  3. Political Institutions
  4. Economic institutions
- Division of legislative and executive power
- Who should do what, and how?
- Administration
  1. Coordinated or decentralized?

Revenue raising and allocation
- How should resources be raised and distributed?
- Intergovernmental relations
  a) How should relations between governments work?

Constitutional and legal frameworks
- How to ensure that the legal framework between decentralization and flexibility works and is consistent and clear
- Implementation of decentralisation

Levels of government
Questions raised by this issue:
- How many levels of government should there be?
- How should the jurisdictions be drawn within each level?
- How to consider PNG includes
- Are districts a fourth level of government?
- Are they needed to meet the goals of decentralisation?
- Is it a problem to use electoral boundaries for the internal boundaries of the District level of government?
### Political institutions

**Questions raised by this issue:**
- What political institutions should each level of government have, to meet the goals of decentralisation?
- In particular, what should be the legislative and executive institutions at the sub-national levels of government?

**Matters to consider in PNG include:**
- What is the effect on achieving the goals of decentralisation of having national MPs at both the provincial and district levels?
- How are the effects of dual representation felt at the provincial level?

### Intergovernmental arrangements

**Questions raised by this issue:**
- What institutional structural arrangements might promote decentralisation goals?
- To what extent should a higher level of government have regulatory control over actions of lower levels?

**Matters to consider in PNG include:**
- Does the role of national MPs at multiple levels of government serve the goals of decentralisation?
- Are the checks on provincial and local decisions currently exercised at the national level of government constructive or effective, accountable and responsive government?

### Division of legislative and executive power

**Questions raised by this issue:**
- How are legislative and executive/administrative powers divided between the levels of government?
- What about impact on law?
- What level can influence the actions of the other levels?

**Matters to consider in PNG include:**
- How clear is it that level of government is responsible and accountable for what?
- To what extent are resources and services linked to specific levels of government?

### Legal framework for decentralisation

**Questions raised by this issue:**
- Is the legal framework for decentralisation appropriately spread across the different categories of legal instruments?
- Is the legal framework consistent, coherent and clear?

**Matters to consider in PNG include:**
- How is the framework for decentralisation appropriately distributed between the PNG Constitution, the Organic Law, ordinary legislation and political practices?
- Are the legal rules and principles clear, consistent and accessible across these instruments?

### Administrative support and other institutions

**Questions raised by this issue:**
- How should the public service be organized under decentralisation arrangements?
- How about support services to the local government units?
- How should independent institutions (e.g., Ombudsman, Auditor-General) be organized?

**Matters to consider in PNG include:**
- What is the significant concern arrangements for the administration in PNG serve the goals of decentralisation in terms of accountability, quality of governance, and responsiveness?
- Could more be done to ensure that independent institutions meet the needs of decentralisation (e.g., should AIC reports be examined by legislators at all levels)?

### Implementation

**Questions raised by this issue:**
- What is involved in implementing new or changed arrangements for decentralisation?
- What are the challenges that implementation might face?

**Matters to consider in PNG include:**
- What changes are made to decentralisation arrangements, what can be done to ensure: enforceability and fairness?
- Harmonization of funding?
- Necessary measures/institutional changes?
- How much time should be allocated to transition?
- What degree of autonomy help?

### Revenue raising and allocation

**Questions raised by this issue:**
- To what extent should each level of government raise its own resources?
- What taxes should the balance be struck between transfers for general and more specific purposes?

**Matters to consider in PNG include:**
- Could more revenue be raised at the provincial level, supporting provincial autonomy?
- To the balances between general and conditional transfers right? Are the arrangements clear?

### Wrap-up

Thank you for listening. We welcome questions and comments.

Many thanks to Bill and, in particular, to Dr. Thomas Webster for support during the development of the written Report on which the presentation is based.

For future questions and comments:
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Powerpoint presentation by Dr Karl Kössler

CONCLUSIONS

Entrenchment of asymmetrical decentralization

- Reflecting differences regarding responsibilities claimed or ascribed/administrative capacities to carry them out
- Horizontal intergovernmental relations between provinces

- Benefits are joint policymaking and one voice vis-a-vis the central government
- Formalization of intergovernmental relations

- The more the inner working of councils is regulated, the lower the risk of councils being marginalized

ENTRENCHMENT AND INTERGOVERNMENTAL RELATIONS

- Revitalizing decentralization based on three cornerstones

- Sec. 2 of 1976 Const: “the creation of political structures that will enable effective, meaningful participation by our people... and in view of the rich cultural and ethnic diversity of our people for those structures to provide for substantial decentralization of all forms of government activity.”

- 2015 report: system “no longer viable to achieve effective service delivery”

- Why are entrenchment and intergovernmental relations (IGR) key issues?

- IGR unavoidable “oil” in any political machinery between governments at national and provincial levels
- Entrenchment in constitutional, organic or ordinary law? Different degrees of legal protection and flexible adaptability

ENTRENCHMENT OF DECENTRALIZATION

- Why is decentralization entrenched and how? The case of Italy

- Reasons for entrenchment of 5 special regions (vs. 15 ordinary regions): cultural diversity, location in periphery and (historical) fear of secession

- What makes the 5 regions special? (1) statutes of autonomy negotiated bilaterally (leading to different responsibilities and financial arrangements); (2) statutes of autonomy have constitutional rank

- Entrenchment of asymmetrical decentralization?

- Reasons some provinces claim more responsibilities than others
- Decrease more or less economic and administrative capacities to carry out certain tasks

INTERGOVERNMENTAL RELATIONS AND DECENTRALIZATION

- Different elements and dimensions of IGR, but in pursuit of the same goals

- GE: integration into country as a whole (complement to autonomy), adoptions of decentralization arrangement, political conflict management

- Elements: intergovernmental councils (political and/or civil servants, permanent or ad hoc) and intergovernmental agreements

- Two key issues for councils: horizontal cooperation and formalization

- Vertical councils more strictly linked with decentralization process, but horizontal councils crucial complement to joint policymaking (tasks transcending boundaries, pooling capacities) and one voice vis-a-vis center

- Formalization may reduce risk of marginalized council > frequency of meetings, agenda-setting, etc. (e.g. TEA Ch. 5 of Constitution; 2000 RAK Framework Act)

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ITALY: 5 SPECIAL REGIONS

MULTIDIMENSIONAL IGR

National
Regional ↔ Regional ↔ Regional
Local ↔ Local ↔ Local ↔ Local
Vertical
Horizontal
Powerpoint presentation by Mr Stephen Pokawin

**Historical Perspective of Decentralization of Government in PNG.**

Stephen P. Pokawin  
University of PNG  
16th February 2022

**Content**

1. Introduction  
2. Background  
3. Decentralization in PNG  
4. Prevailing Dissatisfaction  
5. Amendment to the Constitution  
6. Pursuit of Autonomy  
7. Conclusion

**1. Introduction**

“Professors W. Dowding and R. L. Wilks...”

“...in our experience of political systems in late Africa and the Caribbean, we have not come across an administrative system so highly centralised and dominated by its bureaucracy.”

*CPC Report 1974. Chapter 10, para 6*

“The power to be exercised by the people. Government service should be accessible to them. Decisions should be made by the people to whom the issues at stake are meaningful, easily understood, and relevant. The existing structure of government should therefore be restructured, and power should be decentralized, so that the Muslims and inhabitants of our country can play their full part in promoting our country’s development.”

*CPC Report 1974. Chapter 10, para 8*

“His Excellency Madam, Governor of West New Britain

“Give greater economic autonomy to provinces...”

“The current system that centralized powers in Port Moresby made service delivery difficult in the provinces.”

*Post-Courier. Wednesday 19 January 2002*

**2. Background**

2.1 50-Year Journey  
2.2 Constitutional Planning Committee  
2.3 Political Participation and Power Sharing  
2.4 Unity and Unitary System of Government  
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**3. Decentralization in PNG**

3.1 Independence Constitution 1975  
3.2 Constitutional Amendment No 1  
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**4. Prevailing Dissatisfaction**

4.1 Service Delivery  
4.2 Costs  
4.3 Implementation of the System  
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5. Amendment to the Constitution

5.1 1977 - Insertion of Part VIA Sections 187A to 187J 1995 – Repeal of the 1977 System (10 to 20 Years)
5.3 Replacement 1995 Part VIA, Sections 187A to 187J (20 Years)
5.4 2000 – Insertion of Part XIV (Bougainville)
5.4 2015 – Proposal to Remove and Replace the 1995 Part VIA for a new one

6. Pursuit of Autonomy

6.1 Provincial Government Constitutions
6.2 Islands Pursuit of Greater Autonomy
6.3 Financial Responsibility s105 of the OLPGLLG
6.4 Service Delivery Partnership Agreement
6.5 Bougainville Peace Agreement
6.6 Proposal to Insert Part XV to the Constitution
6.7 Proposal for new System of Decentralization

7. Conclusion

7.1 20 – Year Reform Cycle
7.2 System of Decentralization does exist
7.3 Role of MPs in the 3 Levels of Government
7.4 Unitary System – Centralized Decentralization?
7.5 Part VIA and Part XIV of the Constitution
7.6 Reform versus Implementation

Powerpoint presentation by Mr. Xaiver Winia
TERMS OF REFERENCE (TOR)

- **3 Broad TORs (Objective of Government)**
  1. A relevant and effective political and administrative structures that suit the demands of the country in the 21st century.
  2. A process to enhance accountability, transparency, and participation of government timeliness for the people. This is key to the delivery of services that are in line with the country’s development goals and targets.

- **4 Working TORs:**
  1. For all practical purposes, CLRC and DPLGA reduced the above three broad TORs to four - Political, Administrative, Financial, and Legal - pillars of the OLG/LLG.

KEY ISSUES/CHALLENGES

- **Political Issues**
  1. Multi-layered political structures - the 1986 election created a large number of government (NGC, MGC, LLG) levels. As a result of the DDA system, 8,500.
  2. Establishment of discretionary funds such as the associated political realities between provincial and national aspirational goals of the constituent political parties and people (voters).
  3. More politicians mean an increase in the cost of administration support of the political offices.
  4. Changing role of the NPP towards service delivery rather than political campaigning.
  5. The “One-Side-Fish-All” (Symmetry vs Asymmetry).

OTHER EMERGING POLICY ISSUES

- **A/items of the system of government**
- **Recommendations:**
  1. The OLG/LLG has been amended more than 11 times (about 150 sections amended).
  2. Enabling legislations: The OLG/LLG has inserted sections which provide for enabling legislation. While to give effect to their respective components of the Organic Law 12 of which are in place while two are not until very recently.

FINANCIAL ISSUES

- **Institutionalization:**
  1. Best practice sharing: the best practice should be shared and harmonized within the country.

CONCLUSION

- The spirit of the law was well-intentioned, but the forces of change that have shaped PNG to what it is today may be responsible for the difficulties faced during its implementation phase (GoPNG, 2019).
- The Final Report contains 10 RECOMMENDATIONS for change, aimed at STRIKING A BALANCE between DECENTRALIZATION and INTEGRATION for Greater, Stronger, and Prosperous PNG.
Fiscal Decentralisation in Papua New Guinea

Satish Chand
UNSW

Outline

1. Introduction – the meaning of fiscal decentralisation
2. Theory and Practice of fiscal decentralisation
3. Fiscal decentralisation in PNG measured against (2)
4. Policy Implications lessons for ongoing debates
5. Conclusions

Fiscal Decentralisation

- Fiscal decentralisation entails the devolution of the powers from the National Government to subnational governments for raising of revenues and delivery of services to the local public.
- The powers which are devolved under fiscal decentralisation include those to tax economic activities and spend public funds for the exercise of responsibilities assigned to the subnational government.
- Subnational Governments in Papua New Guinea include the Provincial Governments, the District Development Authorities (?), and Local-level Governments.

5 guiding principles for fiscal decentralisation

1. Subsidiarity principle: Assign functions to subnational governments for economic efficiency
2. Asymmetric decentralisation: Consider context when assigning functions to subnational governments
4. Fiscal equalisation: for equity of access to services across the nation – match COS to LRC using ‘gap-filling’ grants.
5. Tax mobile/immobile income at the national/local level.

Designing fiscal decentralisation

Policy makers must ensure that:
(i) Subnational governments have access to adequate revenues to exercise their responsibilities for service delivery (i.e., Funding follows Function);
(ii) the transfers from the national budget to subnational governments are equitable (i.e., fair) and sustainable (i.e., can be maintained over time without creating macroeconomic distress); and,
(iii) subnational governments have an incentive to raise revenues that both supplements their own resources and that of the nation at large.

5 common mistakes with fiscal decentralisation

1. Under-funding of functions
2. Over-spending by SNGs → Macroeconomic management
3. Over-dependence on the National Budget → Mixed incentives for local revenue generation
4. Failure to recognise economies of scale
5. Rigid structures thus unable to adapt to change

Fiscal Decentralisation in PNG

- Subsidiarity - √
- Asymmetric decentralisation - √; e.g., ARoB (2003), MR & ENA, ENP (2019)
- Tax mobile/immobile income at the national/local level - √
- Fiscal equalisation - RSFP - √
- PSIP and USIP - motivations ???
- Funding follows function - ×
- Fiscal equivalence - ×
- Local revenue generation - limited and varied across SNGs

Figure 1: Self-generated revenues % of Total. 2016
Figure 2: Extent of fiscal decentralisation

Source: Penn, 2012; Fig. 8, p.231

Summary: Fiscal decentralisation in PNG

- Subsidiarity has been fulfilled
- Little expenditure and even less revenue decentralisation
- The National Government has close to complete control over all recurrent expenditures in the provinces
- Over-dependence on the National Budget
- DDAAs have centralised power through practice against the rhetoric of decentralisation.

Figure 3: Revenues raised by National/Provincial Governments

Source: Ministry of Finance 2012; p. 29

Incentives for Grassroot democracy: Revenue and Expenditure Autonomy:

1. Devolve more revenue-raising power to the Provinces – e.g., return ALL of the GST revenues.
2. Devolve more of the powers to spend revenues raised locally (including GST).
3. Incentives for LLGs, PPGs, and NGOs to improve service delivery – LGDR
4. Mechanisms to increase ‘grassroot accountability’ while reducing the risk of financial abuse.

What if ALL GST was returned to source?

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Five questions for a National Conversation

1. How do DDAAs fit into the overall structure of decentralisation?
2. How much of the GST collected should be returned to the source province? Specifically, why limit this share to 60 percent?
3. What proportion of royalties and dividends should accrue to the source province?
4. What additional revenue-raising powers, if any, should be granted to the provinces?
5. Should provinces be allowed to borrow to fund any shortfalls in revenues, and if so, then how much?
Community empowerment for accountability

- Role of information for grassroot accountability – proposal for an independent NSMA
- Structure of NSMA – NEFC, NSO, NDoH, NDoE, NRI, etc
- Risks: clientelist politics leading to poor accountability

Conclusions

1. Autonomy runs deep in the veins of PNG – celebrate this & harness it for improved service delivery!
2. CPC has many lessons for ongoing efforts at reform
3. Little progress (regress) has been made w.r.t. fiscal decentralisation
4. Questions for National Conversation:
   i. What is the desired level of decentralisation?
   ii. How do we fit into the structure of decentralisation?
   iii. Why have local communities not succeeded in demanding better services from their local government?
5. Comments, Corrections, and Questions

Powerpoint presentation by Mr. Pedi Anis

INTRODUCTION

- New Ireland called for autonomy of the highest kind since 2008.
- East New Britain called for Autonomy since 2002. Inga joined immediately after.
- Many people have misunderstood our quest for autonomy to mean seeking independence from the rest of Papua New Guinea and planning to follow the path of Bougainville. That is not correct.
- Because of the word autonomy, which came to be used in reference to the case of Bougainville, other provinces calling for autonomy are also suspected to be following Bougainville, and accordingly, misunderstood.
- WHEN WE SAY AUTONOMY OF THE HIGHEST KIND, IT MEANS WHAT THE CONSTITUTION REFERS TO AS SUBSTANTIAL DECENTRALIZATION.
- IT MEANS DEVOLUTION OF MORE POWERS AND FUNCTIONS UNDER S.42 OF THE ORGANIC LAW ON PROVINCIAL GOVERNMENTS & LOCAL-LEVEL GOVERNMENTS.

AUTONOMY MODEL

- POLITICAL AUTONOMY
- ADMINISTRATIVE AUTONOMY
- FINANCIAL AUTONOMY

POLITICAL AUTONOMY

The attainment of some level of independence in relation to the decision making process and the funding and control of development aspirations of the Province.

ADMINISTRATIVE AUTONOMY

- The maintenance of the Province as an integral part of Papua New Guinea and at the same time establishing a collaborative relationship with the National Government in the administration and governance of the country.

FINANCIAL AUTONOMY

- The sharing of functions and powers relating to wealth, grants and aid, with each other (National Govt & Autonomous Govt)
WHAT WE HAVE DONE SO FAR

- DRAFTED CONSTITUTION (AMENDMENT) LAW ON AUTONOMY
  - This law inserts a new Part XV in the Constitution to authorise the granting of autonomous government to the provinces.

- DRAFTED ORGANIC LAW ON THE AUTONOMOUS GOVERNMENTS
  - This law gives effect to Part XV (autonomous government) of the Constitution, by specifying the details, systems, powers and the processes to be used to enable the granting and the establishment of autonomous governments to the Provinces. This law revolutionises the legal regime on governance, in particular with the sharing of powers, wealth and resources between the National Government and the Provinces.

HINDRANCES

- Relevant Government Departments and State Agencies inability to appreciate, assess and facilitate autonomy for provinces as directed by the National Government under Aalotra Accords 3 and 2 of 2012 and 2017.

- The proposed Organic Law on Decentralisation is given prominence hence the autonomy proposed laws have been given less or no attention by relevant government agencies.

- Political Commitment is clear for ENRP, NIP and Iaga to pilot autonomy but have not been assisted by the relevant government agencies in Waimami, hitherto taken up by 13 years of commitment, hard work, and huge cost to the province, especially NIP.

- Failure by relevant National Government Ministries to facilitiate NEC Submission on Autonomy for proposed laws to be enacted by Parliament.

- Failure to establish a body with its own secretariat to help provide advice to the National Government and implement autonomy in PNG.

WAY FORWARD

- NEC should consider and approve the Autonomy Submission and the proposed Constitutional laws for enactment by Parliament.

- Grant Autonomy to the pilot provinces followed by other provinces or failing that the future of the unity of our country is at stake especially, preserve our resource provinces. Grant autonomy to avoid disunity and disintegration.

- Set up a National Coordinating body on autonomy to coordinate, monitor, assess, supervise and implement autonomy in PNG.

End of Powerpoint Presentation
DEBATING POLICY AND MAKING LAWS

Section 99(2)(a) of the Constitution reads:

“The National Parliament, which is an elected legislature, with
subject to, Constitutional Laws, has unlimited powers of law-
making...”

Section 100 of the Constitution

Parliament’s law-making powers cannot be ‘permanently’
destination.

NET EFFECT OF THESE PROVISIONS

This monopoly of law-making powers by the parliament means that:

If parliament neglects its law making powers, no other entity outside of
the parliament can compensate for this vacuum.

PARLIAMENTARY COMMITTEES

Currently 34 parliamentary committees, and each
is delegated a specific function

Set up to scrutinise: operation, every law, policy,
budget, and decision

Most times these committees are non-existent.

PERFORMANCE OF PARLIAMENT?

Secretary of Constitutional and Law Reform Commission of PNG
(2018):

27% of PNG’s laws were outdated at least by half a century, and had
“no practical application in modern era”

LAW MAKING POWERS PROTECTED BY THE CONSTITUTION

Sections 115 and 134 of the Constitution ensure:

immunity for MPs within the parliament chamber;

the functions of the parliament are ‘non-justiciable’

unless inconsistent with the Constitution, or violates
procedures prescribed by Constitutional Laws

EXECUTIVE DOMINANCE

The dominant government side bulldozes laws & policies

Weak parliament and dominant executive: legislative arm of the
government becomes a mere rubber stamp for the government
proposals

CASE IN POINT

PNG Drug Act 1952 – doesn’t cover cocaine & metamphetamine

Two offenders involved in cocaine & meth (2020/2021) walk free

Section 37 (2) of the PNG Constitution:

“The fundamental proposition is: nobody may be convicted of an offence
that is not defined by, and the penalty for which is not prescribed by
written law.” (SC REF NO 5 3 & 5 OF 2014)
4. The dual role of PNG MPs

LAW MAKERS + SERVICE DELIVERERS

1995 and 2014 reforms:

Made MPs service deliverers and project managers, in addition to their roles as law makers, providing representation, and holding the executive accountable.

MPs have since then focused on service delivery.

3. Providing representation

Direct access that MPs have to millions of kina, and the discretion over it, creates an expectation among voters that they can transact their votes for direct personal benefits.

Instead of judging MPs by their performance on national priorities, voters judge MPs on their ability to meet immediate and local needs.

MPs on the other hand, focus on meeting these personalised needs of their voters whilst neglecting national priorities.

FLUIDITY OF MP MOVEMENTS

Since election in 2017:

48 MPs have switched political parties
24 have switched more than 2x
4 have switched more than 3x
1 has switched 6x

For more information: PNG MPs Database, Development Policy Centre, AU
The costs are too high for MPs to neglect national priorities.

Reform needed: to ensure MPs are prioritising national issues.
Appendix C: Draft Reports

Decentralised Governance arrangements in Papua New Guinea

Cheryl Saunders
Anna Dziedzic

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About the authors
Dr Anna Dziedzic researches comparative constitutional law and judicial studies, with a particular focus on the Pacific region. Her postdoctoral research, which she is conducting at Melbourne Law School under the auspices of the Laureate Program in Comparative Constitutional Law, explores how constitutions and constitutional institutions are reflective of the people and the state, and how they can accommodate diversity, legal pluralism and non-state actors. Anna is a Convenor of the Constitution Transformation Network at Melbourne Law School, Co-Editor of the Blog of the International Association for Constitutional Law, and Regional Coordinator for Oceania for the Global Citizenship Observatory at the European University Institute. Anna is the author of Foreign Judges in the Pacific (Hart 2021) and co-editor of the Cambridge Handbook of Foreign Judges on Domestic Courts (forthcoming).

Professor Cheryl Saunders is a laureate professor emeritus at Melbourne Law School, a convenor of the Constitution Transformation Network, and a senior technical advisor to the Constitution Building program of International IDEA. Her areas of research include comparative constitutional law, with particular reference to constitution making and change, federalism, decentralisation and intergovernmental relations and the design and operation of institutions. She is a President Emeritus of the International Association of Constitutional Law and of the International Association of Centres for Federal Studies, the founding director of the Centre for Comparative Constitutional Studies and a former President of the Administrative Review Council of Australia.

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Acknowledgements: A draft of this paper was presented to a meeting of senior public servants and academics on 10 November 2021 and we are grateful to all participants in that meeting for sharing their insights and constructive feedback. We would particularly like to thank Dr Thomas Webster of the National Research Institute and Mr Patrick Painap and Mr Erwin Pouru of the National Economic and Fiscal Commission, who provided invaluable further information and insights.

List of abbreviations
DDA District Development Authority
MP Member of Parliament
NEFC National Economic and Fiscal Commission
OLPGLLG Organic Law on Provincial Governments and Local-level Governments
PNG Papua New Guinea
SIP Service Improvement Program
Executive summary

Decentralisation is widely used across the world as an aid to good governance. It is a longstanding feature of governance in Papua New Guinea (PNG), too. In PNG, however, there are widespread concerns that the current arrangements for decentralisation do not adequately provide for the effective delivery of public services to communities. The National Research Institute’s project on Autonomy and Decentralisation seeks to encourage an informed national conversation on the design and operation of decentralisation as an aid to policy makers as they consider options for change.

The purpose of this paper is to identify the key issues to be considered in a review of decentralisation in PNG. These issues are interrelated and overlapping. They cover both the design of decentralisation and its operation in practice in the specific context of PNG. This paper offers a framework, tailored to the context of PNG, to supports discussion of decentralisation and to guide further, more detailed, research on key topics.

Countries adopt decentralisation for a range of reasons: to enhance the quality of government including service delivery, to make government more inclusive, to disperse public power, and to encourage localised self-government and self-reliance within a national framework. Across the world, decentralisation takes a wide variety of forms, which balance, in different ways, the benefits of localised autonomy and national unity. Clarity about the goals of decentralisation can help to decide where that balance should lie in PNG, and how it should be achieved.

Decentralisation has gone through at least three distinct phases in PNG. The history of these changes and the various forms that decentralisation has taken are instructive for understanding the current drivers for decentralisation in PNG and the issues that arise for design and implementation.

This paper canvases eight issues that arise in designing any decentralised system of governance, in a format that highlights their relevance in PNG:

Levels of government

PNG has three levels of government – the national level, the provincial level and local-level government. In addition, districts and wards, while originally designed for electoral purposes, are now also used for some governance functions. Issues to consider include:

- How many levels of government should PNG have? What should they be?
- How should the boundaries between governments at each level be drawn? In particular, should areas with governance functions be determined by the boundaries of electoral districts?

Political institutions

Each level of government in a decentralised system has its own political decision-making institutions. Their design and effective operation is important for the quality of government, including service-delivery, inclusive government and accountability. Decentralisation is likely to be deeper when the members of subnational governments are directly elected by the people of the area they serve, and more shallow where they are appointed by the elected officials of a higher level of government. A distinctive feature in PNG is use of the same elected representatives at national, provincial and district levels. Issues to consider include:

- What are the advantages and disadvantages of using national MPs at multiple levels of government?
- What effects does this have on the goals for decentralisation in PNG?

Division of legislative and executive power

A key criterion for the division of power in decentralised systems is to allocate power to the lowest level of government that is capable of effectively exercising it. The underlying assumption is that sub-national governments will be responsive to the needs and demands of the communities they serve. This rationale can be undermined if there is confusion over the responsibilities of the respective levels of government. Issues to consider in the context of PNG include:

- How are legislative and executive powers divided between the levels of government? Does this division work well in practice?
- What effect do fragmented funding arrangements have on the operation of the division of powers?
- What causes problems of service delivery? What options are available to resolve them?
Administration

In decentralised systems, each level of government needs appropriate support from a public service that is responsive to its needs and accountable for carrying out its programs. PNG has experience with both a dual public service, with a separate public service to serve each level of government and with a single public service that serves all levels of government. Issues to consider include:

- How can the public service be organised so that the responsibilities of public servants to different levels of government are clear and do not give rise to conflicts, duplication or gaps in accountability?
- How can independent institutions established at the national level (such as the Auditor General or Ombudsman) support decentralisation?

Revenue raising and allocation

Decentralisation requires governments to have adequate resources to fund the exercise of their responsibilities, including the provision of services. In PNG, as in many other countries with decentralised government, sub-national governments rely heavily on funding transferred from the national government, with the associated needs of ensuring that funding is adequate, that it is distributed fairly and that there is accountability for expenditure. The challenge in all such cases is to ensure that transfer arrangements strike a balance between local autonomy and national control that best promotes the quality of governance at all levels, including service delivery. Issues to consider, in the context of PNG, include:

- To what extent can and should sub-national governments be reliant on their own financial resources?
- What considerations apply in striking a balance between transfers for general purposes (unconditional transfers) and more specific purposes (conditional transfers)?
- How are decisions best made about revenue transfers to subnational levels of government and between governments at each level, to enable them adequately to fund programs and services?

Intergovernmental relations

Relations between the different levels of government need to be designed in a way that foster the goals of decentralisation and the desired balance between localised autonomy and national unity. Issues to consider include:

- Can and should the design of institutions contribute to positive relations between levels of government?
- Do the arrangements for national government oversight and regulation of subnational government (such as consultation and reporting requirements, monitoring, and step in powers) strike the right balance between effective subnational decision making and national oversight?
- What formal and informal mechanisms are available to support collaborative relationships between governments?

Constitutional and legal framework

Decentralisation must be supported by a legal framework that balances protection of decentralisation with the need for flexibility over time and which provides clear guidance on the responsibilities of each level of government. In PNG, the framework for decentralisation is spread across many different types of legal instruments: the Constitution, Organic Law and ordinary legislation. Issues to consider include:

- Is the framework for decentralisation appropriately distributed between the different categories of legal instruments?
- Is the legal framework for decentralisation consistent, coherent, and clear?

Implementation

Issues of design are only one part of any project to review and reform decentralisation. Implementation of new or changed arrangements so that they operate effectively in practice critical. The final section of the paper explains what implementation involves. It extends beyond the obvious changes to laws and institutions to include changes to political and bureaucratic culture, at all levels of government. It requires understanding and acceptance from all stakeholders, including the public at large. It necessarily involves attention to the needs for capacity building, education, and training. A formal transition period may provide for a staged approach in which decentralisation proceeds at a different pace in different parts of the country. In some places, specialist institutions have been established to oversee implementation, although this approach has been only partially successful. Decentralisation requires all institutions of government to take responsibility for its success. Implementation is often a continuing work in progress and adaptation to new arrangements may continue after a formal transition period ends.
Introduction

The National Research Institute has undertaken a project on Autonomy and Decentralisation to review arrangements for decentralised governance in Papua New Guinea (PNG) since independence. The project comes at a time of concern that the current arrangements for decentralisation do not adequately provide for the effective delivery of public services to communities in PNG.¹ The project seeks to encourage an informed national conversation on the design and operation of decentralisation as an aid to policy makers as they consider options for change. It is intended to canvass all the key, interrelated issues that contribute to a working system of decentralisation and are critical to its success. This paper is written at the outset of the project, to assist the conversation as it gets underway.

Decentralisation is widely used across the world as an aid to good governance. It takes a variety of forms, in ways that this paper will explain. The possibilities can be understood as ranged along a spectrum that has relatively light devolution of power from central institutions at one end and federation at the other. Between these two poles are many other forms of decentralisation for use in unitary states, which sometimes are described as devolution or regionalism. There are no bright lines between these categories and no standard prototypes. The principal difference between arrangements for decentralisation at different points on the spectrum is the degree of autonomy of sub-national governments, measured by reference to criteria that include, for example, the distribution of power and resources and the extent to which governments are accountable to their own communities, rather than to another level of government. These variations are examined more fully in part 2 of the paper, which also identifies some of the principal challenges of designing arrangements for decentralisation and making them work.

The system of government in PNG has involved decentralisation since shortly after independence. Decentralisation seems particularly suited to PNG, given the diversity of its people and the topography of the country, and the long history of service provision by non-state bodies such as churches and local communities. The need for decentralisation was identified in the report of the Constitutional Planning Committee in 1974.² National goal 2 of the Constitution of 1975 called for ‘structures to provide for substantial decentralisation of all forms of government activity’ in recognition of ‘the rich cultural and ethnic diversity of our people’.

Since 1975, however, decentralisation has gone through at least three distinct phases, as PNG has sought an approach to governance that delivers the best result for its people.³ These phases, the rationales for them, and their effects are described in greater detail in part 3 of the paper, to inform the sections that follow on the options for change. The first, in 1976, involved the establishment of provincial governments. The second, in 1995, made major changes to provincial institutions, in which national Members of Parliament (MPs) now played a key role. A third phase, following the turn of the century, developed the role of Districts as vehicles for funding and development, once again involving national MPs. Each of these phases placed PNG at different points on the spectrum of decentralisation. As a generalisation, the trend has been towards less autonomy. The use of national MPs at multiple levels of government is unusual, however, making decentralisation in PNG difficult to typecast in comparison with arrangements elsewhere.

The principal purpose of this paper is to identify issues and options for consideration in a review of decentralisation in PNG, drawing primarily on experiences in PNG itself as well as experiences elsewhere. To this end, part 4 of the paper sets out eight issues raised by the current design of decentralisation in PNG and identifies options for dealing with each of them, generally and in the context of PNG. The eight issues and questions for consideration, are summarised in the box below.

---


Issues of decentralisation: A framework for discussion

1. Levels of government
   • How many levels of government should PNG have?
   • How should the boundaries between governments at each level be drawn?

2. Political institutions
   • What are the advantages and disadvantages of using national MPs at multiple levels of government?

3. Division of legislative and executive power
   • How are powers divided between the levels of government?
   • What effect do fragmented funding arrangements, including the provision of funds to MPs, have on the operation of the division of powers?
   • What are the implications of the division of powers for the quality of governance and of service delivery?

4. Administrative support
   • How can the public service and independent institutions be organised in a system of decentralisation to promote good governance and effective service delivery?

5. Revenue raising and allocation
   • To what extent can and should sub-national governments be reliant on their own financial resources?
   • What considerations apply in striking a balance between transfers for general purposes and more specific purposes
   • How are decisions best made about revenue transfers to subnational levels of government and between governments at each level, to enable them adequately to fund programs and services?

6. Intergovernmental relations
   • What structural intergovernmental arrangements might be useful to advance the goals of decentralisation? What purposes should they serve and how should they work?
   • What regulatory checks is it useful or appropriate for higher levels of government to have over actions by subnational governments? Do existing arrangements strike the right balance?
   • How are collaborative intergovernmental relations conducted? What purposes can they properly serve?

7. Legal framework for decentralisation
   • Is the framework for decentralisation appropriately distributed between the different categories of legal instruments?
   • Is the legal framework for decentralisation consistent, coherent, and clear?

8. Implementation in practice
   • What should be included in a plan for the implementation of decentralisation?

In the end, the beneficial effects of decentralisation depend on the way in which the components of it fit together and work in practice, in the context for which they are designed. These practical considerations underpin discussion throughout the paper and should be borne in mind in using it. They receive specific consideration in the final part 4.8 of the paper, which examines the challenges of implementing new arrangements for decentralisation, to ensure that they work in the way that was intended.

Mapping decentralisation

Decentralisation involves the distribution of governmental powers, responsibilities, and resources between a national or central government and subnational governments. Decentralisation is a feature of systems of government in countries in
all regions of the world, in both developed and developing countries. This part of the chapter considers the reasons why countries adopt decentralisation, explains the different forms that arrangements for decentralisation take, and identifies some of the principal challenges of operating decentralisation in practice.

Advantages of decentralisation

Countries adopt decentralisation for a range of interconnected reasons, which might be summarised as follows.

• Decentralisation can contribute to the quality of government including the design and delivery of basic services to individuals and communities. Decision-makers at lower levels of government can develop and adapt policies and practices to the varying conditions, needs and preferences that exist in countries of any significant size. They live and work in the parts of the country for which they have responsibilities and understand the area. They are also more embedded in, and accountable to, local communities, which can enhance community oversight and control. In a country as diverse as PNG, this advantage of decentralisation is more evident still.

• Decentralisation can help to make government more inclusive. The existence of multiple levels of government provide more opportunities for people to participate in democratic decision-making by choosing representatives at different levels and holding them to account. Multiple levels of government also enable a wider range of people to put themselves forward for elected office, including groups underrepresented at the national level, such as women and members of minority tribal or ethnic groups. Participation in lower levels of government may be attractive to people who want to continue to live and work locally, for family or other reasons.

• By definition, decentralisation disperses public power between levels of government. It thus breaks down the tendency to concentrate power in a few institutions at the national level which, typically, are situated in the national capital. This way of dispersing power also contributes to more effective government. It enables each level of government to focus on the functions appropriate for exercise at that level and to develop expertise in the development and delivery of the services for which they are responsible.

• Decentralisation allows a measure of more localised self-government and encourages local self-reliance, within a national framework. The extent of local autonomy depends on the design of decentralisation, with which the next section deals.

Forms of decentralisation

Decentralisation takes a wide variety of forms around the world. These forms can be conceived as ranged along a spectrum, which in a highly simplified form looks broadly like this:

At the most decentralised end of the spectrum is federation. In a federation, public power is constitutionally divided between two levels of government each of which has autonomy in exercising its own protected powers and is directly accountable to its citizens.

Other points along the spectrum describe degrees of decentralisation in a unitary state. A unitary state is distinguished from a federation because in a unitary state, the central level of government has final authority. Papua New Guinea is a unitary state in the sense that the Constitution confers power, authority and jurisdiction on the national government, including the power to amend the Constitution and Organic Laws that establish the provincial governments.

At the opposite end of the spectrum of decentralisation is delegation. Under arrangements of this kind, all public power is held by central institutions, but some power is delegated to sub-national levels of government, usually by legislation. Central institutions retain ultimate control, and the delegated power can be recalled or, in some cases, overridden.

In between these two poles of the spectrum of decentralisation are many variations, sometimes described as devolution (as

in the United Kingdom) or regionalism (as in Italy). Other terms (recognising, for example, provincial government) may be used as well, to describe varying degrees of decentralisation within a unitary state.

There are no fixed models for any of these points on the spectrum and no bright lines between them. Any system of decentralisation is made up of many component parts, which can be assembled in different ways to meet the goals of decentralisation and fit the context of a country. The components of decentralisation most relevant to PNG are analysed in part 4 of this paper. As a generalisation, however, the main difference between systems of decentralisation at different points on this spectrum lies in the depth of decentralisation, in both design and practice. The depth of decentralisation depends on both the extent of the power effectively held by sub-national levels of government and the autonomy that they have to exercise it. Autonomy includes the degree to which a government is accountable to its people rather than to a higher level of government. In any unitary system there will always be a balance of some kind between these two forms of accountability.

Challenges of decentralisation

Arrangements for decentralisation face a variety of challenges that need to be met for their advantages to be secured.

Some challenges are connected with design. Questions typically raised from the standpoint of design include:

- Which powers should be decentralised?
- How should resources be distributed?
- How should the public service be organised?
- To whom should the institutions of government at the subnational level be accountable? Their own constituents? The national government? If they are accountable to both, how should that work?

These and other questions about design are tackled in part 4 of this paper.

Other challenges are connected with decentralisation in practice. These are equally important. No matter how well designed the system is in theory, arrangements for decentralisation will not meet expectations unless they also work effectively in practice. Challenges of this kind can be grouped in three categories:

- One category of challenges concerns the capability of governments and other entities at each level to effectively exercise the powers allocated to them. This is an issue for all levels of government, including the national level, where critical functions are exercised on behalf of the state as a whole, demanding particular insight and expertise. Questions of capability usually are raised in relation to sub-national governments, however, where the pool of people to play effective public roles is smaller and where experience of governance may be more limited. Capability is important, because the success of decentralisation depends on sub-national governments being able to carry out their functions adequately and to do so honestly and in good faith.

Considerations of capability are likely to be taken into account in deciding on the allocation of powers between levels of government and determining the extent of continuing national control. They can and should be met in other ways as well, however, to ensure that sub-national levels of government can perform the functions properly exercised at those levels. It is possible to anticipate problems of capability in order to take remedial measures in good time. Remedial measures include, most obviously, effective capacity building. They may also involve the incremental conferral of functions on governments in areas where capacity is weak, as skills and experience develop.

- A second category of challenge involves the likelihood of resistance to decentralisation, typically from national institutions. This may manifest itself in the course of designing new arrangements for decentralisation, in the form of reluctance to agree to the transfer power, even when transfer is otherwise a good idea, and insistence on continuing national control. It may also manifest itself, in all sorts of ways, after arrangements for decentralisation are in place. Resistance to decentralisation may amount to de facto centralisation. Signs include assertion of central power in areas of sub-national authority; an overuse of legal controls of sub-national decision-making by central institutions; and the use of funding by the national level of government to influence sub-national activity. Another sign may be an alliance between the national and most local level of government that aims at weakening the intermediate level which almost inevitably has a centralising effect.

These and other forms of resistance can significantly undermine decentralisation. They may be caused by lack of understanding of what decentralisation requires, an all-too-human unwillingness to surrender power, and assumptions about the virtues of national institutions in a centralised state. The solutions are both legal and cultural. Legal frameworks for decentralisation can help to protect against creeping recentralisation. Cultural responses are equally important, however. New arrangements for decentralisation require genuine buy-in from all levels of government to ensure understanding and commitment and to build the mutual respect and trust that multi-level government requires.

- A third group of practical challenges commonly associated with decentralisation is public understanding. Decentralisation involves multiple levels of government. It may be hard for members of the public, as well as officials, to understand who does what. Lack of understanding matters. Decentralisation is introduced to benefit citizens and provide the advantages outlined above. Decentralisation relies on citizens to engage with government and to hold public decision-makers to account. In the absence of public understanding, decentralisation will not work as it should.7

This challenge might be met in several ways. One is to involve the public in designing new arrangements for decentralisation, to ensure the new arrangements meet needs and expectations and, more generally, to spread information about them.8 Another solution is to make arrangements for decentralisation as clear as possible, not only on a general level, but in implementing programs and projects, particularly those that have a direct impact on people and communities. A third is to take advantage of the opportunity that decentralisation offers to structure and operate lower levels of government in ways that are familiar to people, and as accessible as possible, practically and culturally. It is more difficult to take this approach at the national level, where the institutions of the state must deal with the country as a whole and are more remote from the lives of ordinary people. Enhanced public understanding of decentralisation should enable the public both to engage actively with lower levels of government and to appreciate the significance of the role that the national level of government plays.

Decentralisation in PNG

Decentralisation in PNG has taken different forms over the years since PNG became independent in 1975. The first phase, from 1976 to 1995, involved the establishment of provincial governments. The second phase, from 1995 to the present day, reconfigured provincial governments and gave greater recognition to local level government. A third phase, running concurrently with the system of decentralisation introduced in 1995, developed the role of Districts as vehicles for funding and service delivery.

This part sets out the key features of each phase, organised under the same key issues that are used in part 4 to discuss the issues of decentralisation currently being considered in PNG. The purpose of this overview is to set out the context for decentralisation in PNG and provide a foundation for assessing any proposed changes and the challenges for implementation, once changes have been agreed and put in place.

Decentralisation policy at independence

Decentralisation was an important but controversial issue at the time of PNG’s independence in 1975. Decentralised government was strongly supported by the Constitution Planning Committee, a parliamentary committee charged with developing a draft Constitution for the independent state of PNG. The Constitutional Planning Committee recommended the decentralisation of government services to make services accessible to the people, as well as the decentralisation of decision making to ensure government was responsive to local needs and wishes.9 A government ‘white paper’ supported the principle of decentralisation, but raised several concerns, including that the Committee’s proposals concentrated power at the provincial level, that local governments were not sufficiently protected, and that many provinces were not ready for such significant change.10 As a result, decentralisation was included in the National Goals and Directive Principles, but

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7 On the issue of distance between government and the people in PNG’s decentralised system see Reilly 35-6.
9 Constitutional Planning Committee Papua New Guinea (n 2) ch 10, para 8.
substantive provisions for decentralisation were deleted from the text of the Constitution that was adopted in 1975. However, after Bougainville made a unilateral declaration of independence just days before PNG’s own independence, the PNG government took steps to try to ensure that Bougainville remained a part of PNG. These included the reinstatement of the provisions for decentralisation in what became Part VIA of the Constitution.11


The first phase of decentralisation in PNG began in 1976.12 The objective of decentralisation in this phase has been described as to ‘empower Papua New Guineans to chart their own development pathways’ through ‘self-reliance, local empowerment and control’.13 At least in terms of design, these arrangements gave PNG a relatively deep form of decentralisation within a single state.

Levels of government

The first phase of decentralisation established provincial governments. There were 19 provinces and the National Capital District, which mapped on to the pre-independence districts established under the colonial administration. Provincial governments had authority over local or village level governments within their area, with some constitutional limits on their unilateral abolition.14 Because of the limited constitutional recognition of local government, this phase of decentralisation is sometimes described as a two-tier system, comprising the national and provincial levels of government.15

Political institutions

In the first phase, most members of provincial legislative assemblies were directly elected by the people of the province; a small proportion of the members could be appointed.16 In 1981, the Organic Law on Provincial Government was amended to permit members of the national parliament representing the province to sit in provincial assemblies, but they did not have a vote.17 The details of the form of government were left to be determined by the Constitutions of each province. Most provinces adopted a parliamentary system of government, similar to the system at the national level, in which the Premier and Cabinet were members of the legislative assembly and responsible to the assembly. There was some divergence, however, as four provinces adopted presidential style elections for their premiers.18

Division of power

In this phase, decentralisation sought to confer ‘substantial powers of decision making and substantial administrative powers in respect of matters of direct concern to the province’.19 The idea was to allocate powers to secure the autonomy of provincial governments while maintaining the oversight and authority of the national government to safeguard the public interest.20

The division of powers in this phase was quite complex. The Organic Law allocated legislative powers by listing subjects in different categories, which gave provincial governments varying degrees of law making powers depending on whether national legislation was in place or might be made in the national interest. Each level of government was permitted to delegate powers and functions to the other (although some subjects, such as taxation, were exempt from delegation). In effect, while provinces were given wide legislative and administrative powers, the national parliament maintained significant control. It had exclusive law making powers over some subject matters, as well as the power to amend provincial constitutions and to disallow provincial legislation in the public interest. Legal provision was made to accommodate the gradual transfer of power

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15 Kwa, Matui, and Winnia (n 8) 31.
16 Organic Law on Provincial Government s 16(2).
17 May (n 10) 127. This was consistent with the recommendations of the Constitutional Planning Committee Papua New Guinea (n 2) ch 10, paras 52-3.
18 May (n 10) 128.
19 Constitution of Papua New Guinea s 187C(5) and (6) (as amended in 1976).
to some provinces, which, with the approval of the national parliament, could refuse or delay assuming some of the powers and functions conferred on provinces by the Organic Law. This provided flexibility, but also led to confusion over roles and responsibilities and mixed records of implementation as several provinces did not exercise the full scope of their powers.

Administrative support

In the first phase of decentralisation, the provinces had their own separate public service. In addition, members of the national public service could be assigned to work in a province, subject to supervision and control by both levels of government.

Revenue raising and allocation

While provincial governments had some taxation powers, it was clear that they would rely on the national government for financial support. Grants from the national government to provincial governments included, amongst others, a minimum unconditional grant to meet the costs of the functions devolved to the provinces; unconditional grants to cover certain public service offices; derivation grants to return a proportion of the value of goods to the province of origin, a share of national taxation; and equalisation grants based on advice from the National Fiscal Commission to provinces in need of greater financial assistance.

Funding in this phase of decentralisation has been described as based on meeting the costs of the functions and responsibilities given to provinces. Problems arose when the transfer of functions to the provincial level was not accompanied by financial transfers to provinces to meet the costs.

Intergovernmental relations

The complexity of the legal provisions for decentralisation reflected, in part, the premise that governments would cooperate closely. There were procedures for both levels of government to notify and consult each other, for example, when allocating new powers or entering major investments. Intergovernmental institutions were established, including a National Fiscal Commission to review provincial taxation arrangements and make recommendations on equalisation grants. They also included a Premiers Council, which met once a year ‘with a view, in particular, to avoiding legal proceedings between governments by providing a forum for the non-judicial settlement of intergovernmental disputes’.

In extreme cases of non-compliance, the National Executive Council had the power to provisionally suspend a provincial or local-level government if it ‘undermines or attempts to undermine the authority of the National Parliament or the national unity’.

Drivers for change

Reviews of the first phase of decentralisation identified issues of inefficient administration, nepotism, corruption, and financial mismanagement. There were conflicting opinions about what had gone wrong. National politicians said that provincial governments had failed to deliver services, while provincial governments said that they lacked adequate funds from the centre to provide even basic services.

Politics played a strong role in attitudes towards the system of government established in by this first phase of decentralisation. Provincial governments did not have much support from either national politicians or local level governments. Provincial politicians, who were more directly involved in providing services to the people, were seen by national politicians as direct

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21 Organic Law on Provincial Government s 100.
22 May (n 10) 131; Ron Duncan and Chris Banga, ‘Solutions to Poor Service Delivery in Papua New Guinea’ (2018) 5 Asia & the Pacific Policy Studies 495, 498.
24 May (n 10) 131.
26 Duncan and Banga (n 22) 497.
27 Ghai and Regan (n 11) 594-5.
29 Organic Law on Provincial Government s 84.
30 Constitution of Papua New Guinea s 187E.
31 May (n 10) 133.
competition, displacing them as visible benefactors to the people.\textsuperscript{32} Similarly, provincial politicians saw some local level government leaders as a threat to their political base.\textsuperscript{33} As a result, national and local level politicians aligned in their criticism of the system of provincial government and called for change.\textsuperscript{34}

**Second phase: Organic Law on Provincial Governments and Local Level Governments – 1995 to today**

The second phase of decentralisation began in 1995, when a new Organic Law on Provincial Governments and Local Level Governments established a new system of decentralisation. Aspects of this system continue in force today. These revised arrangements significantly reduced provincial authority, leading to a more centralised system. The motivation for the reforms was to focus on service delivery and increase the powers, funding and responsibilities of local level governments.\textsuperscript{35} The reforms also reduced the number of elected politicians at the provincial level, while increasing the role and visibility of national MPs in subnational levels of government.\textsuperscript{36}

**Levels of government**

The second phase of decentralisation retained the provincial level of government, although their number has increased to 22 (including the National Capital District and the Autonomous Region of Bougainville) over time. However, in this phase, local level governments received greater formal recognition and responsibilities.\textsuperscript{37} Control over local level government was removed from the provincial level and vested instead in the national government. There are presently 396 local level governments in PNG, classified as either urban or rural.\textsuperscript{38} Since 2015, three urban local level governments have a special status as city authorities.\textsuperscript{39}

**Political institutions**

In the second phase, the institutions of government at each level remained in place, but there were significant changes in their membership, especially at the provincial level.

Provincial assemblies were no longer directly elected. Instead, each provincial assembly is composed of the MPs representing the province in the national parliament. Provincial assemblies comprise: the MPs elected from each electorate situated in the province (called ‘open’ electorates), the MP elected by the province as a whole (called ‘provincial electorates’); and up to eight additional members, including the heads of the local level governments, chiefly representatives and at least one woman.\textsuperscript{40} Executive government at the provincial level shifted from a parliamentary model to what has been described as a committee system, but which might be characterised as a form of presidentialism, given the extent of the authority of the Governor to select the members of the executive.\textsuperscript{41} The function of the executive is to implement both provincial laws and national laws applying to the province.\textsuperscript{42} The executive is led by the Governor, who in most cases is the national MP representing the provincial electorate (if that person holds an office in the national parliament or ministerial position at the national level, they are ineligible to be governor, in which case another national MP from the province becomes Governor).\textsuperscript{43} A Governor may be dismissed for failure or negligence in performance of his or her duties.\textsuperscript{44} The other members of the executive are the Deputy Governor and the chairs of each permanent committee in the Assembly, as appointed by the Governor.

Local-level governments have both a legislative and executive arm, although the membership of both is the same. Members

\textsuperscript{32}Gelu and Axline (n 25) 9; Peasah (n 20) 14.
\textsuperscript{33}May (n 10) 132.
\textsuperscript{34}Peasah (n 20) 13. For an overview of the reform process see May (n 10) 134–139.
\textsuperscript{35}Kwa and others (n 13) 1.
\textsuperscript{36}May (n 10) 144.
\textsuperscript{39}Kokopo City Authority Act, Lae City Authority Act 2015, Mt Hagen City Authority Act 2015.
\textsuperscript{40}Organic Law on Provincial Governments and Local-level Governments s 10(3).
\textsuperscript{41}May (n 10) 141.
\textsuperscript{42}Organic Law on Provincial Governments and Local-level Governments s 23(5)
\textsuperscript{43}Organic Law on Provincial Governments and Local-level Governments ss 18–19.
\textsuperscript{44}Organic Law on Provincial Governments and Local-level Governments s 20.
are elected by each ward in the local government area and two or three additional members may be appointed. The head of each local government (variously known as 'Mayor', 'Lord Mayor' or 'President') is either elected by the other members of the body or directly elected by the constituency.

Below the local level government are wards, which serve as electoral districts for the local level government. In 2019 there were 6375 wards in PNG. The 1995 reforms recognised a role for wards in service delivery. Each ward has a Development Committee, comprising the elected representative for the Ward and up to five associate members.

Division of power

The 1995 Organic Law on Provincial Governments and Local-level Governments (OLPGLLG) simplified the division of powers to some degree, although complexities remain. Many of the subjects in the previous lists of concurrent and primary provincial powers remained within the law-making power of the provincial governments. Consistently with their increased status, local level governments were also vested with law making powers over a range of subject matters, subject to the power of provincial governments to legislate in the provincial interest.

The 1995 reforms did away with the complex categories of primary, concurrent and unoccupied fields. It consolidated the national parliament’s powers to make laws on any subject in the provincial or local level government list, in the national interest and following consultation with the other levels of government concerned. The power to legislate on any unspecified subject was vested in the national parliament. National legislation prevails over inconsistent provincial or local level government legislation. Each level of government may delegate powers to other levels.

Section 43 of the 1995 Organic Law provided for ordinary law to identify the administrative and service-delivery functions of Provincial Governments. Subsequent legislation listed administrative functions for provincial governments, including the maintenance of roads, health, education, housing, water, and the environment. Service delivery functions and responsibilities are assigned to provincial governments, local level governments or other statutory bodies (such as DDAs) by the Head of State, acting on the advice of the National Executive Council.

Administrative support

The 1995 reforms centralised the bureaucracy at the national level. While provinces retain the ability to hire staff under contract, nearly all public servants, including front line service delivery (eg teachers) are employed by the national government. The Provincial Administrator, who is responsible for coordinating the public service in the province, is appointed by the National Executive Committee from a list provided by the Provincial Executive Council. The provincial Treasury is an extended service of the National Department responsible for finance.

Revenue raising and allocation

As in the first phase of decentralisation, while provincial and local level governments have some taxation powers and sources of revenue, they are still highly dependent on funds distributed from the national government. The Organic Law and legislation provide for a range of grants to meet the costs of service-delivery functions; to return revenue to the locality in that generates it; to cover the salaries of staff; and to support development. The National Economic and Fiscal Commission, once established, functioned as an independent expert body to monitor the fiscal policies of all levels of government and make recommendations to the national government on the allocation of grants to subnational governments. Significant changes were made to the fiscal provisions of the Organic Law in 1998 and again in 2008, reflecting the increasing impact of constituency funds in the system of decentralisation, which are outlined in the discussion on the third phase of decentralisation.

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45 Organic Law on Provincial Governments and Local-level Governments s 29.
46 Local-level Governments Administration Act 1997 s14.
47 Commonwealth Local Government Forum (n 38).
48 Local-level Governments Administration Act 1997 s 27.
49 Organic Law on Provincial Governments and Local-level Governments s 42
50 Organic Law on Provincial Governments and Local-level Governments ss 40(1)(e), 44.
51 Organic Law on Provincial Governments and Local-level Governments s 41(2) and (3).
52 Provincial Governments Administration Act 1997 s 16.
53 Intergovernmental Relations (Functions and Funding) Act 2009 s 5.
54 Organic Law on Provincial Governments and Local-level Governments s 73(2).
55 Organic Law on Provincial Governments and Local-level Governments ss 86-87.
56 Ketan (n 5) 261.
57 Organic Law on Provincial Governments and Local-level Governments ss 82-82I.
Intergovernmental relations

The second phase of decentralisation emphasised the national government’s monitoring and oversight role. The Provincial and Local-level Service Monitoring Authority was established to monitor the implementation of national policies, develop minimum development standards, facilitate audits by the Auditor-General and provide training and assistance to provincial and local level governments.\textsuperscript{58} Disputes between governments could be referred to mediation and the National Executive Council retained the constitutional power to suspend provincial governments.\textsuperscript{59}

The Premiers Council, a feature of the first phase of decentralisation, was discontinued and no official forums for the governors or administrators to meet with their counterparts in other provinces have been established in law.

Drivers for change

The restructuring of decentralisation in 1995 did not resolve the problems of service delivery. Reviews found that familiar problems were recurring, including funding shortfalls, inadequate infrastructure and a lack of experienced staff exacerbated by the centralisation of politicians and public servants in the cities.\textsuperscript{60} In addition, the new system was not well defined or understood, and implementation was rushed, leading to confusion and lack of support from those charged with making the law work.\textsuperscript{61} While the political impetus for the 1995 system was to reduce political competition by eliminating provincial politicians, other political rivalries emerged between open electorate MPs and governors and between politicians and public servants in the administration of the system.\textsuperscript{62}

Third phase: The rise of districts - 1996 to today

The third phase of decentralisation has seen districts play an increasing role in decentralisation and service delivery. This phase overlaps with the second phase, as the system of decentralisation introduced in 1995 remains in place, but changes over time have provided districts with a prominent role in funding and development.

Levels of government

Districts are sometimes described as a fourth tier of government in PNG, sitting between provincial governments and local level governments. There are 89 Districts in PNG, corresponding to the open electorates for the national parliament. Districts are contained within provincial borders, but some local level government areas cross across two districts.

Institutional design

Amendments to the OLPGLLG in 1996 established the Joint District Planning and Budget Priorities Committees, with further changes in 2006 consolidating their role.\textsuperscript{63} Each Committee was chaired by the MP for the District. Other committee members included the provincial MP (who is usually also the Governor of the Province), the heads of the Local Level Governments in the District and up to three members appointed by the Chair. Similar bodies – called Joint Provincial Planning and Budget Priorities Committees – were established within the Provincial Executives.

In 2014, the Joint District Committees were replaced by District Development Authorities (DDAs). DDAs are statutory authorities with a corporate structure.\textsuperscript{64} The governing board of each DDA is largely similar to the former Joint District Committee, except that the provincial MP (usually the Governor) is no longer a member.

As a result of their position as chairs of the DDA and members of the provincial governments, national MPs play the key role in allocating funds and controlling the budgets of all other levels of sub-national government. Critics of the system have observed the resulting great potential for – and evidence of – the misuse and mismanagement of financial resources for political purposes, exacerbated by the clientelist nature of PNG politics, as funds are spent in political partisan fashion rather...
than in accordance with ward and local level government development plans.65

**Division of power**

Districts do not have law-making powers. The role of the Joint Committees, and now the DDAs, is to coordinate the planning, implementation and monitoring of development projects at the district and provincial level. The DDAs have a new and additional role to implement service delivery and to distribute development funds provided by the national government. This is done by requiring each Ward and Local Level Government to produce rolling five-year plans that identify and cost development projects and programs, for consideration at the district level. If approved, project funds are then disbursed to the relevant government.

The functions of the districts cover service delivery in relation to law, education, health, infrastructure, water and agriculture. These functions cannot be performed in a way inconsistent with the work of provincial governments.66

**Administrative support**

Each District has an Administrator, who is a national public servant, appointed by the Provincial Administrator in consultation with the national MP representing the district. The District Administrator is also the CEO of the DDA and has powers to oversee the public service in the district. The District Administrator reports to both the Provincial Administrator and the Board of the DDA.67 Otherwise, the DDA is a separate legal entity, with its own staff. Some concerns have been raised about how DDA staff work with political staff (sometimes called electoral officials) and with public servants in provincial and local level governments.68

**Revenue raising and allocation**

Most of the funds disbursed by DDAs are constituency development funds, which are paid to each open electorate MP to spend on projects in their electorates/districts.69

Since 2013, there has been a significant increase in the funds provided directly to MPs to distribute within their constituencies. For example, under the Service Improvement Program or SIP, funds are provided to MPs to distribute to their constituents at the provincial, district and local level.70 The largest share is the District Service Improvement Program, which is paid to the open MP in each District. Half of these funds are to be spent by the MP, the other half by the DDA (which is chaired by the same MP). Local-level Service Improvement Program funds are allocated by the DDA, based on funding proposals submitted by local-level governments. Provincial Services Improvement Program funds are paid to the provincial MPs.71

The administration of SIP funds is set out in the SIP Finance Instructions and Administrative Guidelines, issued by the National Executive Council. Between 2012 and 2016, the Guidelines directed the proportion of funds to be spent on different sectors: 30% infrastructure, 20% health services, 20% education, 20% law and order, 10% economic support and 10% administration. In 2016, these guidelines were relaxed, so that now much of the allocation is left to the discretion of the DDA and MPs.

In addition to SIP funds, DDAs are able to raise their own revenue through investments, joint ventures and partnerships, although only a few have been in a position to take actually pursue such options.72

**Intergovernmental relations**

The District’s role has been described as integrating the ‘top down’ planning done at the provincial and national levels, with

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65 Duncan and Banga (n 22) 502; Chris Banga, ‘Is District Development Authority an Effective Decentralised Government Mechanism to Improve Service Delivery?’ (Discussion Paper No 163, National Research Institute Papua New Guinea 2018) 8–9; Barcson (n 37) 153.

66 Duncan and Banga (n 22) 497. The responsibilities of each DDA are determined by the national Minister for provincial and local-level government in consultation with the Board of the DDA and the Provincial Executive Council: District Development Authorities Act 2014 s 6.

67 Ugyel, Sause and Gorea (n 64) 145.

68 Banga (n 65) 10–12.

69 Organic Law on Provincial Governments and Local-level Governments ss 95A and 95B.

70 To the point that ‘PNG seems to rely more heavily on constituency funding to disburse its budget than any other government in the world’: Stephen Howes and others, ‘A Lost Decade? Service Delivery and Reforms in Papua New Guinea 2002-2012’ (National Research Institute Papua New Guinea 2014) 129.


72 For example, East New Britain: Ugyel, Sause and Gorea (n 64) 146.
the ‘bottom up’ planning of Local Level Governments and Wards. Relationships between District authorities and other levels of government are largely informal and often rest on relationships between politicians and public servants. In provinces where decentralisation has been most successful in service delivery, that success has in part been attributed to the ability of the DDAs to work within the established system through informal cooperation.

Drivers for change

Decentralisation in PNG has a number of distinctive features. Foremost amongst these is the direct and decisive role in governance given to national MPs at both the provincial and district level, which also gives them a high degree of control over the local level government and ward levels. MPs have largely displaced public servants in the technical tasks of implementing policy and service delivery. The role of MPs is further complicated by two other, related, features of PNG. The first is the highly clientelist nature of politics, which colours the relationship between voters and elected politicians and has led to an assumption that elected leaders must provide direct and tangible benefits to their voters. The second is the reliance on funds provided to MPs to distribute within their constituencies, such as the Service Improvement Program, to fund decentralisation and service delivery, rather than unconditional grants to sub-national governments.

One further development should be noted, which is a growing demand from some provincial governments and leaders for greater provincial ‘autonomy’. Similar proposals have been made in the past, in the special context of Bougainville as well as in other provinces. In 2018, the national government entered into an inter-governmental agreement with three provinces to commence a process to grant ‘greater autonomy’ to those provinces, although what greater autonomy entails is not yet fully known. Some have proposed a staged or differential approach to decentralisation, in which provincial governments might qualify for more powers and autonomy if they meet certain standards of governance and capacity.

There have been many studies and reviews of decentralisation in PNG. Gelu and Axline, in a report for the NRI, provided a critical review of efforts at reform up to 2008. Since then, a major review was conducted by the Constitutional and Law Reform Commission’s Inquiry on Decentralisation which recommended wide-ranging reforms. Given the issues identified in these and other reports about the quality of service delivery, standards of governance and accountability and the workability of the system, it is clear that calls for reform will continue.

Key issues in decentralisation in PNG

This part provides a framework for explaining the eight key issues raised by decentralisation in PNG. Each section identifies the issue, explains how it is relevant in PNG and sets out matters for consideration when it comes to developing potential options to deal with each issue in a way that is integrated and responds to the context of PNG. While the eight issues are dealt with separately in this report, any reforms would need to be integrated into the system as a whole.

Levels of government

Issues

All systems of decentralised government have two or more levels of government. Apart from the national level of government, the options include a local level of government and one or more intermediate levels of government. These are the most basic building blocks of any system of decentralisation. Of course, the levels of government can be changed over time. They need to be reasonably stable, however, to foster the relationship between governments and their communities, to allow expertise to develop and to build a constructive relationship between levels of government.

Issues raised by consideration of levels of government include the following:

- How many levels of government should there be? What should they be?
- How should the boundaries between governments at each level be drawn?

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73 Barcson (n 37) 153.
74 Ugyel, Sause and Gorea (n 64) 147.
75 Gelu and Axline (n 25) 6.
78 As recommended by the Constitutional Law Reform Commission in 2015.
79 Gelu and Axline (n 25).
80 Kwa and others (n 13).
Relevance for PNG
As described in part 3, PNG has three general levels of government, the national level, the provincial level and local-level government. The provincial level is divided into 20 provinces, plus the National Capital District and the Autonomous Region of Bougainville. There are 396 local-level governments, 31 of which are urban and 265 rural. PNG also has two other levels of territorial organisation, originally designed for electoral purposes, but now also used for some governance functions. One is the Districts, which correspond to the 89 open electorates for the PNG Parliament. The other comprises the 6375 wards, which are the electoral districts for local-level governments and are used also as a means of determining local development priorities.

This section of the paper is designed to assist evaluation of the adequacy of the current territorial organisation of PNG for the purposes of decentralisation. It is concerned only with issues about the levels of government and internal divisions within each level. Questions about the purpose of different levels of government, the political structure of sub-national governments and the powers exercised by them are taken up in later sections of part 4 of the paper.

Matters for consideration

The number of levels of government
Most decentralised systems have three levels of government: a national level, a local level, and an intermediate level. The national level acts for the country as a whole. The local level usually comprises a large number of governments, each with responsibilities for a relatively small geographical area and relatively small sections of the people and for this reason is described as being closest to the people. The intermediate level of government, is closer to the people in different parts of the country than the national level of government but is large enough to exercise significant authority in its own right, in a way that is responsive to local circumstances. The hierarchy of national, provincial, and local-level government in PNG fits this common pattern well.

It is possible to have more than three levels of government or less. In each case the advantages of having more or less than three need to be weighed against the risks. The risk of having only two levels of government in a large and diverse country, of which PNG is an example, is that the full benefits of decentralisation may not be achieved. Individual local-level governments are too small to be able to exercise significant public power effectively. If PNG had only national and local-level government, the country would be likely to be highly centralised in practice. On the other hand, if the local level were eliminated, leaving only the ‘intermediate’ level, PNG would lack the network of small governments able to operate at the community level.

Having more than three levels of government runs the risk of overcomplicating the system and fragmenting the exercise of public power too much. Any form of decentralisation is somewhat complex, because it distributes public power and requires relationships of various kinds between governments. These complexities are magnified if additional levels of governments are added. The reasons in favour of having additional levels need to be balanced against the additional challenges they create.

In PNG, these considerations are potentially relevant to the Districts. Districts represent a fourth level of government, used for specific purposes that are governmental in character. Districts are both too small and too large to replace either of the other levels of government effectively. As a fourth level of government, the additional complexity it brings to the system of government therefore needs to be justified by reference to whatever value the use of Districts adds.

Drawing the boundaries between governments within each level.

In evaluating arrangements for levels of government it is also relevant to consider how governments are organised within each level and the rationales for the boundaries between them.

Natural features (sea, rivers, mountains) and an existing sense of community will always be relevant to the configuration of sub-national governments, at any level. Otherwise, there may be different rationales for configuring governments at the local and intermediate level. At the local level, governments must be small enough to serve local communities, but large enough to be viable for the functions assigned to them to be performed. At the intermediate level, the governments must be large enough to exercise significant decentralised authority but small enough to contribute to the goals of decentralisation. In general, both the local-level and provincial level of government in PNG meet these criteria well.

The Districts also need consideration in this context, however. The configuration of the Districts is largely determined by electoral boundaries. As discussed in the earlier section, this results in a significant number of Districts, positioning them between the small but numerous local-level governments and the less numerous but more substantial provincial

81 Figures are as reported by the Department of Provincial and Local Government Affairs to the Commonwealth Local Government Forum in 2019: Commonwealth Local Government Forum (n 38).
governments. The use of electoral boundaries to determine the configuration of sub-national governments is questionable for another reason as well. Electoral boundaries are (or should be) determined on the basis of reasons particularly relevant to the electoral context. These may include natural features and a sense of community. Importantly, however, criteria for drawing the boundaries of electoral also include numbers of voters, which should be roughly equal for each constituency to meet the principle of one person one vote. Ideally, electoral boundaries should be reviewed on a regular basis to reflect changes in the population. It would be undesirable for the use of electoral boundaries for the purposes of the Districts to discourage change to electoral boundaries when that is needed. Conversely, it would be destabilising for the boundaries of a District that is used for governance to change whenever this is needed for electoral purposes.

Political institutions

Issues

Each level of government in a decentralised system has political decision-making institutions of its own. Usually, these comprise both a legislature and an executive. These institutions need to be accepted as legitimate by the communities that they serve and by the other levels of government. Their design and effective operation is important for the goals of decentralisation to be realised. The design of political institutions, at all levels of government is particularly important for securing the quality of government, including service-delivery, and for the opportunities they offer for more inclusive government.

This section deals primarily with the design of the political institutions of the sub-national levels of government. It assumes that the national level of government will have either a presidential, semi-presidential or, as in PNG, parliamentary system of government. Each of these can work effectively with decentralised governance arrangements.

The key issue for consideration in this section therefore is:

• How should the legislative and executive institutions of each of the sub-national levels of government be constituted?

Relevance for PNG

As noted in earlier sections, PNG presently has three general levels of government and two other levels that perform some governance functions. This section of the paper will focus primarily on the structure of political institutions at the provincial and district levels. Local-level governments in PNG run together legislative and executive functions in ways often found in local government structures and do not raise major issues for present purposes, as long as they are accepted by the communities concerned and work effectively for them.

By contrast, the unusual design of political institutions at the provincial level and, by extension, at the district level, affects the operation of decentralisation and deserves more careful consideration. As described in part 3, during the first phase of decentralisation, from 1976 to 1995 the provincial legislatures were directly elected. After 1995, provincial legislatures instead were constituted by Members elected to the national Parliament from the open electorates in the province and the office of provincial governor was held by the Member elected to the national Parliament from the province-wide electorate. In a subsequent development, after the establishment of the District Development Authorities (DDA), each open electorate MP also chairs the board of the DDA in the MP’s own electorate. These changes mean that the provincial executive is no longer dependent on the legislature for office and that the DDA resembles a corporate, rather than a governmental body. They also meant that, in relation to each province, the same people hold political office at national, provincial and district levels.

Matters for consideration

In most systems of decentralised government, the legislative and executive institutions of the intermediate level of government are broadly modelled on those that exist at the national level. This was the case for most provinces in PNG before 1995 but is no longer so. In itself this does not matter; it is possible to have different systems of government at the sub-national and national levels or between different sub-national jurisdictions. Nevertheless, there are also positive advantages for effective government in using a system that everyone understands.

More significant is the use of the same elected representatives at multiple levels of government.

In most systems of decentralisation with any degree of depth, legislators at each level of government are directly elected by the people in the area they are intended to serve. This feature contributes to several of the goals of decentralisation. It gives representatives a direct relationship with the people, and so provides an incentive for decision-makers to be responsive to local preferences and conditions. It also extends the opportunities for political participation.
In the most common alternative, sub-national political institutions are appointed by elected officials of another higher level of government. In this case, the sub-national legislature derives its legitimacy from the other level of government and is accountable to the people through the other level of government. This kind of arrangement tends to be found in systems where decentralisation is relatively shallow. Use of appointment rather than election tends to be diminishing, consistently with recognition of the values of decentralisation.

The use of the same elected representatives at national, provincial and district levels in PNG is an unusual variant on these two options. Again, the fact that it is novel, alone, does not matter: there is undoubtedly plenty of room for innovation in the design of systems of government. What matters is its effect in practice on the quality of decentralised government. Those who work in and with the structures for provincial government in PNG since 1995 are best placed to make this judgement, which would be an important issue for a national conversation on decentralisation of the kind the National Research Institute has in mind.

One point in favour of the current system might be that it provides a mechanism for the flow of information between levels of government. There are other ways of achieving this undoubtedly beneficial result, however, which will be considered further in part 4.6 of this paper, in the context of intergovernmental relations.

And there are other points against the use of national MPs for provincial institutions that need to be weighed in the balance in assessing it. One is that, unlike most arrangements for decentralisation, the current design of provincial government in PNG does not widen the range of representatives in government or provide additional opportunities to people to exercise democratic choice. Not only has this worked to preclude representation of women and minority groups, but is also likely to have had a centralising effect. In addition, having the same people at two levels of government (three, if the Districts also are counted), reduces the potential for each level of government in PNG to develop expertise in relation to its own particular responsibilities. This factor may be significant at both national and provincial levels. Using national MPs at both levels may not only affect the development of effective and responsive government at the provincial level but may have implications for the quality of the important decisions made at the national level as well. There is much to be said for having different groups of elected representatives at different levels of government, who are able to concentrate on the effective exercise of their distinctive categories of powers and on holding their respective governments to account.

On a more cynical view, the changes made in 1995 might be seen to serve another purpose, which also is familiar in decentralised systems. By definition, national MPs have very significant responsibilities for the country as a whole, which include responsibilities for PNGs relations with other countries. By their very nature, however, such activities tend to be abstract and somewhat remote from the lives of ordinary people, who are more directly affected by the kinds of functions suited to provincial and local-level governments. In many systems of decentralized government, this causes national politicians to seek ways to be associated with sub-national issues, including through the distribution of grants, whether or not they represent value for money. It can also lead national MPs to focus on provincial and district matters at the expense of fulfilling their lawmaking and accountability responsibilities at the national level. To the extent that there is a problem with ensuring that the role of national MPs is appreciated at the community level, there are other ways of dealing with it through information, education, and collaboration.

Division of legislative and executive power

Issues

The division of legislative and executive power is a core component of any arrangements for decentralisation. The division of power should be clear enough to enable governments to plan and implement programs and to be held accountable for their performance. A key criterion for allocating power is that each level of government should have the power that is appropriate for exercise at that level in principle and can be effectively exercised by the governments in question. This is sometimes described as the principle of ‘subsidiarity’.

Many issues arise in connection with the division of power in systems of decentralisation across the world. Three that are dealt with in this section, because they are particularly relevant in PNG, are:

- How are powers divided between the levels of government?
- What effect do fragmented funding arrangements, including the provision of funds to MPs, have on the operation

• of the division of powers?
• What are the implications of the division of powers for the quality of governance and of service-delivery?

Relevance in PNG
The national Constitution and the OLPGLLG allocate law-making and executive powers to the provinces and local-level governments. The OLPGLLG also authorises the delegation of powers between levels of government. On the face of it, the particular powers allocated to provincial and local governments are broadly appropriate for exercise by them, consistently with the principle of subsidiarity. The real question, however, is how the division of powers works in practice. The idea that decentralisation promotes good governance and effective service delivery assumes that sub-national governments are responsive to the needs and demands of the communities they serve. There are several features of decentralisation in PNG that cut across this idea and deserve attention in a national conversation on decentralisation. One is a lack of clarity about which level of government is responsible for what, either because of the way in which powers are allocated or because of the overriding power of the national government to intervene. Another is the fragmentation of funding arrangements, which are split between grants to provincial and local level governments and the provision of funds directly to MPs to distribute within their constituencies, which detract from the exercise of powers by provinces in a way that is comprehensive and adequately planned and for which they can be held fully accountable.

Matters for consideration

How are powers divided between the levels of government?
Decentralisation typically involves the division of legislative and executive power between the levels of government, in accordance with the principle of subsidiarity. How this is done is significant for the effectiveness of programs, responsiveness to communities and lines of accountability.

It is convenient to deal separately with the division of legislative and executive power.
Most systems of decentralisation divide legislative power – the power to make laws – on particular subjects between levels of government. Where a subnational level of government has legislative power over a particular subject it is likely also to have responsibility to administer that legislation, to deliver services pursuant to it, and to allocate funding to it. In principle, the government to which legislative power has been allocated is responsible for its exercise and accountable for its effectiveness to the communities that they represent, although there may be procedures for accountability to a higher level of government as well.

In PNG, some legislative power is allocated to subordinate levels of government in much the same way as occurs elsewhere. Section 42 of the OLPGLLG lists the subjects on which the provincial governments may make laws, while section 44 lists those of local-level governments. Provincial powers include, for example, education, tourism, agriculture, and transportation and are apparently consistent with the principle of subsidiarity. Section 50 of the OLPGLLG also authorises levels of government to delegate law-making power to each other.

Under the Constitution and the OLPGLLG, the national parliament retains all other law-making power. It may also make laws on matters within provincial and local-level authority ‘where the matter is of national interest’, subject to some consultation requirements. Provincial and local-level laws must be consistent with national law and local level powers also are subject to those of the provincial level of government. Powers may be withdrawn from a provincial or local-level government if irregularities occur, of the kind listed in section 51 of the OLPGLLG.

These provisions suggest that, while provincial and local-level governments have ‘relative autonomy’ in the exercise of law-making powers for which they can be held accountable to their communities, they also are controlled by the national level of government in a range of ways. One of the issues to be considered in a national conversation on decentralisation is how well these arrangements work in practice, to deliver quality government at the provincial and local levels.

Most systems of decentralisation also divide executive power between the levels of government. This may involve power for each level of government to execute or administer their own legislation, including through delivery of the services for which the legislation provides and the allocation of resources to service programs. As an alternative, however, the division of executive power may confer power on subnational governments to execute or administer legislation of the national government. This is a way of ensuring that a law has national reach, while providing scope for some diversity in administration, in response to local conditions, needs and preferences. In principle, the subnational government administering a national law is accountable

83 Organic Law on Provincial Governments and Local-level Governments s 41.
84 Organic Law on Provincial Governments and Local-level Governments s 40(1)(c).
to its community for this purpose, although necessarily it is bound by the legislation itself and there will be accountability of some kind to the national government as well.

Decentralisation in PNG divides executive power broadly along both these lines, but distinguishes between administrative and service delivery functions. Sections 43 and 45 of the OLPGLLG require the national parliament to make laws to provide for the administrative and service delivery responsibilities of provincial and local-level governments respectively. For the provinces, that part of this power that deals with administrative functions is exercised in the Provincial Governments Administration Act 1997. Section 16 of this Act confers very extensive administrative functions on provinces, including for the maintenance of roads and bridges, health facilities and programs, water, and the environment. It is not clear whether any are linked to specific acts of the national parliament and some functions clearly are not: for example, the responsibility of ‘maintaining peace, harmony and good-will in the province’ and of ‘providing support to non-government agencies’ is another. The Intergovernmental Relations (Functions and Funding) Act 2009 deals separately with the assignment of service delivery functions.

In principle, the provinces are responsible to their provincial communities for the exercise of these functions. The national level of government also exercises extensive control, however, including through a power to give overall policy directions and to assign service delivery functions and responsibilities to provincial governments, local level governments or other statutory bodies (such as DDAs) by executive instrument. Broadly comparable legislation has been enacted for local-level governments, which makes it clear that local-level government implements its own laws and policies as well as those of other levels of government.

The separation of service delivery from other governance functions in this way is unusual in global experience. It creates a great deal of complexity, which in turn creates uncertainty about the responsibilities of each level of government and blurs lines of account. How well these arrangements work in practice is another matter for consideration in any national conversation on decentralisation.

What effect do fragmented funding arrangements, including the provision of funds to MPs, have on the operation of the division of powers?

The administration of legislation or any public policy requires expenditure of public moneys. The amounts involved may be substantial when a policy involves the delivery of public services (for example, health programs) or the maintenance of public infrastructure (for example, roads and bridges). In most systems of decentralisation, decisions about expenditure are an integral part of exercising a power. The revenues available for the purpose either will be raised by the sub-national government exercising their powers or will be received as a transfer from another level of government, in ways that are examined more closely in part 4.5. Typically, the sub-national government makes a decision about the allocation of resources between its expenditure responsibilities, including those involving service delivery or public infrastructure. It is accountable for such decisions to its own legislature and to the public.

In PNG, the funding arrangements are fragmented in at least three ways that affect the operation of the division of powers. First, the provision of funds to MPs to distribute within their constituencies (such as the Service Improvement Program) provides an alternative source of funds for programs administered at the sub-national level. In principle, it provides a mechanism whereby at least some of those funds are allocated in accordance with development plans from wards and local-level governments. In practice, however, it leaves a great deal to the discretion of national MPs, in their capacities as chairs of DDAs, which will not necessarily be exercised in ways that enhance the delivery of government services. It also makes inroads into the capacity of provincial governments to develop and implement policies, including budgetary priorities, in the exercise of their powers and responsibilities. The provision of funds to MPs to distribute within their constituencies offers one way of ensuring that each constituency is considered as funding is allocated. This is done at the cost of the fragmentation of planning and budgeting at the provincial level, however. It also risks greater politicisation of the provision of government services. The costs and benefits of these arrangements in practice need evaluation. There should be ways of ensuring fairness in the allocation of public funds and the provision of infrastructure without eroding the powers and responsibilities of the sub-national level of government.

Secondly, funding is fragmented as a result of the separation of legislative, administrative and service delivery functions,

85 Organic Law on Provincial Governments and Local-level Governments s 16(1) (g) and (i).
86 Provincial Governments Administration Act 1997 s 16(1)(c).
87 Intergovernmental Relations (Functions and Funding) Act 2009 s 5.
88 Local-level Governments Administration Act 1997 s 15.
as described in the previous section. The different treatment of different functions in relation to the same subject matter complicates both funding and governance. It has the potential to cause duplication or gaps in the exercise of any particular power, such as health or education.

A third source of fragmentation in funding arrangements results from the use of conditional grants, which can further impede the ability of a subnational government to develop policies and implement them through service delivery in a way that responds to the needs of its people. Conditional grants can effectively constrain how a province or local level government exercises the legislative and administrative powers conferred on it. Conditional grants and other fiscal issues are discussed further in part 4.5.

**What are the implications of the division of powers for the quality of governance and of service delivery?**

A major catalyst for a review of decentralisation in PNG is concern about the quality of service delivery. A range of possible causes linked to the division of powers between levels of government have been canvassed in this section. It is convenient to draw them together here. The cause of problems in service delivery is likely to involve a mixture of two or more of them. This is a matter that deserves further investigation, to determine the best ways to resolve the problems.

- One possibility is that the powers to deliver particular services are conferred on governments that are not able to exercise them adequately. This might be because a particular power is not suitable for exercise at that level of government because, for example, it overlaps with the responsibilities of other levels of government. The solution in this case is either a reallocation of power or, perhaps, more collaborative arrangements between levels of government. Alternatively, a government may not be able to exercise a power adequately because, in practice, it lacks the necessary capability. If this is the problem, it is important to identify it and deal with it, through some form of capacity-building.
- It may be that a cause of deficiency in the delivery of services is a lack of clarity about which level of government has responsibility, leading to defects in planning, execution and community consultation and feedback. If this is the problem, it might be because a power is exercisable by both the national and sub-national levels of government so that neither takes full responsibility. In a variation on this theme, lack of clarity might be due to uncertainty about where the balance lies between local autonomy and national control, undermining the incentive for provinces and local level governments to take initiatives to improve the quality of service delivery.
- Another possibility is that service delivery is inadequate because the powers to plan and implement programs for the delivery of public service is fragmented – not only between national and provincial institutions but the provinces, local level governments and the DDA – including through the provision of funds to MPs to distribute within their constituencies (such as the Service Improvement Program).
- In an explanation of a different kind, it may be worth considering whether the role of national MPs in provincial institutions and DDAs has inhibited some provincial institutions from developing the experience, knowledge and commitment that is necessary for the holistic planning, co-ordination and delivery of services and infrastructure across the province.

**Administrative support and other institutional structures**

**Issues**

An effective public service is an essential component of any system of government, the significance of which often is underestimated. The public service advises on policy, administers programs, delivers or manages the delivery of services, monitors outcomes and facilitates accountability. It is the continuing body, even as the political office holders change with each election. At the same time, however, it has no legitimacy in its own right. Its authority to engage in the exercise of public power derives from the elected governments it supports, to whom it is responsive and accountable.

These arrangements are straightforward where only a single level of government is involved. In conditions of decentralisation, each level of government needs appropriate support from a public service that is responsive to its needs and accountable for carrying out its programs. This might be accomplished in different ways, which are the subject of this section. Somewhat similar issues arise for the organisation and operation of independent institutions, with which this section also deals. The key issue for consideration is:

- How can the public service and independent institutions be organised in a system of decentralisation to promote good governance and effective service delivery?
Relevance to PNG
PNG has experimented with different approaches to the organisation of the public service since independence. Under current arrangements it has a single public service and single national independent institutions, serving all levels of government. This approach is relatively common in systems of decentralisation but requires careful attention to the responsibilities and lines of accountability within each organisation and agency. In PNG, the ability of the public service to provide support to decentralised government is further complicated by the role of national MPs in the DDA that, arguably, blurs the line between policy-making and effective and impartial administration. These aspects of the organisation of the public sector in PNG are likely to be relevant to any discussion on how to improve the quality of governance and service delivery.

Matters for consideration
Public service
In any decentralised system, there are two broad options for the organisation of the public service.

1. A dual public service, with a separate public service to serve each level of government or, at least, the national and intermediate levels of government.
2. A single public service that serves all levels of government (usually with the option of some additional hirings at each level of government).

Both are used in systems of decentralisation around the world, and both can be made to work. They raise different challenges, however, to which different responses are necessary.

- A dual public service is the more straightforward, insofar as it replicates the familiar relationship between political institutions and the public service in a unitary system. On the other hand, it may be more resource intensive and present problems of capacity. It may lead to duplication or at least overlap between the roles of the respective public services if the division of powers between the national and subnational levels of government is unclear or blurred.
- A single public service overcomes these problems, but at the expense of others. It is necessary to organise the public service in a way that ensures that sub-national levels of government have the necessary loyalty and commitment of those parts of the public service working for them. It may be that sub-national governments should have more of a role in the hiring and placement of public servants, for this reason. It is necessary for the divided responsibilities of the public service to be taken into account in the structure of the public service hierarchy and in the ways in which accountability systems operate.

The current arrangement for the public service in PNG favours the second model, with some variations. Most public servants working at the provincial and local government levels are part of the national public service. This is even the case with the Provincial Administrator, although the Provincial Executive provides a list from which such persons are appointed. It is possible for provincial governments to hire their own staff on contract, after consultation with the heads of the national departments responsible for provincial government and for personnel matters.\(^89\) As in many other countries, PNG also has also created statutory corporations, government agencies that operate at arm’s length from the bureaucracy and are structured more like a business corporation. The DDAs are designed on this model.\(^90\)

If PNG continues to rely on a single public service model, aspects of its structure may repay attention. Under current arrangements, as officers of the national public service, public servants seconded to work with provincial and local level governments are appointed under and subject to the national Public Service (Management) Act 2014. For example, teachers serving in a local government area or province are trained, employed and paid by, and accountable to, their superiors in the Teaching Service Commission in the national Department of Education.\(^91\) In contrast, in a dual public service, provincial or local level public servants would be accountable to superiors at that level, giving provincial and local level governments greater autonomy in the appointment and control of their public servants. It may be possible to better meet the needs of decentralisation by providing lines of accountability for seconded public servants to the provincial or local level government. Under the current arrangements, there are ways in which public service responsibilities overlap or collide. The role of the District Administrator is an example. The District Administrator is also the CEO of the DDA. The District Administrator is appointed by the Provincial Administrator, in consultation with the MP for the district. As a result, he or she is subject to the direction and control of the Provincial Administrator and the requirements of the Public Service Management Act. As CEO, this same person is an agent of the DDA, responsible for implementing the decisions of the DDA, dual roles which can give

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89 Organic Law on Provincial Governments and Local-level Governments s 78.
90 Ugyel, Sause and Gorea (n 64).
91 Howes and others (n 70) 7.
rise to conflicting loyalties and duties.\footnote{This is described in the literature as the 'multiple principals problem'. In PNG see Ugyel, Sause and Gorea (n 64).}

Questions of capability also arise in connection with the structure and role of the public service in PNG. The capability of the public service itself can be fostered by stability, including the opportunity to develop knowledge and expertise in the matters entrusted to particular levels of government. A capable public service, in turn, can complement the roles of elected officials who, almost by definition, have less experience in the development, delivery and co-ordination of services and other government programs. This familiar arrangement depends on an appropriate division of roles and responsibilities between MPs and public servants. Several studies of the dominant role of national MPs in the allocation of funds suggest that this line between policy and law-making on the one hand, and implementation and administration on the other, has been blurred.\footnote{See ‘Performance Audit on Payments and Acquittals of Service Improvement Programs (DSIP, PSIP and LLGSIP) for the Fiscal Years 2013-2016’ (Auditor General’s Office of Papua New Guinea 2019) 14; Gelu and Axline (n 25) 9; Ketan (n 5).}

**Independent institutions**

There are similar options for the establishment of independent institutions in decentralised systems. The range of independent institutions varies but they include, for example, the offices of the Ombudsman and the Auditor-General, both of which are designed to enhance accountability and provide oversight. Some decentralised systems establish separate institutions of this kind at both the national and intermediate levels of government. Others, as in PNG, establish such bodies only at the national level, with the expectation that they will perform their functions for all levels of government.

In PNG, the independent institutions of government are respected and have maintained a good reputation. Even so, they have needed to adapt to the realities of decentralised government, to ensure that they provide appropriate services to all levels of government in a way that encourages compliance and preserves respect. There are occasional signs that there is more to be done, in this regard. Audits of the accounts of all provinces, districts and LLGs have not always been conducted,\footnote{Eliko Pedastsaar and others, ‘Papua New Guinea: Public Expenditure and Financial Accountability Assessment’ (International Monetary Fund 2015) para 75.} for reasons that include lack of capacity and the difficulties that arise for central agencies to visit and provide services to remote and diverse communities. One possibility for consideration is to further decentralise independent agencies, so that they have offices outside of the capital (for example, the Ombudsman has offices in Port Moresby, Kokopo, Mt Hagen, Lae and Buka). Another is to require reports (for example the Auditor General’s Reports) to be submitted and examined by legislatures at all levels of government, and not just the national level.

**Revenue raising and allocation**

**Issues**

Decentralisation requires governments to have access to adequate resources to fund the exercise of their responsibilities, including the provision of services. Governments are expected to act honestly in dealing with public moneys and to be accountable for their use. Arrangements to manage the allocation and use of public money are fairly straightforward, even in decentralised systems, if each level of government raises money for its own purposes. Usually this is not the case, however, and sub-national governments often rely heavily on the national level for transfers. Designing arrangements for transfers raises some important issues of its own. One is where the balance lies between transfers that can be used by sub-national governments for general purposes, which tend to reinforce autonomy, and those that are tied to particular purposes or functions, which favour national influence and control. The other is how decisions are made about the amounts to be transferred to other levels of government and about their distribution between governments within each level.

This section is structured to explore the following key issues that arise in connection with revenue raising and allocation in decentralised systems:

- To what extent can and should sub-national governments be reliant on their own financial resources?
- What considerations apply in striking a balance between transfers for general and more specific purposes?
- How are decisions best made about the amount and the process for revenue transfers to subnational levels of government and between governments at each level, to enable them adequately to fund programs and services?

**Relevance in PNG**

The allocation of funding between levels of government is as critical in PNG as in other decentralised systems. As in other countries, also, the provinces and local-level governments have some revenue raising powers, but these are limited, to the extent that they are useful at all. Government at both levels are reliant on transfers from the national government, although in
significantly varying degrees. Any system of transfers carries with it the associated needs of ensuring that funding is adequate, that it is distributed fairly and that there is accountability for expenditure. Funds are transferred from the national to sub-national level in a variety of ways, including through the provision of funds to MPs to distribute in their constituencies. Collectively, these need evaluation to determine whether they strike the kind of balance between local autonomy and national control that best promotes the quality of governance and service delivery in the context of PNG. As in other decentralised systems, an independent, expert body has responsibility for advising on the allocation of grants, in this case, the National Economic and Fiscal Commission (NEFC).

Matters for consideration

To what extent can and should sub-national governments be reliant on their own financial resources?

Most arrangements for decentralisation authorise sub-national governments to raise and retain some revenues from their own sources for their own purposes. When this occurs, it has some significant advantages. The same level of government is accountable for both revenue raising and spending, so that lines of accountability are more clear-cut. Enabling and encouraging sub-national governments to raise some of their own revenues encourages self-reliance and can assist in achieving the goals of decentralisation in this way. Some revenues are more efficiently raised at the sub-national level, in any event.

Sub-national revenue raising is only a partial solution, at best, to the problem of funding programs and services at the sub-national level. Sub-national governments vary, sometimes dramatically, in their capacity to raise own-source revenues, due to differences in the characteristics of regions. Many forms of taxes are not suitable for imposition at the sub-national level, because they can be too easily avoided by crossing provincial boundaries or because it requires national legislation for some other reason. As a result, the types of revenues typically regarded as suitable for sub-national levels of government are relatively limited. They include property taxes, vehicle taxes, and other forms of imposts that have obvious local links. They sometimes include sales taxes and may also include natural resource revenues, where these are available and subject to any sharing arrangements with the national government or with other regions.

An approach broadly of this kind can be seen in action in PNG. The Constitution requires an Organic law to provide for the imposition and collection of taxes by provincial and local level government. This obligation is given effect in sections 86 and 87 of the OLPGLLG which authorise the provinces to impose sales and services and road user taxes together with a range of fees and charges. They also authorise local level governments to impose a ‘head tax’ and a range of local rates and fees. For the reasons explained earlier, in principle, revenue-raising measures of this kind are suitable for imposition at sub-national levels of government. Whether they are suitable in PNG and, if so, whether the opportunities they offer are maximised in practice is a matter for consideration in any national conversation about decentralisation.

National levels of government derive revenues from a much wider range of sources than is possible for sub-national governments. Of course, national resources are finite too, in ways that vary dramatically between different countries. Nevertheless, the financial resources available to governments at the national level typically are far greater than those raised by other levels of government, necessitating transfers from one to the other.

What considerations apply in striking a balance between transfers for general and more specific purposes?

Moneys may be transferred between national and sub-national governments in a range of different forms. The principal contrast is between unconditional transfers, to be used by sub-national governments to fund their own priorities, and transfers that are tied to particular purposes, or are subject to other conditions, prescribed by the national government. There are many variations in between these two extremes. Transfers might, for example, be sought by a sub-national government for a particular purpose; might be made by the national government to meet the costs of functions delegated to subnational governments; or might be subject to only general conditions, leaving considerable discretion to sub-national governments in the manner in which the moneys are used. These features of transfers have implications for the depth of devolution. Typically, unconditional transfers strengthen sub-national autonomy, while transfers that are subject to conditions offer a means for greater national control over sub-national decision making. This is an issue to be taken into account in designing transfer arrangements.

All transfers from one level of government to another break the nexus between taxing and spending on which arrangements for fiscal accountability in centralised systems traditionally have relied. Arrangements for transfers therefore need to pay particular attention to procedures for accountability for expenditure. In this connection, also, it may be relevant to...

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95 Constitution of Papua New Guinea s 187C(40(b).
96 For example, head tax has long since been abolished and that other measures may be particularly unsuitable for rural local-level governments: Ketan (n 5) 261.
distinguish between unconditional and conditional transfers. Unconditional transfers represent general revenue in the hands of subnational governments. The obligation to account for expenditure lies largely and, generally, solely with subnational governments and procedures are needed at those levels to avoid and control corruption. By contrast, accountability for conditional transfers may lie with both the subnational and the national government, in proportions that depend on the stringency of the conditions.

There is no very clear line in PNG between the allocation of funds that can be used for general purposes and those that are conditional in some way. The OLPGLLG requires legislation to be enacted for the sharing of national revenue, which in principle is available to be used by subnational governments to fund their general responsibilities. Even in relation to these transfers, however, the OLPGLLG provides that shared national revenue may be made ‘subject to conditions’97. Additional payments are made for staffing at the provincial and local levels of government,98 which falls somewhere between the categories of general and tied revenue payments. The District and Provincial Support Grants, payable under sections 95A and 95B of the OLPGLLG are hard to characterise as well; they may be subject to conditions directed to ‘development needs’99 but this does not necessarily occur. In addition to these payments, it also is clear that the national level of government can make tied grants of many kinds to provincial and local governments, including for developmental purposes.100

Several considerations deserve attention in relation to fiscal transfers in any national conversation on decentralisation in PNG:

• The appropriate balance between general and conditional transfers, with an eye to maintaining the desired level of autonomy at the sub-national levels.
• The projects or purposes to which such grants are tied ideally should be developed in consultation between the national government and the sub-national governments affected. This is both because grants that are tied to projects also affect the priorities of the sub-national levels of government and because, like all such initiatives, it is important that they are targeted to local needs, on which sub-national levels of government can best advise.
• In the interests of good and effective government, it is desirable for the conditions attached to transfers to be publicly known.
• Procedures for accountability need to be clear, and balance accountability to the national government with accountability to the constituents and representatives of the sub-national level of government.

As suggested earlier, in principle, subnational governments are likely to be accountable for the expenditure of untied funds. Where the national level of government has determined the priorities for particular spending program, for the purposes of conditional transfers, accountability is likely to be shared between levels of government, with all the complexities that involves. Subnational governments may be accountable to the national level for compliance with the conditions and, potentially, for outcomes. On the other hand, because the moneys are spent by sub-national governments, in the exercise of responsibilities to their communities, accountability to and consultation with local communities should be an element of such arrangements as well.

How are decisions best made about revenue transfers to subnational levels of government and between governments at each level, to enable them adequately to fund programs and services?

A third major issue in designing arrangements for transfers from a national to sub-national governments is to determine the bases on which transfers are made. This issue affects all form of transfers, but attracts most attention in relation to transfers in the nature of general revenue. Sub-national governments rely on these in order to be able to perform their functions effectively. The amounts to be transferred and the procedures for transferring funds need to be predictable and stable enough to enable sub-national governments to plan.

In determining the amounts to be transferred, two different dimensions require consideration. One is the totality of the funds distributed to sub-national levels of government, which in PNG is called ‘equalisation’. The other is the fairness of the distribution of the funds between governments at each level, which in PNG is termed ‘equitable distribution’.101

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97 Organic Law on Provincial Governments and Local-level Governments s 82E(3)(a).
98 Organic Law on Provincial Governments and Local-level Governments s 82F.
99 Organic Law on Provincial Governments and Local-level Governments s 82J.
100 Organic Law on Provincial Governments and Local-level Governments ss 82K, 82L.
101 Organic Law on Provincial Governments and Local-level Governments s 82(f). These terms are used differently in some of the comparative decentralisation literature, where ‘equalisation’ often refers to the distribution of funds between governments within each level.
There are various options for distributing revenue raised at the national level between levels of government. One is tax-sharing. This involves the allocation of particular tax revenues, or a proportion of particular tax revenues, to sub-national levels of government. One advantage of this system is that it provides an incentive for provincial governments to invest in economic growth and in proper planning and development to collect and remit tax, so as to increase their share of revenue. An example in PNG is GST revenue, which is collected by the national government and 60% transferred to the province in which it was collected.

A disadvantage may be that the total received is unpredictable if the national level of government makes changes to its tax laws without consultation with other levels of government. Another option for distributing revenue between levels of government is to use a formula of some kind related, for example, to population numbers. This option can yield predictable results, as long as the formula is maintained and observed. A third option, which can be used to supplement either of the other two, is to rely on the decision or advice of an independent expert body to determine the annual distribution of revenue between levels of government. This option is explored further below.

Whatever approach is taken to distributing revenue between levels of government, it also is necessary to determine the distribution between governments within each level. This might be done on a fixed basis using, for example, population numbers or a proportion of national revenues collected in the government area. Typically, even if an initial distribution is made on this basis, it is further adjusted to achieve a measure of ‘equalisation’, in an expression of ‘solidarity’ across the country as a whole. The precise objectives of equalisation vary. Amongst various options, it might be designed to bring all governments to the position where they can deliver at least a minimum standard of service, or to strike an average of some kind, so that all governments are in a position to deliver roughly the same standard of services. A range of different factors also might be taken into account in making these calculations. These include the relative capacity of governments to raise funds from their own sources and their relative expenditure and developmental needs.

Decisions about the allocation of general revenue funds between levels of government and between particular governments might be made by the national level alone or, preferably, by the national level of government in consultation with the affected sub-national governments. Alternatively or in addition, an independent body might be established to advise on allocation or, in some cases, to determine the allocations itself. Where this approach is used, there will be questions to be decided about the kinds of expertise that should be represented on the body, the matters that it is to take into account in making its decisions and whether sub-national governments are involved in decisions about appointments or on other matters. Whatever design is used, the procedures and outcomes should be transparent, in the interests of trust between governments and accountability of all levels of government.

In PNG, these aspects of transfers are dealt with in the Constitution and the OLPGLLG.

An obligation to provide for transfers from the national level to provincial and local level government ‘to an extent reasonably adequate for the performance of their functions’ derives from the Constitution itself. The OLPGLLG identifies a series of principles to be taken into account by the national level of government in dealing with revenue redistribution. As a generalisation, these principles require the government to take into account economic and other disparities between parts of the country for the purposes of revenue distribution. The OLPGLLG also requires legislation to be enacted to provide for the ‘sharing’ of national revenue. In principle, this is a reference to the distribution of funds to the other levels of government that can be used to fund their general responsibilities. Any share of the ‘development levies’ paid to a provincial or local government from the fund identified in section 98 of the OLPGLLG also presumably can be used for the purposes of general revenue and, in this regard, may be taken into account for equalisation purposes.

The Constitution also provides for a National Economic and Fiscal Commission (NEFC) to ‘make recommendations to the National Executive Council and to the National Parliament on the financial arrangements and the allocation of grants’. The functions of the NEFC are elaborated in the Intergovernmental Relations (Functions and Funding) Act 2009, but not in

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103 Intergovernmental Relations (Functions and Funding) Act 2009 section 40.
104 Constitution of Papua New Guinea s 187C(4).
105 Organic Law on Provincial Governments and Local-level Governments s 82A.
106 Organic Law on Provincial Governments and Local-level Governments s 82A(l).
107 Constitution of Papua New Guinea s 187H.
an Organic Law, as foreshadowed in the Constitution. Like many such bodies in other decentralised systems, the NEFC has an advisory rather than a determinative role. The allocation of funds in a decentralised system requires both expertise and the trust of all levels of government, however, which an independent body like the NEFC offers. There may be merit in developing a practice whereby the advice of such a body is regularly accepted unless, at least, departure from it can be publicly justified.

Finally, the procedures for the transfer of funds to sub-national governments need to be clear and streamlined so that governments receive the funds in a timely manner to meet the functions of government for which they are responsible. Under current arrangements, the national government treasury must approve the budgets passed by the provincial governments before funds are provided to them. In this way, the national treasury exercises control over provincial budgetary decisions, but is not itself accountable to provincial representatives or their constituents. Delays in the approval of budgets and the disbursement of funds can compromise the budgets of subnational governments and their capacity to complete of projects and deliver services.

**Intergovernmental arrangements**

**Issues**

Arrangements of various kinds between levels of government are inevitable in any decentralised system. They need to be designed in a way that foster the goals of decentralisation, as reflected in the desired balance between localised autonomy and national unity. For the purposes of this paper, intergovernmental arrangements are defined broadly as having three components: structural, regulatory, and collaborative. Structural intergovernmental arrangements refer to the design of institutions in a way that gives them an intergovernmental character. Regulatory intergovernmental arrangements involve controls over the decision-making of subnational institutions by higher levels of government, usually, the national level. Collaborative intergovernmental arrangements respond to a host of other reasons why governments might work together in a decentralised system, both within and between levels of government, often using informal mechanisms.

The key issues that arise are:

- What structural arrangements might be useful to advance the goals of decentralisation? What purposes should they serve and how should they work?
- What regulatory checks is it useful or appropriate for higher levels of government to have over actions by subnational governments? Do existing arrangements strike the right balance?
- How are collaborative intergovernmental relations conducted? What purposes can they properly serve?

**Relevance in PNG**

Intergovernmental arrangements are as relevant in PNG as in any other decentralised governance system. All three forms of intergovernmental arrangements are used, in some degree. In PNG, however, some intergovernmental arrangements have distinctive aspects that would need consideration in a national conversation about decentralisation. In particular, the involvement of national MPs in provincial institutions and the DDAs is an unusual form of structural interdependence between levels of government. The national level of government also exercises significant regulatory controls over provincial and local-level governments, which should be revisited to ensure they are appropriate both in principle and practice to meet the goals of decentralisation. Collaborative intergovernmental arrangements are less developed in PNG since the changes that were made in 1995, but should be taken into account as part of any significantly revised arrangements.

**Matters for consideration**

*What structural arrangements might be useful to advance the goals of decentralisation? What purposes should they serve and how should they work?*

Many decentralised systems use the design of institutions to create positive relations between levels of government. Most obviously, in federations and in some other decentralised systems in unitary states, sub-national jurisdictions are represented in the second chamber of the national legislature. This works out differently in different states: in some decentralised systems, such second chambers are more symbolic than functional. Even if largely symbolic, they promote unity while recognising the diversity of the country. To the extent that second chambers have a functional role for the purposes of decentralisation, they...
offer a way of ensuring that the needs and perceptions of different parts of the country are fed into national decision-making. This improves the quality of national decisions and gives all parts of the country a sense of ownership of these decisions and a commitment to their implementation.

There are no structural arrangements of this kind in PNG, where the national Parliament is unicameral, with only a single chamber. MPs are, of course, elected to the parliament from each district, with one MP from each province to represent the Province as a whole. There is some symbolic and even, potentially, functional value in this arrangement. In addition, in an unusual feature of PNG decentralisation that has arisen for examination in other parts of this paper, national MPs constitute the executive and legislative institutions of the provinces and chair the DDA boards. Under this arrangement, national MPs potentially connect national policies and programs to what is happening on the ground in provinces and districts and vice versa. Common membership of the Ward Development Committee and the Local-level governments can perform a similar function.

There are risks to common membership as well, however, for reasons that have been explained earlier. Most obviously, it inhibits not only the provincial institutions but also the national Parliament from developing specialist expertise in their own affairs and applying it to the distinctive needs of the respective levels of government. In this way, it detracts from the depth of decentralisation. Other consequences include the high workload placed on representatives if they are to adequately carry out functions at more than one level of government; the concentration of power – and in particular the power to allocate funding – in the hands of individual MPs; the dual roles which mean that MPs in the national parliament are called upon to hold themselves to account for their conduct at the provincial and district level; and the politicisation of tasks of government including basic service delivery.\footnote{Ketan (n 5); Kabuni (n 82).} These aspects of the current arrangements for structural intergovernmental relations in PNG deserve consideration in any national conversation about decentralisation. As part of the conversation, it may be worth considering whether whatever values they bring could be achieved in other ways; for example, through regular meetings between national MPs from a province and separately elected provincial MPs to discuss provincial and national matters.

One other aspect of PNG practice also might be noticed in the context of structural intergovernmental arrangements: the public service. A single public service that serves both the national and subnational levels of government has obvious implications for interactions between the levels of government, because officials are trained in the same institution, share in its culture and are organised in a common hierarchy. To the extent that officials develop experience at multiple levels of government, the structure of the public service may also contribute to mutual understanding. Equally, however, it brings challenges, some of which were canvassed earlier. It is more difficult to ensure that officials in a single service develop the necessary expertise for different levels of government and offer the commitment that is necessary to sub-national institutions. In some circumstances, a single public service actively works against effective decentralisation if, for example, officials are reluctant to move from the national capital to the provinces, or vice versa.

**What regulatory checks is it useful or appropriate for higher levels of government to have over actions by subnational governments? Do existing arrangements strike the right balance?**

Intergovernmental arrangements that have a regulatory character might take a variety of forms, ranging from a requirement for consultation as a precondition for action, to reporting requirements, to a national veto of some subnational actions. Arrangements of this kind are common in systems of decentralised governance in unitary states. The challenge is to strike the right balance between the effectiveness of sub-national decision-making and national oversight, avoiding the temptation of overcentralisation.

In PNG, regulatory intergovernmental arrangements take at least the following forms:

- There are requirements for various kinds for **consultation or approval** between levels of government before specified actions are taken. For example, the OLPGLLG requires the national Minister to consult provincial and local level governments before the national parliament legislates on grounds of ‘national interest’ on a subject matter assigned to the provincial or local level governments.\footnote{Organic Law on Provincial Governments and Local-level Governments s 41.} Consultation between levels of government may also be required in relation to the appointment of senior officials to positions in subnational government, such as the Provincial Administrator.\footnote{Organic Law on Provincial Governments and Local-level Governments s 73(2).}

- **Reporting requirements** are used to facilitate the monitoring role of the national government over subnational levels of government. Such requirements provide a way to ensure compliance with legislative and administrative
rules relating to decision making procedures and the spending of funds. Reports are a mechanism for accountability, but can also useful as a source of information for the national level about the needs of local communities and the implementation of government services. Examples include the reporting processes required to secure Service Improvement Program funds, from the creation of development plans at the ward, district and local government levels, to the submission and approval of funding proposals and reporting on the acquittal of funds.

Another regulatory arrangement of a kind that affects relations between levels of government involves monitoring. In decentralised systems, the national level of government often creates a public service agency with primary responsibility for decentralisation. An example is the Provincial and Local-level Service Monitoring Authority established under section 110 of the OLPGLLG. This body sits within the Department of Provincial and Local Government Affairs and consists of representatives from a range of national government departments. Its role is to monitor the implementation of national policies, develop minimum development standards, and provide training and assistance.

A fourth category of regulatory-style intergovernmental arrangements enables intervention in subnational affairs by higher levels of government; typically, the national level. There are several examples of this in the OLPGLLG. Section 51 authorises the withdrawal of powers, functions and finances from other levels of government if specified events occur. These range from a finding of corruption or abuse of power by the Auditor-General to a breakdown in the administration of the province or local level government area. Division 9 of the OLPGLLG gives effect to the constitutional provisions dealing with the suspension of a provincial or local level government and provides for the exercise of their powers during that time. These are familiar kinds of provisions in systems of decentralised government but need to be kept under review to ensure that the relatively extreme action that they authorise is consistent with the goals of decentralisation.

A final form of intergovernmental relations in PNG that is regulatory in character concerns the conditions attached to most fiscal transfers. These provide a mechanism whereby the national government can influence the use of funds in the hands of subnational governments and thus constrains their autonomy in the exercise of their powers.

How are collaborative intergovernmental relations conducted? What purposes can they properly serve?

There are many reasons why governments collaborate in decentralised systems of government and a variety of mechanisms through which they do so. This form of intergovernmental relations can foster the goals of decentralisation where the purposes for which they are used are clear and the mechanisms are designed to achieve them.

Productive interaction between level of government in a decentralised system serve at least three important purposes.

- **Information sharing**: Sub-national governments will have specialist knowledge about the needs and conditions in their own local areas, while at the national level, the government will have a broad view of the needs and priorities of the nation as a whole. Mutual understanding from both the top-down and bottom-up is needed. If the national government is to make policies that work across the country, it needs a sound understanding of how things are working on the ground. If sub-national governments are to implement national policies, including through service delivery, they need to understand the purpose, procedures and priorities at the national level. Intergovernmental arrangements facilitate sharing information to inform policy making as well as decisions about implementation.

- **Coordinated policies and actions**: Where an outcome requires action by several levels of government, intergovernmental arrangements can provide a vehicle to assist co-ordination. Service delivery provides an example, where the national level of government is responsible for providing funds, and the provincial and local level governments, together with the districts, are responsible for providing services and development projects. Procedures for providing funds, accounting for the way in which they are spent and ensuring projects are delivered require a high degree of coordination between levels of government, to ensure, for example, that funds are released in time to complete the prioritised projects.

- **Joint decision making**: In decentralised governance systems it is sometimes necessary for decisions to be made jointly about a course of action. Again, intergovernmental arrangements can be used for this purpose. An example might be the administration of vaccines in response to the covid-19 pandemic. Other examples are likely to arise in mitigating the effects of climate change. Intergovernmental arrangements provide a means of sharing understanding among levels of government.

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114 For reflections on the planning process see Barcson (n 37).
115 For a review of the reporting process on acquittal of funds see ‘Performance Audit on Payments and Acquittals of Service Improvement Programs (DSIP, PSIP and LLGSIP) for the Fiscal Years 2013-2016’ (n 93).
116 Under the first phase of decentralisation, the national government’s power to suspend provincial governments was widely used. By 1994, all but five of the 19 provincial governments had, at some point, been suspended and several more than once: May (n 10) 133.
of different perspectives and arriving at a negotiated agreement that works on the ground.

It is sometimes suggested that intergovernmental arrangements also provide a means of resolving disputes between levels of government. Of course, they may do so, by fostering dialogue, understanding and mutual respect. This is not their natural purpose, however, and they may not deliver lasting resolution of deep disagreement. Consideration might be given to other methods of dispute resolution. If a dispute involves legal questions it may sometimes be appropriate to use the courts. While some constitutional provisions for decentralisation (such as law-making and the division of powers) are not justiciable, the Constitution gives institutions from all three levels of government the right to seek an advisory opinion from the Supreme Court on any question relating to the interpretation or application of a constitutional law (which includes the OLPGLLG).\textsuperscript{117} It might also be noted in this regard that the PNG Constitution contemplates the establishment of a body specifically for the ‘settlement of disputes between the National Government and Provincial Governments or Local-level Governments, or between Provincial Governments, or between Provincial Governments and Local-level Governments, or Local-level Government’\textsuperscript{118} The Mediation and Arbitration Tribunal established by section 118 of the OLPGLLG may have been a formal response to this requirement, but has not been significant in practice, if at all.

Mechanisms for intergovernmental arrangements of a collaborative kind range from formalised institutions and bureaucratic processes, to informal networks and relationships between individuals. One of the most common is the establishment of forums in which representatives of levels of government can meet from time to time. Such meetings might be between various groups, for example:

- The Prime Minister and Governors of each province;
- The Governors of each province (for example, the Premiers Conference under the 1976 arrangements, or the Annual Provincial Governors Conference);
- National MPs from a province and separately elected provincial MPs to discuss provincial and national matters;
- Lord Mayors, Mayors and Presidents of Local Level Governments of a district or province;\textsuperscript{119}
- Officials, such as Provincial Administrators and Heads of Department at the national level.

Meetings of this kind provide forums for private deliberation and information sharing, as well as a public forum to communicate joint decisions on policy or achievements in service delivery.

Forums for intergovernmental meetings may be established in law or be left to be organised in practice. If intergovernmental meetings become more formalised, governments might consider establishing a permanent body to provide secretariat support and/or specialist sub-committees to deal with complex issues (eg management of natural resources or rural development).

**Legal framework for decentralisation**

**Issues**

There is a legal framework of some kind for all decentralised governance arrangements. Such a framework serves several important purposes. It authorises the exercise of public power, protects decentralisation and helps to make clear how decentralisation is supposed to work. Options for a legal framework for decentralisation include both constitutions and statutes. In countries like PNG, where organic law also is recognised, this may be used as well. Most decentralised systems use a combination of mechanisms for legal protection. In designing the legal framework for decentralisation, it is necessary to balance protection of the arrangements against the need for flexibility over time. It is also necessary to ensure that the powers and functions of each level of government are clear, particularly where the framework is spread across multiple instruments and/or where it has been amended periodically.

Key issues include the following:

- Are aspects of the framework for decentralisation appropriately spread across the different categories of legal instruments?
- Is the legal framework for decentralisation consistent, coherent, and clear?

**Relevance for PNG**

In PNG, the framework for decentralisation is spread across the Constitution, Organic Law, and ordinary legislation. The availability of Organic Law gives PNG a useful additional option in designing a framework for decentralisation that

\textsuperscript{117} Constitution of Papua New Guinea s 187D(3) and s 19.

\textsuperscript{118} Constitution of Papua New Guinea s 19(ec).

\textsuperscript{119} To take one example, the recent New Guinea Islands Mayors Conference: ‘NGI Mayors Conference Concludes’ Loop PNG (28 October 2021) <https://www.looppng.com/node/106035>. 
appropriately balances flexibility and protection, although it should be noted that the Constitution itself is relatively easy to change.\textsuperscript{120} Spreading the framework across three forms of law requires attention to be paid to whether the distribution of subject-matter between them is appropriate and whether they fit together in a way that is consistent, coherent, and clear. This latter set of considerations may be particularly relevant, given the changes that have been made to decentralisation in PNG over time. The suitability and clarity of the legal framework for decentralisation will require attention in any event if the arrangements are revised again.

The framework for decentralisation in PNG is provided by the national Constitution, the OLPGLLG and a range of ordinary statutes. The broad functions each of these performs are as follows:

- Part VIA of the Constitution mandates a system of provincial and local-level government. It makes general provision for the institutions and powers of provincial and local level governments and somewhat more extensive provision for intervention by the national level of government. Almost all of the significant detail, including the distribution of powers, is left to organic law. This part of the Constitution also makes provision for a National Economic and Fiscal Commission (NEFC) with powers to give advice and recommendations on, for example, the allocation of grants but, again, leaves other details to organic law.\textsuperscript{121} Importantly, other parts of the Constitution also have a bearing on decentralisation. Several of the National Goals and Directive Principles are directly or indirectly relevant to decentralisation.\textsuperscript{122} Other parts of the Constitution also affect the operation of decentralisation, including those providing for the State Services and regulatory statutory authorities;\textsuperscript{123} for constitutional office-holders such as the Ombudsman and Auditor-General;\textsuperscript{124} and the Leadership Code and which applies to leaders at all levels of government.\textsuperscript{125}

- The principal organic law presently dealing with decentralisation is the OLPGLLG. It makes detailed provision for the institutions of subnational governments, their powers, including fiscal powers, and mechanisms for supervision and control. Many significant matters are left to ordinary legislation, however. To take only two examples: section 43 of the OLPGLLG requires an Act of Parliament to provide for important aspects of the division of administrative powers and service delivery, while section 118 leaves the composition, powers, functions and responsibilities of the Mediation and Arbitration Tribunal to ordinary law.

- It follows from this framework that a range of ordinary statutes provide the remainder of the framework for decentralisation in PNG. These include: \textit{Provincial Governments Administration Act 1997}; \textit{Local-level Governments Administration Act 1997}; \textit{District Development Authority Act 2014}; \textit{Intergovernmental Relations (Functions and Funding) Act 2009}; \textit{Public Service (Management) Act 2014}; the three City Authority Acts for Kokopo, Lae and Mt Hagen of 2015; and several Acts dealing with the National Capital District.

Matters for consideration

This paper has shown that a system of decentralisation has many components, ranging from the constitution of the institutions at each level of government to the distribution of powers and resources to the manner in which political institutions are supported by the public service to arrangements for intergovernmental relations. None of these components exists independently of the others and all must be consistent with the rest of the system of government, in principle and practice. Countries differ in the ways in which they provide the legal framework for such arrangements. Most spread the framework in some way across Constitutions and other forms of legislation. The goal is to balance protection of decentralisation against flexibility, should the need for change arise. Clarity and consistency also are important. As a generalisation, the greater the depth of decentralisation, the stronger the constitutional protection for key elements of it is likely to be.

Does this distribution of the framework for decentralisation across different categories of legal instruments strike the right balance in PNG?

Part VIA was added to the Constitution of PNG in 1976, one year after PNG’s independence. In the light of greater experience with decentralisation since, it may be timely to reorder the framework, to ensure that more of the substance of decentralisation is included in the Constitution, both for protection and as an indication of its significance in the system of government. If this were done, it would have flow-on effects for the content of the organic law and for the matters left to

\textsuperscript{120} Constitutional amendments must be approved by a two-thirds majority of the parliament, following special procedures for the introduction and debate of the amending law; Constitution of Papua New Guinea s 14.

\textsuperscript{121} Constitution of Papua New Guinea 187H.

\textsuperscript{122} In particular Principle 2, set out in the preamble to the Constitution of Papua New Guinea.

\textsuperscript{123} Constitution of Papua New Guinea Parts VII and VIIA.

\textsuperscript{124} Constitution of Papua New Guinea Parts VIII and IX.

\textsuperscript{125} Constitution of Papua New Guinea ss 26-31.
legislation. In the course of any such reordering, attention also should be paid to whether any provisions or institutions are redundant or need renewal or activation. An exercise of this kind in any event would be needed if the arrangements for decentralisation were significantly changed.

Is the framework for decentralisation consistent, coherent, and clear?

One of the values of a legal framework for decentralisation is that it provides a public record of the responsibilities of the respective levels of government. Of course, much also depends on how decentralisation operates in practice, but the legal framework provides a critical starting point.

In PNG, arrangements for decentralisation are spread across three types of instruments, including multiple ordinary statutes. The arrangements have also been changed, sometimes very significantly, over the more than forty years that they have been in operation. In these circumstances, there is a danger that gaps, overlaps or inconsistencies in the framework have emerged, detracting from the clarity and coherence not only of the arrangements for decentralisation, but of each of the instruments themselves including, potentially, the Constitution.

Various examples might be used to suggest that this has occurred, at least to some degree, including in relation to the distribution of executive power and the arrangements for fiscal transfers. These issues deserve attention in any review of decentralisation. We examine one example more closely here, to illustrate the point.

The National Economic and Fiscal Council (NEFC) is a significant public institution in PNG, providing independent, expert advice on fiscal and economic aspects of decentralisation. The Constitution was amended post-independence to make provision for the NEFC, which now appears in Part VIA of the Constitution, dealing with subnational governments. The NEFC is not identified as a constitutional institution in Part IX of the Constitution, nor does it receive the degree of constitutional protection afforded to most such institutions. It may be that the significance of the NEFC was not fully appreciated when it was established; in any event, this is a question that deserves consideration now. Section 187H of the Constitution, which deals with the NEFC, identifies some functions of the NEFC but foreshadows that its structure and other functions will be provided by Organic Law. Section 117 of the OLPGLLG makes some structural provision for the NEFC but leaves other significant structural requirements and the further specification of functions to ordinary law. This apparent underutilisation of the potential of organic law is found elsewhere in the framework for decentralisation. In the end, the remaining functions of the NEFC are specified in the Intergovernmental Relations (Functions and Funding) Act 2009, where they are distributed across the various categories of grants, in a manner that makes it difficult to get a clear impression of what the NEFC does and the bases on which it acts.

Implementation in practice

Issues

Much of this paper has been concerned with issues and options for the design of arrangements for decentralisation. Design is important, but it is only one part of any project to review and reform decentralisation. Equally important is the implementation of arrangements for decentralisation, to provide a foundation for their effective operation in practice over time. Any design can be weakened or even ruined by failures of implementation. Conversely, effective implementation may be able to compensate for some inadequacies in design. Implementation is significant whether decentralisation is introduced for the first time or whether changes are made to existing arrangements for decentralisation. Implementation for this purpose involves the adjustment of laws, institutions, practices, processes, and attitudes, to meet the new requirements and to ensure delivery of the quality of governance that they seek to achieve.

Implementation is relevant whenever significant changes of any kind are made to a system of government. Some changes call for new institutions and processes, which need to be put in place in a workable form. Cultural change may be needed as well. Processes, practices, and attitudes grow up around any governmental arrangements over time, to the point where they become taken for granted by politicians, public officials and the public. If systems are changed, consideration needs to be given to how these habits of governance can be altered as well.

Arguably, implementation is particularly important where decentralisation of government is concerned. The three practical challenges associated with decentralisation set out in part 2 of this paper – shortfalls in capability, resistance to decentralisation from officials and elites, and lack of public understanding – are all most likely to arise at the point of implementation. Decentralisation depends on the capability of government at all levels to perform the functions for which each is responsible. It requires different modes of operation to centralised government, including mutual respect, power sharing and collaboration.
between levels of government. Decentralisation calls for institutions and procedures that may be new or unfamiliar, many of which are located in different parts of the country. Importantly, decentralisation requires a departure from the habits of governance that concentrate power in a single level of government, in which political power is exercised through a parliamentary system. Promoting knowledge of the new system and achieving a cultural shift of this kind may be one of the greatest challenges of implementing new governance arrangements.\textsuperscript{126}

**Relevance in PNG**

Reviews of decentralisation in PNG commonly cite problems of implementation as reasons why decentralisation has not improved governance and service delivery. A lack of capability, particularly at the provincial, local and ward levels, exacerbated by a lack of funding, support and training in skills of governance such as budgeting and administration, is sometimes given as a reason why decentralisation has not worked as it should.\textsuperscript{127} Competition or antagonism between politicians at different levels of government, and between politicians and bureaucrats has also affected the implementation of earlier phases of decentralisation.\textsuperscript{128} As Gelu and Axline point out, making new laws (which themselves assume the capacity and willingness to implement) is not the answer to such issues of implementation.\textsuperscript{129}

Inevitably, if new institutions are created, new powers conferred and new processes introduced, a focus of the implementation will be on sub-national governments. This focus should not be exclusive, however. Consideration also should be given to the need for institutional, procedural, and cultural change at the national level as well, to ensure the degree of power-sharing envisaged by the new arrangements actually occurs. Strategies for implementation must include political elites as well as public service officers and agencies. In addition, attention should be paid to ensuring that the people understand and are able to play their part in the new arrangements, by taking advantage of the opportunities of decentralised government and holding different levels of government to account.

In some places, specialist institutions have been established to assist and monitor the implementation of new constitutional arrangements, including decentralisation, with varying degrees of success.\textsuperscript{130} There are two key problems with implementation institutions. The first is that they conceive of implementation too narrowly to cover the range of activities that are critical to implementation, focusing for example on technical implementation rather than cultural change. The second is that other actors with a critical role in implementation, such as politicians, government agencies and courts, will not take responsibility for implementation and instead leave it to the specialist institution rather than work actively and cooperatively to realise the goals of decentralisation.\textsuperscript{131}

**Matters for consideration**

Exactly what is required for the purposes of implementation depends on context and on the changes made. Any plan for implementation, however, should include at least the following:

- **Understanding and acceptance (‘buy-in’).** Implementation will be significantly assisted if the stakeholders, at all levels of government, as well as the people understand and, preferably, embrace the changes made. The point is sometimes made that in PNG, changes in the system of decentralisation is driven by politicians and fuelled by political interests. However, buy-in from politicians is critical if reforms are to be enacted, let alone implemented. It is important therefore to build a sense of ownership of system, in the political class as well as in the people who rely on basic government services. This can be fostered by the way change is considered and agreed, as well as by the ways it is put into effect and some options for enhancing public understanding are outlined above, in Part 2 of this paper.

- **Education and training.** Implementation requires all relevant decision-makers not only to understand and be able to give effect to new systemic requirements but to grasp the goals and expectations of decentralisation more generally so as to be able to meet them in spirit and well as in form. In the past, efforts were made to build education and training into decentralisation, for example the OPLPGLLG provides that one of the functions of the Provincial and Local-level Service Monitoring Authority is to develop and coordinate the training and professional needs of public servants assigned to provinces and districts, although there is some concern that training needs have not been met.\textsuperscript{132}


\textsuperscript{127} See eg Barcson (n 37).

\textsuperscript{128} Peasah (n 20) 12–13. 3

\textsuperscript{129} Gelu and Axline (n 25) 10–11.

\textsuperscript{130} Bodies of this kind have been established in Afghanistan, Kenya and Pakistan.

\textsuperscript{131} Constitution Transformation Network and International IDEA (n 126) 6.

\textsuperscript{132} ‘Performance Audit on Payments and Acquittals of Service Improvement Programs (DSIP, PSIP and LLGSIP) for the Fiscal Years 2013-2016’ (n 93).
• **Capability**, which includes the funding, human resources and ability to make independent administrative decisions. It may be that the design of decentralisation can itself support – or alternatively challenge – capability. For example, the point was made in part 4.4 that the capability of the public service is fostered by a clear and stable differentiation between the policy responsibilities of elected MPs and the implementation and administrative responsibilities of the public servants. Inadequate funding for subnational governments, or funding that is unpredictable and insecure, also directly impacts on capability. Even where decentralisation does provide a strong and secure framework for building capacity, it is likely that special efforts to build capability will be required as a new system is put in place.

• **Introduction of necessary structural change.** Implementation of a new or reformed system of decentralisation is likely to require the enactment of laws and regulations, changes to existing procedures of governing and perhaps the creation of new institutions. Other challenging aspects of structural change may include, for example, reconceiving existing institutions so as to serve new purposes and relocating public service agencies around the country. PNG’s experience of implementing the OLPGLLG made in 1995 is instructive in this regard. It required a ‘huge legislative program’ to formally empower provincial and local level governments to meet their new functions and responsibilities. In this, model legislation that could be adopted by subnational governments was of some assistance, but not before the hasty introduction of the new Organic Law gave rise to confusion about the roles of public servants and governments.133

Two further points are particularly important for the implementation of arrangements for decentralisation in the context of PNG:

• **Timing.** Some of the needs of implementation can usefully be anticipated even before changes are formally introduced. This suggests that it is likely to be useful to consider the demands of implementation even while changes are being considered and agreed. Inevitably, however, the task of implementation becomes particularly significant as soon as the new arrangements are approved. A period of transition needs to be carefully planned, to ensure that all necessary aspects of implementation actually occur. The formal transition phase should be long enough to be realistic, but not so long that the impetus and enthusiasm for change is lost. It might be that the changes associated with decentralisation are introduced all at once, or sequentially in a staged approach over time. Whatever the length of the formal transition period, questions of implementation may continue to arise over a longer period, requiring patience in achieving the goals that decentralisation is designed to secure.

• **Accommodation of asymmetry.** The potential for a staged approach to the implementation of new arrangements for decentralisation raises an issue of asymmetry. The point was made earlier that it is normal for the same kinds of arrangements to apply to all governing areas within the same level of government so that, in this sense, decentralisation usually takes place on a symmetrical basis. The current arrangements in PNG, however, already distinguish between cities, urban and rural local level governments in recognition of the differences between them. The point was also made that in practice regions in PNG differ, not only in physical characteristics but in needs and, sometimes, political preferences. As a result, in some systems of decentralisation, the powers and responsibilities of regional areas may deliberately be differentiated, reflecting local conditions or preferences, in ways that are expected to continue over time. Whether this is a feature of decentralisation in the longer term or not, asymmetry may in any event be a useful device during the implementation phase, if some regions adapt, or seem likely to adapt, to new arrangements more quickly than others. While asymmetry sometimes can be controversial, it should not be treated as a reflection on regions that are adapting to the new arrangements more slowly. Rather, it is simply a useful device for building capacity and ensuring that decentralisation delivers intended results.

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133 May (n 10) 142–3.
PNG’s Reformed Decentralization Arrangement: Options for its Entrenchment, Intra-provincial and Intergovernmental Relations

Karl Kössler – Draft, 26 January 2022

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Introduction

When Papua New Guinea embarked on a journey towards decentralization in the wake of its independence 1976, this appears to have occurred in a context quite unfavourable for this endeavour to be successful. After all, German colonization (1884–1914) and subsequent rule by Australia had created a strong legacy of centralization. It seems obvious that such a legacy severely complicates any experiment with a decentralized system of government. This point is demonstrated by the experiences with post-colonial decentralization arrangements in a number of countries in Africa, Asia and the Caribbean such as India, Pakistan, Malaysia, Nigeria, Rhodesia and Nyasaland, as well as the West Indies. Indeed, the repercussions of colonial administration have either hampered the implementation of such arrangements in these countries or have made it even impossible. A second context factor which potentially complicates decentralization in PNG is its coexistence with an agenda of development, as the latter is often perceived as requiring steering and control by a strong national government. Debates in several countries have revolved around inherent tensions between governmental commitments to decentralization, on the one hand, and development, on the other hand, for which Ethiopia is an illustrative case in point.

Despite these challenging context factors, the 1976 PNG Constitution recognized the possible merits of a decentralization of responsibilities and laid out several reasons for that in its Section 2 on National Goals and Directive Principles. With a view to the objective “for all citizens to have an equal opportunity to participate in, and benefit from, the development of our country” the Constitution demands “the creation of political structures that will enable effective, meaningful participation by our people in that life [the political, economic, social, religious and cultural life], and in view of the rich cultural and ethnic diversity of our people for those structures to provide for substantial decentralization of all forms of government activity.” Thus, the rationale behind decentralization appears to be a combination of both ethno-cultural diversity and participatory governance with a view to equality and development. Yet, decentralization in PNG is not seen as a success story. A 2015 report wrapping up an Inquiry into the Organic Law on Provincial and Local Level Government concluded that “the current Organic Law is no longer viable” and that a “new system of decentralisation is therefore imperative”.

Against this background, this study aims to identify insights from global comparative research which the new decentralization arrangement could take into account with a view to three topics, namely its entrenchment, relations within provincial governments and relations between national and provincial governments. The paper is structured as follows. It starts with a comparison of different options for the entrenchment of a decentralization arrangement which depends on the extent to which it is regulated in the constitution or other sources of law (section 2). The resulting rigidity and flexibility both have pros and cons for the policymakers involved and these are pointed out with a view to the ongoing reform process. While entrenchment concerns the legal protection for the initial decentralization arrangement, an equally consequential issue is to provide a solid basis for implementation which crucially depends on the relations between all actors involved. These are key for both adapting the arrangement to changing political, social and economic circumstances and the political resolution of disputes resulting from it. The study therefore argues that intragovernmental relations within subnational entities benefitting from self-governing powers should by based on the concept of “shared autonomy” which requires – for decentralization to benefit all groups concerned – inclusive decision-making and power-sharing within subnational entities (section 3). Moreover, the success of decentralization is obviously determined at least as much by intergovernmental relations between the subnational and national governments. As autonomy always needs to be complemented by effective integration of subnational entities into the country as a whole, an appropriate legal and political framework needs to be set up for both institutions and instruments of intergovernmental relations (section 4). The paper concludes with a summary and concrete recommendations (section 5).

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4 The paper uses the expressions “subnational entity” and “province” interchangeably as general terms designating entities between local governments and the national government.
Entrenchment of the Decentralization Arrangement

A fundamental question for political decisionmakers to answer is the degree of deconstitutionalization of a new decentralization arrangement which depends on the sources of law that shall regulate its various aspects. Not all of these can be foreseen and enshrined in constitutional law nor should they be because some things are better handled in a more flexible manner. Indeed, decentralization may be regulated in the constitution and in other sources of law such as ordinary or special legislation.

Special laws are usually distinguished from ordinary laws through particular features regarding the legislative procedure (e.g. qualified majorities), its application to only one subnational entity or enhanced legal protection. Comparative research provides several instructive examples for such legislation.

A case in point are the autonomy statutes Spain's regions, the so-called autonomous communities. These are acts which are first bilaterally negotiated between each region and the national government and then approved by both the respective regional legislature and the Spanish parliament (Article 147(3) of Constitution)\(^6\). As the latter enacts the autonomy statutes in the form of national organic laws, these are different from ordinary legislation. In terms of content, they regulate all aspects of the decentralization arrangement that are not expressly stipulated in the Spanish Constitution. They must, for example, determine – within national constitutional limits – the region's institutional organisation and responsibilities (Article 147(1-2)) and they can have some additional contents like regional symbols. In terms of form, the autonomy statutes have as special legislation a distinct rank in the legal hierarchy with the Constitutional Court recognizing them as being superior to all regional and national law except for the Spanish Constitution.

Another relevant case where the national constitution limits itself to the basic framework for the decentralization of responsibilities is that of the special regions of Italy. There are five of them and they are distinguished from the 15 ordinary regions through several characteristics. But most important are for our topic of entrenchment the rule that the adoption and any amendment of their autonomy statutes must be bilaterally negotiated with the national government, as well as their constitutional rank.\(^7\) This means that ordinary national laws cannot interfere with the decentralization arrangement. But while this applies to all regions in Spain, it only applies in Italy – in an asymmetrical manner – to the five special regions. The autonomy statutes of the ordinary regions do not have this rank and can be changed via the normal procedure of constitutional amendment.

In contrast to both these examples, deconstitutionalization does not necessarily involve in all cases bilaterally negotiated law. Decentralization may also be regulated by special legislation that is adopted by the national parliament and applies to all entities but is “special” because it requires the consent of different regional or linguistic groupings in order to ensure inclusiveness. In Belgium, for instance, the members of the national parliament are subdivided into linguistic groups (Article 43(1) of the Constitution) and special laws require not only an overall two-thirds majority of the votes cast in each chamber but also a majority in both the Dutch-speaking and French-speaking caucus (Article 4(3)). Such special laws determine nearly all aspects of decentralization, including the responsibilities of Belgium’s regions and communities, their financial arrangements and their autonomous institutions, and have therefore come to be extremely important.

The three above-mentioned cases show that a decentralization arrangement may be regulated in a number of legal sources, not only the national constitution but also special legislation (with or without bilateralism being involved) or ordinary legislation. Several points are important to bear in mind with a view to the entrenchment of decentralization in PNG.

First, if deconstitutionalization does involve bilateral procedures, this can be the case for all subnational entities (like in Spain) or only for some of them (like in Italy) and thus typically entails different degrees of asymmetry, meaning that some provinces enjoy a higher degree of decentralization than others. Such asymmetry may be justifiable either because regions differ in terms of how many competences they demand or how many their individual financial and administrative capacities enable them to carry out efficiently in line with the principle of subsidiarity. In this light, the issues of bilateralism and asymmetry might be of relevance for the new decentralization arrangement of PNG. It is important to point out that these two issues are obviously interconnected but not in an automatic way. Indeed, both Spain and Italy have seen – despite

\(^{6}\) The procedure differs with regard to the autonomous communities and requires in four of them as an additional step even the consent of the regional population in a mandatory referendum.

bilateral decentralization arrangements – repeated waves of resymmetrization so that asymmetry cannot be considered a one-way street.\(^1\) Moreover, especially the Italian example teaches us that, even if bilateral procedures evidently tend to breed asymmetry, this legal dimension is only one factor determining how asymmetrical decentralization is in practice. Another one is financial and administrative capacity. This is the reason why today some wealthier ordinary regions in Northern Italy de facto exercise more responsibilities than some poorer special regions in Southern Italy even though the latter have been transferred, from a legal perspective, more potential responsibilities.

Secondly, deconstitutionalization must not equally concern all aspects of decentralization. This is to say that it might make sense to entrench some elements in national constitutional law and deal with other ones, normally in a more flexible manner, in other sources of law. Interestingly, the allocation of regional responsibilities in Spain, undoubtedly a key aspect of decentralization, is regulated in the above-mentioned autonomy statutes. In fact, the autonomous communities do not have any powers directly from the national constitution. Instead, the latter only refers to the statutes (Article 147(1-2)) and otherwise does nothing more than offering certain subject matters that they may take over in these special laws after bilateral negotiations (Articles 148-149). Another obvious key aspect is the financing of decentralization because just the formal legal authority to carry out certain functions is meaningless if provinces lack the resources to perform them at least according to some minimum standards. Put differently, financial means shall be commensurate with responsibilities. In South Africa funding arrangements for the country’s provinces were seen as requiring strong legal guarantees so that large parts of them were regulated rather extensively in the constitution, that is in a long chapter dedicated to “Finance” (Sections 213-230A). This does not mean, however, that there is no deconstitutionalization. In fact, as these many sections often merely provide basic principles, a considerable part of the financial aspects of decentralization are actually determined – within constitutional limits – in ordinary national laws. Inevitably, as these pieces of legislation (e.g. the 1999 Public Finance Management Act regarding provincial budgeting or the annual Division of Revenue Act) have gained considerable, also the power of the national parliament has increased vis-à-vis that of the provinces.\(^2\)

Thirdly, the decision whether major parts of decentralization should be entrenched in national constitutional law or regulated in other legal sources typically implies more rigidity in the former case and more flexibility in the latter. Increased rigidity evidently benefits those political actors, typically the weaker ones, who are interested in maximum legal guarantees for the arrangement. By contrast, the greater flexibility of regulating significant parts of a decentralization arrangement in sources of law below the constitutional level plays into the hands of actors who are predominant in ordinary politics and thus able to safeguard their interests beyond the constitution-making process, which is typically the national government. But it also has the objective advantage of enabling timely and uncomplicated adjustments of the new arrangement to changes in the political, social and economic context. While national constitutional law is normally most rigid and thus offers the strongest legal guarantees against unilateral change, this is not necessarily so in all instances. In fact, Belgium's special laws regulating decentralization are more difficult to amend than the constitution as a result of the above-mentioned veto power of both the Dutch and French language group in the national parliament. A constitutional amendment, by contrast, „only“ requires the approval of both chambers before and after elections (Article 195). Paradoxically, deconstitutionalization thus arguably provides in this case rather stronger legal guarantees than weaker ones.

**Shared Autonomy: How to Organize Intragovernmental Relations?**

It is beyond doubt that PNG is characterized by immense ethno-cultural diversity and the above-mentioned Section 2 of the Constitution implies that this diversity is not only the factual context for the decentralization process but also one of the rationales behind it. This certainly makes sense in a country where distinct cultural and regional identities abound and which is – with nearly 850 languages spoken – one of the most diverse places on earth.

If decentralization takes place in countries featuring considerable diversity, this leads inevitably to the question of how to address the issue of “internal minorities”\(^3\) or “intra-unit minorities”\(^4\) (with provinces being the “unit” meant here), to which

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comparative research has recently paid increasing attention. As territories in such countries are far from being homogeneous in ethno-cultural terms, any decentralization of responsibilities, which transforms them into autonomous territories, does not only empower the dominant majority group in this province. It often also entails the risk of marginalizing the “internal minorities”. Majorities in autonomous territories in these cases tend to apply the somewhat schizophrenic strategy to demand the decentralization of powers from the national government but at the same time refuse to share power with provincial minorities.

Concerning the relationship between provincial majorities and decentralization, three models may be distinguished. In a first one the autonomy of the territory granted new responsibilities is perceived, for geographical or historical reasons, exclusively as an instrument for protecting the demographically strongest group. This often holds true for islands such as the Åland islands (vis-a-vis Finland) or New Caledonia (vis-a-vis France). But the rationale also applies, for instance, to the province of Quebec within Canada whose identity is very much framed in ethno-cultural and above all linguistic terms, even if French-speakers also settle in other Canadian provinces and Quebec is home to many non-French-speakers. Secondly, in some other cases ethno-cultural and territorial elements coexist within the decentralization arrangement so that the heterogeneity of the provincial population is taken into account at least to some extent (e.g. Belgium). Often the ethno-cultural elements have only over time come to be complemented by the territorial ones (e.g. South Tyrol within Italy). In a third set of cases, protecting one group was key, historically, for the very project of decentralization, while the latter’s legal design then much more emphasized territorial elements. This may then foster an inclusive territorial identity (e.g. Scotland).

While there may therefore be different types of relationships between the provincial majority and decentralization, the first above-mentioned type in particular begs the risk of facilitating a “sons of the soil politics” through which this majority dominates “its” territory and marginalizes “internal minorities”. If one group perceives itself as “owning” the autonomous territory and, as a consequence, territorially-based autonomous power, decentralization may prepare the ground for such marginalization. In such cases, the majority would tell “internal minorities”, as a politician and scholar already noted a century ago, the following: “If you live in my territory, you are subject to my domination, my law, and my language!” For this to be avoided it is important to not understand decentralization as benefitting exclusively one group but rather the whole territory and thus its entire population.

In practice, the latter can be achieved by applying the concept of “shared autonomy” which PNG’s current reform of decentralization might want to consider. Unlike the above-mentioned “hegemonic autonomy” approach benefitting just one group, this concept implies that “internal minorities” participate in decentralized power so that they are not constantly outnumbered under the rules of majoritarian democracy. Intra-provincial power-haring should therefore complement majority rule to a certain extent whereby the concrete extent is obviously something to be determined by policymakers. Due to the recent heyday of power-sharing arrangements in constitutional practice and, as a consequence, in research, policymakers can indeed rely on experiences from a number of countries. Indeed, there has been a major recent trend from Northern Ireland in 1998 to Mindanao in 2012 to apply power-sharing, albeit with very different degrees success, to subnational entities and not, as traditionally, to the national government. Such power-sharing at the subnational level has been a cornerstone, as in research, policymakers can indeed rely on experiences from a number of countries. Indeed, there has been a major recent trend from Northern Ireland in 1998 to Mindanao in 2012 to apply power-sharing, albeit with very different degrees success, to subnational entities and not, as traditionally, to the national government. Such power-sharing at the subnational level has been a cornerstone, as in research, policymakers can indeed rely on experiences from a number of countries. Indeed, there has been a major recent trend from Northern Ireland in 1998 to Mindanao in 2012 to apply power-sharing, albeit with very different degrees success, to subnational entities and not, as traditionally, to the national government. Such power-sharing at the subnational level has been a cornerstone, as in research, policymakers can indeed rely on experiences from a number of countries. Indeed, there has been a major recent trend from Northern Ireland in 1998 to Mindanao in 2012 to apply power-sharing, albeit with very different degrees success, to subnational entities and not, as traditionally, to the national government. Such power-sharing at the subnational level has been a cornerstone, as in research, policymakers can indeed rely on experiences from a number of countries. Indeed, there has been a major recent trend from Northern Ireland in 1998 to Mindanao in 2012 to apply power-sharing, albeit with very different degrees success, to subnational entities and not, as traditionally, to the national government. Such power-sharing at the subnational level has been a cornerstone, as in research, policymakers can indeed rely on experiences from a number of countries. Indeed, there has been a major recent trend from Northern Ireland in 1998 to Mindanao in 2012 to apply power-sharing, albeit with very different degrees success, to subnational entities and not, as traditionally, to the national government.

First, it must be emphasized that even if the logic of such power-sharing is diametrically opposed to that of majoritarian democracy, it does not fully supplant but only supplement majority decision-making in certain areas. These areas should

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10 For an overview of many of these cases see Stefan Wolff, "Complex Power-sharing and the Centrality of Territorial Self-governance in Contemporary Conflict Settlements" (2009) 8(1) Ethnopolitics 27-45.
be those of vital interest for “internal minorities” concerning which being outnumbered has the most adverse impact on them. Fully supplanting majoritarian democracy with mechanisms of power-sharing would evidently immensely decrease efficiency of decision-making on decentralized matters. Therefore, a balance needs to be struck.

Secondly, legal guarantees for intra-provincial power-sharing differ considerably. It is often formally entrenched in domestic law (constitutional and/or ordinary law) and sometimes additionally enjoys from some sort of international guarantees, however weak they sometimes may be (e.g. the 1998 British-Irish treaty concerning Northern Ireland in addition to Westminster’s Northern Ireland Act and the multi-party agreement by most of Northern Ireland’s political parties). Moreover, there are also rare cases of informal power-sharing without any legal guarantees, a case in point being the “magic formula” for dividing the seven seats in the Swiss cabinet between the four ruling parties. This, however, is a specific case where a rule is based on political tradition of consensus-oriented decision-making, while any attempt to newly introduce power-sharing in a country without such a tradition would probably necessitate its formal legal entrenchment.

Thirdly, instruments of intra-provincial power-sharing can relate to the legislative and/or executive branch of the decentralized government. At this point, it is important to keep in mind that PNG abolished elected provincial assemblies in 1995 and, as a consequence, also replaced premiers by governors, a position held by the winner of the province-wide seat in the elections to the national parliament who at the same time also acts as MP. Therefore, some of the power-sharing instruments presented below would either benefit from or even require a reestablishment of elected provincial legislatures in the context of the current reform of decentralization.

As for the legislative branch, provincial law-making on decentralized matters may occur in line with the concept of “shared autonomy” through different instruments. But special voting procedures seem more relevant than others such as reserved seats for provincial minorities in parliament or their inclusion regarding specific parliamentary functions like the speaker and chairs of committees. This is because such procedures may give these potentially marginalized groups beyond mere representation also effective power. Voting procedures in the provincial legislature on some selected decentralized matters may require at least qualified majorities but they may also grant representatives of “internal minorities” some sort of veto power. While their objection to a bill has sometimes only suspensive effect, they are in other cases real veto players in the classical sense as “actors whose approval is required to alter the status quo.” From a political perspective it is important to stress that veto rights do not only have an impact when members of the legislatures actually use them but also when they merely threaten to do so. While they may indeed entice the provincial majority to enter in negotiations and generally have a more compromise-oriented approach, they may also be misused by provincial minorities for obstructionism and sabotage efficient parliamentary decision-making. This is why veto powers are in any power-sharing arrangement an “ultimate weapon” to be used only for the protection of vital interests. For policymakers one crucial question is therefore how easy it shall be to invoke a veto procedure. This depends on the definition of the parliamentary groups empowered to initiate this procedure and on the conditions for it to be initiated. In the Northern Ireland Assembly, for instance, all members must designate themselves at the first session as “Unionist”, “Nationalist” or “Other” (Section 3(7) of the Standing Orders). In principle, vital interests as conditions for the veto procedure may then be defined either directly in written law (rigid content element) or by a certain threshold of support in parliament (flexible numerical element). In the case of the Northern Ireland Assembly there are both options, as several issues are pre-defined as requiring cross-community support from both Nationalists and Unionists in written law (the 1998 Northern Ireland Act and the Standing Orders). Beyond that, however, 30 out of the 108 assembly members can invoke the cross-community support requirement for any other matter by signing a “petition of concern” (Section 42(1) of the Northern Ireland Act). This entails a (quasi-)veto procedure, as approval of the bill then requires either an overall majority of votes plus a majority of both Nationalists and Unionists (parallel consent) or an overall majority of 60% of votes plus 40% of both designations (weighted majority) (Section 4(5)(a-b) of the Northern Ireland Act). While a failure to achieve one of these thresholds means the defeat of the bill, special voting procedures in other cases have post-veto mechanisms to break the deadlock. These may include a formal negotiation commission to reconcile the different views (e.g. in the autonomous entities of Bosnia and Herzegovina) or the possibility for a language group within the legislature to bring a law, which was adopted against its will, before the Constitutional Court (e.g. Article 56 of the autonomy

4These issues are, for instance, changes to autonomous powers of Northern Ireland, the determination of the number of Ministers and their portfolios, the exclusion of a Minister from holding office, the decision about the draft budget, the election of Speaker and Deputy Speakers, as well as the adoption and amendment of the Standing Orders.
Comparative evidence also provides regarding the executive branch numerous options for intra-provincial power-sharing, among them examples of inclusive cabinet composition which reflects the diversity of groups in the territory. While proportional representation of groups in provincial public administration can be another important tool, my focus here is on the cabinet because it usually dominates – of course with involvement of higher-level officials – the process of policymaking (e.g. by submitting government bills to parliament and adopting regulations amounting to laws in a material sense). Interestingly, a global comparison suggests that power-sharing regarding cabinet composition is often linked to legislative power-sharing. Cabinet diversity in both Northern Ireland and South Tyrol, for instance, is strengthened by what may be called "two-step proportional representation". An inclusive electoral system first ensures such representation of groups in the legislature whose composition then forms the basis for a diverse cabinet composition including the different language groups (in South Tyrol) or the political parties representing Nationalists and Unionists (in Northern Ireland). While cabinet composition is in these cases based on proportionality, power-sharing institutions can also be based on parity with each group having the same number of representatives, something rather used for smaller institutions (e.g. the three-person presidency instead of a single president in Bosnia and Herzegovina).

Policymakers should contemplate intra-provincial power-sharing in its legislative and/or executive dimensions and determine the concrete procedures based on the above-mentioned examples, as well as their scope of application with regard to specific policy fields. Quite evidently, sharing within the provinces the exercise of decentralized power through these tools is not the only precept that matters. As some tools such as special voting procedures in provincial legislatures could also have adverse effects in terms of slowing down decision-making or enabling obstructionism, the greater inclusiveness that comes with power-sharing always needs to be balanced and traded off against other precepts like efficiency and effectiveness of decision-making.

Effective Integration: How to Organize Intergovernmental Relations?

There are several reasons why intergovernmental relations (IGR) are generally considered essential for any decentralization arrangement and are also empirically of increasing importance. First, for such an arrangement to work it is not sufficient, as outlined in the two previous sections, to adequately entrench it and ensure that decentralized power is exercised in line with the concept of “shared autonomy”. It is also essential that autonomy for PNG’s provinces is complemented by their integration in the country as a whole. This is important to foster country-wide cohesion which requires a common public sphere, inter-provincial solidarity and that the general national interest is not continuously disregarded by an exclusive focus on provincial interests. Secondly, decentralization arrangements are not set in stone but need to be adapted to changing social, economic and political circumstances. IGR provide a flexible way for doing exactly that. Thirdly, the political management of conflicts arising from decentralization require amicable and effective IGR.

Besides these reasons for their importance, policymakers involved in a reform process should also bear in mind that there are two key elements of IGR, namely the institutions bringing together representatives from different governments (e.g. permanent or ad hoc council) and the instruments that may be used in their relations with a view to fostering cooperation (e.g. intergovernmental agreements). Importantly, these two elements may be related to different types of IGR.

First, intergovernmental relations have two dimensions, namely the vertical one between the provinces and the national government and the horizontal one between the provinces. This means that both institutions and instruments of IGR may be in place for each of these dimensions and actually should ideally cover both of them. The value of vertical IGR is usually more easily acknowledged due to their obvious and direct nexus with a process of decentralizing responsibilities from the national government to provinces. By contrast, that of the horizontal dimension often remains underestimated and certainly deserves more attention. This is, for example, because joint institutions or agreements are useful for carrying out decentralized responsibilities that often transcend the boundaries of two or more provinces such as infrastructure projects, the management of natural resources or the provision of public services. Apart from the management of these cross-boundary issues, horizontal IGR also occur between regional groupings of provinces or even all of them with a view to joint policymaking more broadly.

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“among equal partners” without the need to resort to the national government with its potentially centralizing impact. One example for the latter is effective inter-provincial cooperation in Canada regarding education so that intervention of Ottawa in this field was obviated.1

This already points to a second typology of IGR whose criterion is the **number of governments involved**. In fact, both institutions and instruments may be bilateral, multilateral or even omnilateral, thus including all governments in the country. The preference in this regard typically depends on something already discussed in this study, namely whether a decentralization arrangement aims at transferring the same powers to all provinces or more to some than to others.2 Indeed, a symmetrical distribution of powers tends to go together with multilateral IGR, while asymmetry (also) requires bilateral institutions and instruments. It is no coincidence, for example, in view of Spain’s above-mentioned reliance on bilateralism for the adoption and amendment of the regions’ autonomy statutes that “multilateral networks as opposed to bilateral relations between Madrid and the communities are still relatively underdeveloped”.3

Thirdly, both institutions and instruments may relate to **different phases of the policy process**. They may either be established for the purpose of cooperation in policymaking or coordination of policy-administration. Thereby it should be borne in mind that IGR in these two phases are interconnected. This is to say that a decision that is shared and supported by the relevant stakeholders at the stage of policymaking will normally also facilitate smooth policy-administration.

Taking now a closer look at concrete examples of the two elements of IGR, namely institutions and instruments, particular emphasis should be placed on what can be learned from other countries with decentralization arrangements regarding summit intergovernmental councils4 and intergovernmental agreements.5

As far as **intergovernmental councils** are concerned, there is indeed a myriad of such institutions at various levels, as they may bring together civil servants, ministers in charge of the same portfolio or – at the summit level – the heads of government. All these have different foci with higher-level institutions obviously dealing less with details so that the various formats of councils are not mutually exclusive but should ideally complement each other. Irrespective of the level of participants, all these formats have in common that they bring together representatives from the executive branch. This has been considered quite natural for parliamentary systems of government where this branch tends to dominate over the legislative branch (unlike in presidential systems such as the United States) and thus has greater authority to make binding commitments in negotiations in these councils.6 There are rather rare examples of institutions which link legislatures such as the South African Speakers’ Forum which is not only given credit for sharing information but also for coordinating legislative action. However, as councils composed of executives are from a comparative perspective clearly more prevalent7 and elected provincial legislatures do not currently exist in PNG, our study focuses on these, especially on summit intergovernmental councils.

If PNG contemplated the establishment of an institution composed of the prime minister and provincial governors, comparative evidence on **summit intergovernmental councils** raises two main questions, namely their degree of formalization and their vertical and/or horizontal character. As for the first issue, such councils have as a matter of fact only rarely a constitutional basis. India’s Inter-State Council is one of the few exceptions but it is actually often sidelined by the de facto more important National Development Council which is not mentioned in the constitution.8 A vast majority of summit intergovernmental councils is characterized by a low degree of formalization: the Joint Ministerial Committee (JMC) in the United Kingdom is based on a non-binding Memorandum of Understanding between Westminster and the devolved governments, the regulation of Spain’s Conference of Presidents on a multi-party agreement and the First Ministers’ Meeting in Canada simply on a long

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1 Jennifer Wallner, Learning to School: Federalism and Public Schooling in Canada (Toronto, University of Toronto Press, 2014).
tradition that can be traced back to the Charlottetown Conference of 1864. What do all these experiences imply for PNG? To be sure, little formalization does not necessarily mean that a council is rendered automatically ineffective. The above-mentioned examples of the formalized but relatively unimportant Inter-State Council in India and of Canada’s informal First Ministers’ Meetings, which were considered at least until the early 2000 as quite effective, prove this point.

Yet, one point is clear. A low degree of formalization enables the national government either to dominate the council or to sidestep it and the latter is exactly what occurred with the Canadian First Ministers’ Meetings after the early 2000s. Their informal character entailed that then-Prime Minister Stephen Harper (2006-2015), quite disinterested in this institution, could simply choose to only convene it twice in an entire decade. Likewise, the United Kingdom’s JMC also had a period in which it was not convened for years (2003-07) and even the more formalized Inter-State Council has not been called frequently because it is only mentioned in the Indian Constitution but not regulated in terms of how often it has to meet. Similar to others, this council has therefore been rightfully characterized as an “episodic body whose functional dynamism depends on the temperament of the incumbent government” and otherwise “remain in hibernation”. Almost as bad as councils that are not convened at all are those being entirely dominated by the national government. Indeed, they are sometimes only used as information conduit without real engagement in debate and exchange with provincial governments. Even regarding the periods, unlike the Harper premiership, when the Canadian First Ministers’ Meetings took place quite regularly, the provinces have often lamented the unilateral agenda-setting by the national government with their own provincial priorities and initiatives being “at the bottom” of the agenda or not included at all. Similarly, the Council of Australian Governments (COAG) is seen as being dominated by the agenda of the prime minister. PNG should avoid both the marginalization of a summit intergovernmental council and national government dominance by regulating the inner workings regarding such issues as the frequency of meetings, agenda-setting, etc. more clearly and extensively in constitutional and/or ordinary law. Several more recently established decentralization arrangements point in this direction for which Chapter 3 of the South African Constitution and the country’s Intergovernmental Relations Framework Act of 2005 is a notable example. Importantly, besides addressing the twin problems of a marginalized or dominated council, formalization also has a deeper meaning from the perspective of provincial governments. In fact, the demand by the Scottish National Party in 2007 to restore the formal JMC instead of only relying on informal mechanisms was very much about “ensuring that IGR was underpinned by the principle of parity of esteem”. This principle is important for relations between the national and provincial governments.

A second question is then for summit intergovernmental councils whether they should only be in place in the vertical dimension or also horizontally between provincial heads of government to the exclusion of the national one. Without doubt the last three decades have witnessed a trend towards the establishment of such horizontal councils. Cases in point are the creation of the Conference of the Cantonal Governments in Switzerland (1993), the formalisation in Canada of earlier interprovincial meetings by establishing in Council of the Federation (2003) and, modelled on it, the Council for the Australian Federation (2006). Yet, the stories and experiences that these countries tell are quite different, as the real impact of these councils has depended, as with all intergovernmental institutions, on the extent to which they have actually been used and thus filled with life. The strongest of these institutions is probably the Conference of the Cantonal Governments in Switzerland where this is actually the main forum, which is only supplemented by a “federal dialogue” bringing together this conference with the national government. The high degree of institutionalization of horizontal cooperation in Switzerland is probably due, among other, to the small size of the cantons and their common interest to fend off centralisation. But such intensive collaboration may also be advisable for countries like PNG where provinces would probably benefit from

pooling capacities regarding at least some of the decentralized responsibilities. An important lesson to be learned from the Swiss example is that a horizontal intergovernmental council may be beneficial not only for joint service provision but also for finding a common stand ahead of negotiations with the national government. Moreover, Switzerland shows that explicit constitutional empowerment of the cantons to establish common institutions (Article 48(1)) may be useful and that the concentration of horizontal cooperation structures in a single compound in the capital city facilitates exchange in practice. This is precisely what the House of the Cantons in Bern, newly established in 2008, does.

As far as instruments of IGR are concerned, the various forms of intergovernmental agreements deserve particular attention. They are not only key to further elaborate on the details of a decentralization arrangement but also serve, as reliable sources in black and white, as important reference points for the resolution of disputes. Moreover, horizontal agreements between provinces may be useful to regulate joint service provision which obviously makes a lot of sense if single provinces have weak capacities and can thus benefit from economies of scale. For all these reasons it is therefore hardly surprising that such accords are in many countries clearly of increasing significance. From a practical point of view, it is key for a reform of decentralization to decide what should be the legal basis for intergovernmental agreements and what should be their legal effects.

As for the legal basis, there is again a considerable variety of approaches. Some constitutions such as Canada’s remain completely silent on intergovernmental agreements, while the Spanish Constitution, for instance, regulates legally binding accords (convenios) between the autonomous communities for joint service provision and also requires them to be approved by the national parliament (Article 145(2)). If there is neither a basis for intergovernmental agreements in written law nor in the case law of a country’s apex court, they are left to the political sphere with all the uncertainty concerning the scope and procedure of application that this entails. Again, as with the summit intergovernmental councils mentioned above a lack of formalization does not automatically mean a lack of importance for which Canada’s extensive and crucial intergovernmental procedure of application that this entails. Again, as with the summit intergovernmental councils mentioned above a lack of formalization does not automatically mean a lack of importance for which Canada’s extensive and crucial intergovernmental procedures of application that this entails. Again, as with the summit intergovernmental councils mentioned above a lack of formalization does not automatically mean a lack of importance for which Canada’s extensive and crucial intergovernmental procedure of application that this entails.

A second main issue concerns the concrete legal effects of agreements. If such accords between government executives at the national and subnational levels are intended to be not only politically relevant but legally binding, this is typically achieved in one of two ways, that is through legislative ratification or legislative implementation. In the first case, the mere act of ratification provides the accord itself with the force of law. In the second case, the legislatures of all governments involved implement the content of the agreement by passing parallel mirror legislation with only this legislation and not the accord itself acquiring legal effect. The latter pattern is typical of most common law systems like PNG. Of course, not all agreements must gain legal force, as numerous forms of gentlemen’s agreements among politicians or administrative accords demonstrate. Some countries like Spain use different notions for different kinds of agreements and usefully combine those that are legally binding (convenios) with others entailing merely political commitments (acuerdos).

Conclusions and Recommendations

With a view to the current reform of decentralization in PNG this study has laid out what insights from global comparative research might be relevant concerning three interrelated topics, namely entrenchment, intra-provincial and intergovernmental relations. Any arrangement of transferring responsibilities to provinces needs to be entrenched in order to be legally protected and this can occur through a variety of legal sources, including constitutional law, ordinary legislation and special legislation. For decentralization to be widely accepted and successfully implemented a balance is important between autonomy of the provinces and their integration in the country as a whole. As for the first of these two elements, this study has argued that PNG’s immense ethno-cultural diversity seems to make it advisable that decentralized responsibilities are exercised in a manner which includes and benefits all groups within a province in line with the concept of “shared autonomy”. Regarding


the second element, comparative evidence suggests that effective integration of the provinces requires reformers to put in place both institutions and instruments of intergovernmental relations.

More specifically, the previous sections enable us to provide the following six recommendations to policymakers involved in the process of reforming PNG's decentralization arrangement:

• If the reform settles for entrenching parts of this arrangement through bilateral procedures (see the examples of Spain and Italy), this typically entails different degrees of asymmetry with some provinces enjoying a higher degree of decentralization than others. Such asymmetry may be advisable not only if provinces differ regarding their demands of responsibilities but also concerning their individual financial and administrative capacity to perform in an efficient way.

• With regard to the entrenchment of decentralization it is important to strike a balance between the rigidity and enhanced legal protection which is usually provided by constitutional and the greater flexibility that regulation in ordinary and special legislation normally affords. This balance of constitutionalizing the more important aspects and addressing less significant aspects in other legal sources needs to be acceptable to all parties involved, both the provinces and national government, and to needs to be found regarding each single issue of decentralization (see the examples of regional responsibilities in Spain and finances in South Africa).

• For decentralization processes in ethno-culturally diverse countries such as PNG intra-provincial power-sharing is not only important for conflict resolution but also for conflict prevention. Therefore, it seems recommendable in line with the concept of “shared autonomy” that provincial executives are inclusive through representatives from different groups (see the examples of South Tyrol, Northern Ireland and Bosnia-Herzegovina). If the current reform process went as far as re-establishing elected provincial assemblies in whatever form, it might also contemplate special voting procedures in these legislatures, albeit always limited to decentralized matters affecting vital interests of provincial minority groups and with due respect for decision-making that is not only inclusive but also efficient and effective (see the example of Northern Ireland).

• In terms of intergovernmental relations, both councils and intergovernmental agreements should pertain not only to their vertical dimension including the national government but also to the horizontal dimension between the provinces. Horizontal mechanisms are often underestimated but crucial for jointly carrying out decentralized responsibilities which transcend boundaries of neighbouring provinces, for inter-provincial cooperation more broadly by pooling their capacities and for them to find a common stand vis-à-vis the national government. Physical concentration of these mechanisms in a single compound in the capital city might facilitates exchange in practice (see the example of Switzerland).

• The decentralization reform might want to establish various formats of intergovernmental councils (involving civil servants, ministers in charge of the same portfolio and heads of government), as these may complement each other by dealing with issues at different levels of detail and regarding the different phases of policymaking and subsequent policy-administration. In order to avoid that these councils are marginalized as episodic bodies or dominated exclusively by the national government's agenda, their inner workings regarding the frequency of meetings, agenda-setting, etc. should be clearly formalized in law (see the example of South Africa).

• A similar approach of legal formalization and combining various formats should be adopted for intergovernmental agreements. A solid legal basis seems advisable for a country which a short history of decentralization which cannot rely, unlike Canada, solely on a long-standing political tradition. Combining different types of agreements, some being legally binding and others merely political commitments, might be useful because they may be suitable for different issues in intergovernmental relations (see the example of Spain).
Historical Perspective of Decentralization of Government in PNG.

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Since 2012 had been Teaching Provincial and Local Level Government and Administration Law at The University of Papua New Guinea.
Introduction

Provincial Governments in PNG make up the second of the three levels of government in what the Constitutional Planning Committee (CPC) in 1974 described as the “unitary system of government”. It was considered the suitable form of government to usher in a new “united nation” comprising of many pre-existing independent tribal nations.

The Paper provides an historical perspective of the “decentralization project” as it unfolded immediately before Independence (1972 - 1975), soon after Independence (1975 – 1995) and continuously through to this day (from 1995). The CPC accepted that Papua and New Guinea had “the most centralized and bureaucratic administrative system anywhere in the region”. And on independence, the centralized system should be replaced by a decentralized form of government government.

The objective of the paper is to provide the background context to assist in informing the current discussions on Autonomy and Decentralization.

Background

Decentralization has been defined as provincial government (1977) and provincial governments and local level governments (since 1995). It is now forty-eight (48) years from the time of tabling the Final Report of the CPC to the House of Assembly in 1974 and fifty (50) years since the establishment of the bi-partisan CPC by the House of Assembly, after the Territory-wide general election in 1972.

Pangu Pati with its “Independence Now” slogan formed the embryonic coalition government of the Territory. Michael Somare, the Leader of Pangu Pati, became the first and only Chief Minister. The House of Assembly appointed the CPC Chaired by the Chief Minister and Deputy Chairman Fr John Momis to report on and draft the Independence Constitution.

Self-Government was attained on the 1st December of 1973. The term of the House of Assembly was extended from 4 years to 5 years. The CPC completed its Report in 1974 and the Constituent Assembly, comprising of the House of Assembly accepted the Report.

Unitary System of Government

PNG, the land of a thousand tribes was moulded into a nation by a highly centralized and bureaucratic colonial administration. There was uncertainty on whether a new independent nation would last. The CPC Report recommended a unitary system of government. The unitary system of government involves the power of the central government being shared with and exercised by other levels of government.

Constitutional Entrenchment versus an Act of Parliament

The CPC recommended the entrenchment of provincial governments in the Constitution. The Constituent Assembly preferred it be provided for in an Ordinary Act of Parliament. The Draft Constitution before the Constituent Assembly included the provisions on provincial government and local level government. The Constitution approved by the Constituent Assembly was without the provision on provincial government and local government.. The Independence Constitution was drafted and approved on 25th August 1975, just under 1 month before Independence on 16th September 1975.

Tension emerged when the Constitution was approved without inclusion of provisions on provincial government. Bougainville leaders spearheaded by John Momis, disappointed that provisions for self-governance through a decentralized government arrangement was not included in the constitution, declared unilateral Independence on 1st September 1975. Papua Besena declared independence for Papua just few days before Independence.

Decentralisation

In order to appease the Bougainville leaders, the constitution of PNG was amended for the first time in 1976 and PART VIA, Sections 187A to 187J was inserted. It provided the constitutional basis for Provincial Governments and Local Level Governments to be established. The system of provincial government was given form and structure with the enactment of the Organic Law on Provincial Government and the Provincial Government Administration Act and related enabling legislations, by the National Parliament.

The main features of the system of provincial government under the 1976 Organic Law of Provincial Government included:
- each province having its own provincial government constitution,
- an elected provincial government assembly chaired by a speaker elected from among the elected members to the provincial assembly and
- provincial executive council led by the premier elected mostly by the provincial assembly but also directly elected by the people depending on the provincial constitution.
- Members of the Provincial Executive Council were known as Provincial Ministers.
- The Provincial Government was served by the Provincial Government Secretariat led by the Provincial Secretary.
- The Provincial Administration was led by the Administrative Secretary.

System of Provincial Governments and Local-level Governments

From 1995 - In 1995, the system of provincial government was replaced by that of provincial governments and local-level governments. The Constitutional Development Commission comprised of Members of Parliament concluded that the previous system was not effective in delivering services and too costly. The main features included:
- There cannot be a provincial government in a province without the presence first of national government and local level governments.
- Establishment of a common local level government system as the third level of government whose President became members of the provincial governments assemblies.
- Members of Parliament from respective provinces became key members of the provincial government assemblies.
- The Provincial Member became Governor of the province, Chairman of the Provincial Assembly, Chairman of the Provincial Executive Council, Chairman of the Joint Provincial Planning and Budget Priorities Committee.
- All Open Members became members of the provincial assembly, members of the provincial assembly committees, chairmen of Joint District Planning and Budget Priorities Committees later to become District Development Authority and members of Joint Provincial Planning and Budget Priorities Committee.
- Heads of Local Level Governments in each Open Electorate became members of the Provincial Government Assemblies together with appointed members and members of the respective DDA.

Prevailing Dissatisfaction

In 2014, the National Parliament amended the Organic Law on Provincial Governments and Local Level Governments by repealing provisions on JDPBPC and replacing them with District Development Authority. The Member of Parliament is the Chair comprising of LLG Presidents and three nominated members who decide on projects and district service improvement activities. The National Parliament authorized the Constitutional and Law Reform Commission (CLRC) to review the Organic Law on Provincial Governments and Local Level Governments.

The CLRC in 2015 recommended the repeal of the current Organic Law to be replaced by a Proposed Organic on Decentralization. The proposed changes would entrench DDA as a level of government without describing it as such, confine Provincial Members of Parliament as Governors and not members of the National Parliament, Open Members to be Chairman of DDAs but removed as Members of the respective Provincial Assemblies. Local Level Governments would be abolished and the constituencies of the Local Level Governments become the constituencies of the Provincial Government Assemblies. The Parliament to date has not dealt with the proposed change.

Conclusion

Central Dominance and Need for Effective Implementation

The performance of provincial governments is determined by delivery of basic services. The Members of Parliament through the Provincial Governments (22), District Development Authority (89) and JPPBPC (22) provide the leadership and oversee the system of government throughout the country. Local Level Governments have been denied their roles due to inadequate to nil funding for development purposes. What seems to be obvious is that project decentralization has increased greater central control. Provincial governments and DDA dominated by members of Parliament have become dominant players in the systems of government in PNG. PNG has systems, policies, funding, personnel but it lacks consistent and effective implementation.
NEW IRELAND PROVINCIAL GOVERNMENT

TALKING POINTS ON THE AUTONOMY; THE CONSTITUTION (AMENDMENT) LAW AND THE ORGANIC LAW ON THE AUTONOMOUS GOVERNMENTS:

FOR THE

NATIONAL CONFERENCE ON AUTONOMY AND DECENTRALISATION OF GOVERNMENT IN PNG, HOSTED BY NRI, 16-17 FEBRUARY, 2022, APEC HOUSE, PORT MORESBY.
NEW IRELAND PROVINCIAL GOVERNMENT

TALKING POINTS ON THE AUTONOMY; THE CONSTITUTION (AMENDMENT) LAW; AND THE ORGANIC LAW ON THE AUTONOMOUS GOVERNMENTS.

BACKGROUND ON AUTONOMY.

1. Our Provincial Government, along with our brother Provinces of East New Britain and Enga, through our respective Provincial Autonomy Committees, have over the past 20 years made numerous presentations at various forums advocating for the legal regime on governance, in particular with the sharing of powers, wealth and resources between the National Government and the Provinces to be reviewed and possibly changed to benefit our people, the provinces and our country as a whole.

2. As our record of events show, our three Provinces have worked hard and long to come up with a model that allows our National Government and the Provinces to work in a collaborative manner:
   • November 2007: - The New Ireland Provincial Executive Council (NIPEC) approved the Malagan Declaration calling for the highest form of autonomy.
   • June 2009: - The East New Britain Autonomy Committee presented the Palavat document to Rt. Hon. Sir Michael Somare, then Prime Minister of Papua New Guinea, in Kokopo seeking autonomy.
   • September 2009: - A consultative meeting on autonomy for East New Britain held in Kokopo between the East New Britain Autonomy Committee and the National Government represented by the late Sir Manasupe Zurenuoc, then Secretary for the Department of Provincial & Local Government Affairs.
   • 2010: - The East New Britain Autonomy Committee presented a Petition to Hon. Job Pomat, then Minister for Inter Government Relations, demanding for autonomy.
   • New Ireland Provincial Government presentation of its Submission on Autonomy to the Prime Minister’s Office through –
     » Hon. Leo Dion, the former Deputy Prime Minister, in Kokopo on 16 October, 2012;
     » the late Hon. Steven Pirika, former Minister for Autonomy and Bougainville Affairs in Kavieng on the 22 February 2013;
     » the Prime Minister himself during a personal meeting at his Parliament Office with Rt. Hon. Sir Julius Chan and his consultants on 12 July, 2013; and
     » various meetings among NIPG delegates with officers from relevant National Departments between 2012-2015 on autonomy for the New Ireland Province.
   • 22 February 2013: - Late Hon. Steven Kama, Minister for Autonomy and Bougainville Affairs, made a Declaration of Commitment to New Ireland Province Autonomy in Kavieng.
   • 2013: - The New Ireland Provincial Executive Council approved the Malagan Declaration Forward reaffirming its original call for Autonomy.
   • June 2013: - East New Britain women presented a Petition to Prime Minister Hon. Peter O’Neill, demanding autonomy for East New Britain.
   • 28 March 2014: - A Joint Statement by the New Ireland and East New Britain Autonomy Committees after their Joint Meeting in Kokopo demanding the National Government to state its position on Autonomy by 30 June 2014.
   • September 2015: - Prime Minister, Hon. Peter O’Neill, visited New Ireland Province (NIP) and made a commitment to grant the people and government of New Ireland autonomy as a pilot project using the New Ireland autonomy model to assess its suitability and viability as a future governance system for Papua New Guinea (PNG) before the end of the term of the 9th Parliament. However, this did not happen during the last term of Parliament.
   • 7 September 2016: - The New Ireland Provincial Assembly made a Declaration of Autonomy.
   • 6th October 2017: - The East New Britain and New Ireland Provincial Governments through a joint communique agreed to adopt New Ireland’s Autonomy Model as the basis for autonomy arrangements to be implemented in East New Britain and New Ireland.
   • 16th November, 2017: The National Government’s position to grant autonomy to New Ireland Province
was declared on Tsoi Island, Lavongai District, by the Minister for Provincial and Local Government Affairs, Hon. Kevin Isifu.

18th November, 2017: The New Ireland and East New Britain Provincial Governments forwarded our Submission of Autonomy, comprising of the NEC Submission on the Autonomy Arrangements, the Constitutional Amendment Law and the Organic Law on Autonomous Governments, to the National Government, through the Minister for Provincial and Local Government Affairs, Hon. Kevin Isifu, MP.

2nd February 2018: The Prime Minister of Papua New Guinea, the Hon. Peter O’Neill, CMG, MP, at the closing of the 8th Leader’s Summit in Port Moresby, made the commitment to grant Autonomy to New Ireland Province.

15th -16th March, 2018: The commitment to grant autonomy to the New Ireland Province, was confirmed by the Prime Minister of Papua New Guinea, the Hon. Peter O’Neill, CMG, MP, at the opening of the Government Houses in Namatanai and Kavieng.

18th May, 2018: We were advised by the Department of Provincial and Local Government Affairs, that our Submission of Autonomy is going through the processes of the DPLGA and the CACC for deliberations and advise to the Chief Secretary and subsequently to the National Government. They also advised that the NEC has approved implementation of autonomy in three provinces – New Ireland, East New Britain and Enga.

7 June 2019: - Immediately following the formation of the Marape - Steven Government, the New Ireland, East New Britain and Enga Autonomy Committees personally presented to the Prime Minister, Hon. James Marape MP, our Autonomy NEC submission.

3. Despite the various commitments by the National Government to allow the New Ireland, East New Britain and Enga Provinces to pilot the autonomy arrangements in the country, the National Government has done very little to honour those commitments.

PROPOSED MODEL OF AUTONOMY BY NEW IRELAND, EAST NEW BRITAIN AND ENGA PROVINCES.

4. The concept of “autonomy” pursued is one that encourages the formation of a collaborative relationship with the National Government in the governance of the provinces and the country.

5. The concept of autonomy envisaged is one that allows the provinces to remain as an integral part of Papua New Guinea and to share the burden and the cost governing the country, through the sharing of wealth, functions and powers and grants and aid.

6. Our proposal allows the Provinces to acquire more powers from the National Government, which they are capable of handling, and to govern their affairs and people according to their own development goals, programs and policies.

7. This proposal aims to enable the autonomous government to attain some level of independence in relation to the decision-making process and the funding and control of development aspirations of the Province and at the same time to assist the National Government in the governance of the country.

8. This is an autonomy agenda that is distinct and separate from the Bougainville autonomy agenda. The autonomy arrangement we are pursuing is not an “arrangement in preparation to move away from PNG”, as some commentators seem to suggest. This is very far from it.

9. We have been encouraged by the National Government’s commitment to consider autonomy for certain Provinces under the Alotau Accord. In the formation of the new government after the 2012 general elections in Alotau, Milne Bay Province, the coalition parties in the new government adopted the Alotau Accord, which contained amongst other mutually agreed commitments, for the National Government to consider granting autonomy to selected provinces. This view has been amplified in the Alotau Accord II, after the 2017 general election.

10. Our brand of autonomy is modelled in accordance with the commitments made in Alotau Accord I and Alotau Accord II and the National Executive Council Decision No: 106/2009 made at Meeting No: 04/2009, on the subject of PROVINCIAL AUTONOMY, in particular to decision No.3, which states: “approved a clear statement that the Bougainville model would not be applied to any other province and any proposed autonomy model must be capable of being applied to all other provinces”

11. Our decision to transition into an autonomy arrangement is amply supported by and is within the ambit of the
law by having its legal basis in Section 2 of the Constitution in the National Goals and Directive Principles, relating to Equality and Participation, which declares that all citizens must have an equal opportunity to participate in, and benefit from, the development from our country and calls for “the creation of political structures that will enable effective, meaningful participation by our people in that life, and in view of the rich cultural and ethnic diversity of our people, for those structures to provide for substantial decentralization of all forms of government activity”.

12. We aspire to attain:

a. **POLITICAL AUTONOMY:**
   
The attainment of some level of independence in relation to the decision-making process and the funding and control of development aspirations of the Province; and

b. **ADMINISTRATIVE AUTONOMY:**
   
The maintenance of New Ireland Province and East New Britain Province as integral parts of Papua New Guinea and at the same time establishing a collaborative relationship with the National Government in the administration and governance of the country.

c. **FINANCIAL AUTONOMY:**
   
The sharing of functions and powers relating to wealth, grants and aid, with each other.

EXPLANATIONS ON THE BASIS OF OUR MODEL OF AUTONOMY IN THE CONSTITUTIONAL LAWS (CONSTITUTION AMENDMENT LAW & THE ORGANIC LAW ON THE AUTONOMOUS GOVERNMENTS)

   
This law inserts a new Part XV in the Constitution to authorize the granting of an autonomous government to the Provinces.

   
This law gives effect to Part XV (autonomous government) of the Constitution, by specifying the details, systems, powers and the processes to be used to enable the granting and the establishment of autonomous governments to the Provinces. This law revolutionises the legal regime on governance, in particular with the sharing of powers, wealth and resources between the National Government and the Provinces.

15. These laws set out the constitutional and the legislative basis and framework for the autonomy arrangement and provides the details of the type, system and the structure of government, its membership and powers, and the electoral process to be applied to the Provinces and a Local Government system, provisions on the transfer of National Government powers and functions to the two Provincial Governments, including the transfer of the public service functions and the acquisition of certain fiscal and taxation powers and the details of the relationship between the National Government and the Provincial Governments under the autonomy arrangement.

16. Under this arrangement, the New Ireland Province, East New Britain and Enga Provinces will pilot the autonomy arrangements. The autonomy arrangements will come into operation for them, on the certification of the Constitutional Laws.

17. The autonomy arrangements will apply to the other Provinces – in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

18. The Organic Law on Autonomous Governments bill and the other the Constitutional (Amendment) Law bill in the Parliament for enactment as laws to enable New Ireland, East New Britain and Enga Provinces to become fully Autonomous Provinces, as integral parts of Papua New Guinea and pave the way for other Provinces to follow suit on a selective basis in the future.

19. The Governors’ Conference held at the Hilton Hotel from 20-21 August 2020 considered and rejected the two draft bills of the National Government and accepted and endorsed the two draft bills of the three Provinces (New Ireland, East New Britain, and Enga Provinces)
The Governors’ Conference also considered and resolved that the draft bills of the three Provincial Governments provides for an Autonomous arrangement that is applicable throughout the country on a selective basis, and that such an Autonomy model is not of the Bougainville type in that unity is strengthened by power sharing instead of power concentration in the central government in Waigani, and the notions of independence or referendum for independence are not allowed.

21. Some salient features of the autonomy arrangements, classed under the three principles of political autonomy, administrative autonomy and financial autonomy, are as follows:

I. THE POLITICAL AUTONOMY:

The composition of the system of government consists of the Autonomous Government and a system of Local Government and the governments will have a legislative and an executive arm and their own administrative systems.

b. Legislative arm of Autonomous Government
The Autonomous Government Legislative Council will be headed by the Speaker and the Deputy Speaker, who are members of the Legislative Council and are elected by the Members of the Council.

The membership of the Autonomous Government Legislative Council will be determined by each Province in accordance with their Constitutions.

The Members of Parliament will continue to exercise and perform their responsibilities in the Province.

c. Executive arm of Autonomous Government.
The Autonomous Government Executive Council will be headed by the Governor.

The Governor is the Member of the National Parliament representing the Provincial electorate, while the Deputy Governor is appointed by the Governor, who may be a Member of Parliament, President or an appointed member.

Its membership is comprised of the Governor, Deputy Governor and the Chairmen. Members of Parliament are excluded from the membership of the Executive Council. The number of the Chairmen is determined by the Governor, who also appoints and dismisses them.

The number of its membership must not be more than one third of the total membership of the Autonomous Government Legislative Council or twelve, whichever is greater.

d. Local Governments.
An Autonomous Government Law shall make provision for a system of Local Governments for rural and urban communities and it may take the form as is approved by the Autonomous Government Executive Council. The number of Local Governments in each open electorate will be determined by the Autonomous Government Executive Council.

The Governor, acting on the advice of the Autonomous Government Executive Council, is empowered, by proclamation, to establish or abolish a Local Government in and for the area described in the proclamation. The abolition of a Local Government must be approved by the Autonomous Government Executive Council and the Autonomous Government Legislative Council.

e. Legislative Arm of Local Governments.
The membership of the Local Government Assembly is comprised of elected ward members and appointed members.

The President of the Local Government is also the Chairman of the Assembly.
The term of a Local government is the same as the Autonomous Government and therefore, the terms of the members in both systems of government, are similar.
f. **Executive Arm of Local Governments.**
The President of the Local Government is also the head and Chairman of the Local Government Executive Council.

The Local Government Executive Council’s membership consists of the President of the Local Government and the Chairmen of the Committees of the executive arm of the Local Government. The total membership of the Local Government Executive Council must not exceed one-third of the total membership of the Local Government Assembly.

g. **Election of President and the Deputy President of the Local Government.**
The President and the Deputy President of the Local Government will be directly elected by the electors. In the case of the Deputy President, a woman will be elected as the Deputy President of a Local Government for a term of ten years commencing on the date of the coming into operation of the Organic Law and ceasing on the date of the return of the writs of the 2027 general election. After this period, anyone, including a woman, can be elected as a Deputy President.

Election of a woman as the Deputy President is to recognize the significant role the woman plays in the society and the family unit and also to implement gender balance in the political sphere. The New Ireland Province is a matrilineal society and woman play a very important role in the determining ownership rights, solving disputes, cultural activities, etc., in every day life of people in the Province. However, in the political sphere, little or minimal attention is given to women. Consequently, this proposal aims to change the mindset of people to accept that woman can and are capable of undertaking leadership roles in politics and other leadership environments.

h. **Motion of no confidence.**
Provision is made for a motion of no confidence to be moved against certain members of the Autonomous Government and the Local Government, either individually or collectively.

In a motion of no confidence against the Governor, President and Deputy President of the Local Government, no member will be nominated to assume the respective offices. A successful motion of no confidence against the President and Deputy President of the Local Government, will result in a by election in the respective offices. In the case of a Governor, another member of the Autonomous Government Legislative Council will be elected as the Governor by the members.

i. **Electoral System.**
There will be no elections to the Autonomous Government Legislative Council conducted under this Organic Law, but only an election to the Local Government Assembly will be conducted by the Electoral Commission in accordance with the Organic Law on the National and Local Level Government Elections.

The Electoral Commission may cease to conduct elections for the Local Government Assembly where an Organic Law or an Autonomous Government law provides otherwise.

It is also required that the election of the Governor, President and Deputy President must be held at the same time as the Province's general elections.

j. **Political Parties.**
Political parties may register to participate in the elections and the affairs of the government.

k. **Law making powers.**
The Autonomous Government Legislative Council and the Local Government Assembly have full powers to make laws as provided for in this Organic Law, an Autonomous Government law or other laws.

Under this arrangement, laws made by the Autonomous Government Legislative Council and the Local Government Assembly may be put into operation without being forwarded to the National Government for screening. The Autonomous Government legislatures are only obliged to make a copy of the law available to the National Government.

Such laws are the prevailing laws regarding matters that fall within the jurisdiction of the Autonomous Government and have the status as a provincial law. So, where its provisions are inconsistent with a national
law on the same matter, its provisions shall be subservient to the provisions of the national law.

Provision is made allowing the Autonomous Government and the National Government to legislate on the functions and powers of one another and for the national laws to continue to apply to the functions and powers available to the Autonomous Government and the Autonomous Government laws.

The Autonomous Government has the powers to adopt national laws in relation to the functions and powers transferred to or available to the Autonomous Government, to apply in relation to the Province.

I. Leadership Code
Provision is made for the Leadership Code to apply to the members of the Autonomous Government and the Local Governments, public servants and other persons holding public offices as are declared by an Autonomous Government law to be offices to which the Leadership Code applies.

m. Withdrawal of powers, suspensions of government.
Under the autonomy arrangements, the National Government has no power to withdraw the powers, functions and finances of the Autonomous Government or its local governments or suspend the Autonomous Government or its local governments from exercising their powers, functions and finances, for any reason.

n. Dispute resolution
Any dispute arising under the autonomy arrangements between the National Government and the Autonomous Government shall be resolved through the dispute resolution procedure specified under the law, i.e., by consultation, mediation and arbitration, review and through the jurisdiction of the courts.

o. Review of autonomy arrangements
The National Government and the Autonomous Government are required to meet as close as is practicable to the tenth anniversary of the establishment of the Autonomous Government and every ten years thereafter, jointly to review the autonomy arrangements, may agree to additional reviews of the autonomy arrangements at any time and shall present a report of each review to the National Parliament and to the Autonomous Government Legislative Council.

In addition to the reviews, the National Government and the Autonomous Government shall hold annual, wide-ranging consultations on the general operation of the autonomy arrangements.

II. THE ADMINISTRATIVE AUTONOMY:

a. Division of functions and powers.
The functions and powers of government relating to a Province will be divided and transferred between the National Government and the Autonomous Government. Those powers and functions are indicated in the Organic law.

The functions and powers that of general application to the country will remain with the National Government, e.g. - central banking; currency; customs; defence; foreign relations (including foreign aid), etc. The National Government is also responsible for the operation of the functions and powers of a governmental body or State agency or instrumentality, firearms control, foreign investment to the extent permitted by the law and to develop the infrastructure relative to its functions and powers.

The functions and powers available to the Autonomous Government are those that will create peace, order and good governance in the Province and will enhance the welfare of its people, e.g.- agriculture; churches and religion; communications and information services within a Province; education; energy (including electricity and power generation and distribution); environment; fisheries (other than highly migratory or straddling stocks); forestry and agro-forestry; housing (but not State-owned housing; land and natural resources; land, sea and air transport; mining; tourism, etc.

The function and power relating to foreign investment relating to a Province is to be exercised by the Autonomous Government in collaboration with the National Government.

Any power or function not transferred to the Autonomous Government remains with the National Government.
Each government is required to notify and consult with each other if wishing to legislate on a matter which it is not responsible for.

b. **Transfer of Powers and Functions Generally.**

Both Governments are required to prepare agreed plans for cooperating in implementing the transfer of functions and powers. This plan should indicate the criteria, indicators and targets of capacity and resources available to or required by the Autonomous Government that should be taken into account in making proper preparations for the transfer of particular functions and powers.

A function or power that is so closely linked to another function or power to be transferred or available to the Autonomous Government, may be transferred together to the Autonomous Government.

A transfer of a function and power must follow a process, whereby the Autonomous Government must consider its needs and capacity in relation to the function or power, initiate the transfer by giving to the National Government 12 months’ notice of its intention to seek the transfer of the function or power and consult the National Government concerning the transfer, unless both Governments otherwise agree.

The National Government may transfer to the Autonomous Government, at the same time as the transfer of a function or power, such assets, personnel and land as are associated with the function or power.

The National Government or the Autonomous Government may, by agreement, transfer or delegate any function or power (including a financial function or power) to the other Government.

c. **Autonomous Government Public Service.**

On the expiry of the transitional period, i.e., a period of twelve months commencing on the date after the coming into operation of this Organic Law and on which the Autonomous Government requests that the agreed arrangement for the delegation of powers in relation to the Public Service to commence, the Autonomous Government Public Service will be established with the officers of the current National Public Service becoming officers of the Autonomous Government Public Service, except for those officers who choose to remain as officers of the National Public Service.

The National Government is obliged to pay and transfer the accrued rights and entitlements of those officers of the public service becoming officers of the Provincial Public Service, between the National Public Service and the Provincial Public Service.

The provisions of the Public Service (Management) Act 1995 shall continue to apply to the Public Service in a Province until an Autonomous Government law replaces it.

An Autonomous Government law will provide for the matters on a Province’s Public service relating to recruitment, terms and conditions of employment and other personnel matters for the Province’s Public Services based on individual merit.

Prior to the establishment of a Province’s Public Service, on the request of a Province’s Interim Provincial Government or the Autonomous Government, the National Government shall facilitate progress towards greater autonomy in the management of the Public Service in the Province’s through delegations by the Departmental Head of the Department responsible for personnel management matters in the National Public Service, to the Provincial Administrator of a Province or the head of the Public Service.

During the transitional period, the Provincial Administrator for a Province must take steps to plan for the implementation of the province’s Public Service, including the determination of the organization structures, terms and conditions, the General Orders and manpower budgets.

d. **Appointment of Provincial Administrator and District Administrators.**

Under the autonomy arrangements, the Autonomous Government is empowered to appoint the Provincial Administrator.

Similarly, the Autonomous Government is empowered to appoint the District Administrators.

e. **Administrative System.**

The administrative system of the Autonomous Government and Local Government’s consists of the administrative institutions consisting of the offices of Provincial Administrator and District Administrators and an extended service of the National Departments and other agencies and the personnel.
A provincial administrative headquarters and district administrative headquarters are required to be established and their boundaries are to be indicated and to be headed by the Provincial Administrator and the District Administrators.

The staff of the province and of a district consists of the officers of the National Public Service assigned to the province, the members of the Teaching Service assigned to the province by the Teaching Service Commission to carry out teaching and educational functions, such other personnel and the officers of the Province’s Public Service.

f. Judicial matters.
Provinces will continue to use the existing judicial system in the resolution of disputes. Legislating for the establishment or administration of courts or to the exercise of judicial power is not allowed. However, laws may be made in relation to the exercise of powers or functions (other than judicial powers or functions) in relation to the administration of courts or tribunals, the establishment of tribunals of an administrative or quasi-judicial kind or making provision for offences and fines and other punishments, penalties and forfeitures for offences against an Autonomous Government law or a Local Government law or for the establishment and administration of village courts.

g. Provincial planning and data system.
The Autonomous Government is required to establish and maintain an effective and efficient provincial planning and data system to record and evaluate relevant data on population, economic and social factors, infrastructure, physical characteristics, exports and other relevant information about the province or Local government areas.

h. Census.
A census for the count of all natural persons in the province in the year preceding the general election, other than a general election following a dissolution of the Autonomous Government Legislative Council, will be carried out.

III. THE FINANCIAL AUTONOMY:

a. Assembly and Finance.
Budgets. The Autonomous Government Legislative Council or the Local Government Assembly are authorized to pass their budgets and implement them without intervention from the National Government.

If no budget is passed at the beginning of the fiscal year, the Autonomous Government or the Local Government may expend amounts appropriated out of the Province’s Consolidated Revenue not exceeding in total one third of its budgeted expenditure during the immediately preceding fiscal year.

b. Revenue Raising Arrangements.
The Autonomous Government is empowered to impose and collect company tax, duties of customs and the goods and services tax and personal income tax collected in the Province and to pay such moneys to a provincial consolidated fund account established for the purpose. It is also empowered to adjust the rate of company tax, duties of customs and goods and services tax and income tax, which takes into account the rates fixed for that time by the National Government.

c. Tax Office.
The Autonomous Government is empowered to establish its own tax office and to fix rates in respect of all taxes under its own tax regime. The Autonomous Government has power to establish a provincial consolidated fund account into which the revenue from the taxes collected shall be paid.

Until such time as the Autonomous Government has established a Provincial tax office, the Internal Revenue Commission shall, for and on behalf of the Autonomous Government, collect all taxes of the Autonomous Government. On the establishment of a Provincial tax office, the Provincial tax office may collect, by agreement with the Internal Revenue Commission, certain taxes, for and on behalf of the Internal Revenue Commission.

The National Government and the Autonomous Government shall each have the right to audit taxes paid
into the account established under this law.

d. **Financial Grants and Assistance.**
The National Government is obliged to make grants to the Autonomous Government, i.e., recurrent unconditional grants, restoration and development grants, establishment grant and conditional grants for specific purposes. The amounts may vary depending on a formulae agreed between the National Government and the Autonomous Government. These grants shall be paid directly to the Autonomous Government, not later than 31 March in each fiscal year.

e. **Benefits from Natural Resources.**
The Autonomous Government is empowered to collect, manage and control the revenues generated from the natural resources within the Province.

A developer of a natural resource, is required to pay to the Autonomous Government and the Local Governments of the Province or area in which the development is situated, development levies and to the Autonomous Government, royalties in respect of natural resources obtained, for payment to the owners of the land from which the natural resources were obtained.

f. **National Government Incomes.**
The National Government is obliged to share with the Autonomous Government and Local Governments, the revenues of the National Government generated from sources within the Provinces.

g. **Investments.**
Investments by the Autonomous Government and the Local Governments shall be regulated by an Autonomous Government law.

h. **Loans, Borrowings and Guarantees.**
Subject to national laws, Autonomous Government and Local Governments may borrow or obtain loans and give guarantees in relation to such borrowings and loans in accordance with an Autonomous Government law.

i. **Fiscal Accountability.**
The National Government can, through the Auditor General’s office, to carry out an audit of the funding in relation to the recurrent unconditional grants or conditional grants provide to the Autonomous Government.

Any systematic and widespread abuse (or misuse) of funding provided to the Autonomous Government by way of recurrent unconditional grants or conditional grants, would need to be resolved following a procedure.

The Autonomous Government and a Local Government shall keep or cause to be kept proper accounts and records of their transactions and affairs, in accordance with an Autonomous Government law. The annual audited financial and other reports of the Autonomous Government and a Local Government for each fiscal year shall be submitted to the Autonomous Government Executive no later than 30 April in the year succeeding.

Inspection and reporting on accounts and records of the Autonomous Government or a Local Government will be undertaken by Provincial Administrator and the Head of the Department responsible for finance matters and authorized persons.

j. **Treasury Offices.**
A Provincial Treasury and the District Treasuries, to be headed by the Provincial Treasurer, will be established. The Autonomous Government is responsible for overseeing the affairs of the Provincial and District Treasury in the management of public moneys in the Province and not the National Government.

k. **Appointment of Provincial Treasurer and District Treasurer.**
The Provincial Treasurer and District Treasurers will be appointed by the Provincial Administrator.

The Autonomous Government is responsible for overseeing the work of the Provincial and District Treasurers in the management of public moneys in the Province and not the National Government.
l. Control of Natural Resources.
Provision is made for all the decisions, responsibilities, powers and function in relation to the development of a natural resource in the Province to be vested in and to be exercised by the Autonomous Government. The National Government is required to consult the Autonomous Government on any policies, plans and programs affecting the development of natural resources in the Province. Any prior natural resources development project must comply with this law.

Consultation among the National Government, the developer, and the Autonomous Government, the Local Government and the landowners in any project is required. A failure to comply with this requirement renders an agreement or arrangement in relation to a natural resource development, invalid and unenforceable in a court of law.

m. Revenue sharing arrangement.
The revenue from all the taxes collected in the Province will be shared between the National Government and the Autonomous Government for development purposes.

The revenues generated from the natural resources within the Province will be shared with the National Government, in accordance with a formula agreed to between the Autonomous Government and the National Government.

UNITY OF PNG IS PARAMOUNT:

22. We remain committed and will always uphold the UNITY of PNG under the Constitution.

a. Autonomy is important for the unity of this Country. It will hold the country together from disintegrating.

b. Promoting and maintaining a substantially decentralized (autonomous) system of governmental powers from Waigani will promote unity in PNG, compared to a centralized or unitary system of government which we currently maintain. Too much power retained by Waigani is likely to cause dissatisfaction over the exercise of those powers and eventually lead to division and disintegration. Therefore, unity demands substantial decentralization or autonomy.

c. Rapid increase in population will cause difficulties in remote-control governance from Waigani. Since important resource development projects are located in remote parts of the country, Waigani’s inability to reach those remote parts can cause armed landowners and criminals to interrupt civilian lives and investors without government deterrence. Therefore, granting substantial powers to the government at the local level is critical to instill government presence to protect property and people.

d. The way forward for developing PNG is by granting substantial powers to provinces so that they can compete with one another to bring about rapid development. Kokopo competing with Kavieng or New Ireland competing with Enga is a good example.

e. Bougainville have decided through the referendum for Independence. Majority (98%) have voted for Independence. That is an indication of power concentration at the National Government. People want more powers to decide for their province and future needs and development aspirations.

f. Granting autonomy to Enga, New Ireland and East New Britain, followed by other provinces which are willing and ready to implement autonomy, could send a powerful and persuasive message to Bougainville that they do not need to become separated and independent from PNG in order to enjoy the powers they need to decide their prosperity and pace of development. They have these powers already. All they need is to use it wisely for the benefit of their people while remaining an integral part of PNG.

g. AUTONOMY is a solution offered to the National Government to deal with Bougainville issue for Independence. We are recommending to the National Government to consider Autonomy as a positive way to resolve Bougainville issue for Independence.

h. We hope the National Government see the big picture of the future of this great Nation. If we don’t give autonomy to provinces now, our future hangs in limbo.
Take Back PNG and making it become a wealthy and rich black Christian Nation on earth is a good call by PM James Marape. We fully support this call. And we strongly believe that the Autonomous System of Government will have firm foundation for this vision to be realized. When provinces benefit greatly from the resources, PNG citizens and people become wealthy and rich from wealth generated from their resources and will make PNG become wealthy and rich Christian nation on earth.

PROBLEMS WITH THE NATIONAL GOVERNMENTS PROPOSAL ON THE CONSTITUTIONAL (AMENDMENT) LAW ON DECENTRALISATION:

23. The National Government’s Constitutional Amendment (Decentralisation) Law 2020 has nine (9) critical defects, which were pointed out at the Governors’ Conference, and these are:
   a. By repealing Part VIA of the Constitution, which deals with the Provincial Government and Local Level Government system, the Law will effectively abolish the Provincial Government and Local Level Government system from the Constitution.
   b. The repeal of Part VIA of the Constitution will remove the authorisation given for the enactment and the continued operation of the Organic Law on Provincial Governments and Local Level Governments.
   c. What will happen to the existing Provincial Governments and Local Level Governments pending enactment of the Organic Law on Decentralisation? Will they continue to operate? If yes, then under what law since Part VIA of the Constitution which allows the existence of the Organic Law on Provincial Governments and Local Level Governments has been repealed? These are critical constitutional issues.
   d. Recommending the establishment of three types of governments: (1) Provincial Governments, (2) Gradative Decentralised Governments and (3) Integrated Governments, with their elective legislatures and executive arm, is completely different from Autonomous Governments sought by New Ireland, East New Britain and Enga. Moreover, these three types of government would be very costly on the National Government implement and maintain.
   e. There is no Organic Law in existence to govern and regulate the operation, administration, management and implementation of the Gradative Decentralised Government and the Integrated Governments unlike the Provincial Governments.
   f. The Constitutional Amendment (Decentralization) Law 2020 does not deal with the brand of Autonomy as proposed by the New Ireland Constitution (Amendment) Law and the New Ireland draft Organic Law on Autonomous Governments.
   g. The Constitutional Amendment (Decentralization) Law 2020 fails to indicate or highlight in its provisions the issue of Autonomy and even consider the establishment of Autonomous Governments as the basis for such a law.
   h. By dealing with Part VIA of the Constitution, which deals with the Provincial Governments and Local Level Governments system, it is clear that the Constitutional Amendment (Decentralization) Law 2020 intends to continue with the operation of the Provincial Governments and some form of lower level government systems but it does not envisage the establishment of Autonomous Governments, as recommended in New Ireland’s Constitution (Amendment) Law and the Organic Law on Autonomous Governments.

24. Effectively, this Constitution (Amendment) Law on Decentralisation by the National Government will:
   i. abolish the Provincial Government system; and
   ii. abolish the Local Level Government system; and
   iii. abolish the office of the Governor of the Province; and
   iv. abolish the office of the President of the Local Level Government; and
   v. fail to establish an autonomous government system.

24. Comparatively, the model of autonomy propagated by the New Ireland, East New Britain and Enga Provinces will:
   i. allow Provincial Governments and Local Level Governments to co-exist with the autonomous governments; and
   ii. allow the other Provincial Governments to achieve autonomy status on a selective basis at a later time; and
   iii. allow the offices of the Governor of a Province to continue to exist and operate under an autonomous government.
i. allow the offices of the President of the Local Level Government to continue to exist and operate under an autonomous government.
Fiscal Decentralisation in Papua New Guinea.¹

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7th February, 2022

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Satish Chand is currently the Professor of Finance in the School of Business at the University of New South Wales and based at the Australian Defence Force Academy in Canberra. He is a Research Associate of the NRI, a non-resident fellow at the Centre for Global Development in Washington DC, and an adjunct professor at the Crawford School at the Australian National University (ANU). Before joining UNSW, Chand worked for the Australian Commonwealth Treasury and the Australian Taxation Office. Chand has been researching on economic development, migration, and international trade principally within the context of island nations of Pacific for the past three consecutive decades. He has during this period consulted for the Asian Development Bank, the Australian Agency for International Development (AusAID), The Pacific Island Forum Secretariat, The World Bank, and the governments of Australia, Fiji, Papua New Guinea, the Republic of Marshall Islands, and Vanuatu. Chand is the author, co-author, and editor of numerous publications.

¹ I am grateful to Erwin Pouru for providing the data used in this paper as well as helpful comments on an earlier draft of this paper, and to Thomas Webster for many helpful discussions on the ideas presented in this paper. The views expressed here, and any errors in the paper, are the sole responsibility of the author. Comments on the paper and corrections to information presented here are welcome.
Executive summary

There has been a shift towards decentralisation of the delivery of public services by national governments across the world over the past half a century. This shift towards decentralisation is motivated by a desire to bring government closer to the people; improve the effectiveness with which public services are delivered within the nation; and, as a means to raise economic growth.

Papua New Guinea has pursued decentralisation throughout its existence. Decentralisation was at the forefront of the deliberations by the Constitutional Planning Committee (CPC) during the drafting of the National Constitution in the leadup to independence in 1975. Self-reliance, moreover, predates colonisation when autonomous clans and tribes coexisted with one another without the presence of an over-arching national administration. The demand for greater autonomy by many Provinces in contemporary Papua New Guinea is older than the nation itself.

Present PNG has three levels of government; namely, the National Government, 22 Provincial Governments, and 318 Local-level Governments (LLGs). In addition to the above, there are 89 Districts that demarcate electoral boundaries for members of the National Parliament. District Development Authorities that were created as part of the reforms of 1995 and are chaired by the elected member have taken on some of the responsibilities for the delivery of basic services. While Districts are exclusive to their Province, Local Level Governments (LLGs) sometimes straddle across Districts. Such overlap can complicate the assignment of responsibilities for service delivery between Districts and overlapping LLGs.

Decentralisation of governance arrangements extends across three specific areas; those relating to the division of legislative and executive powers across the three levels of government; the distribution of the responsibilities for administration across these levels of governments; and the mechanism for inter-governmental relations between the three levels of governments. Each of the above-mentioned is explained in considerable detail for PNG in the companion paper (i.e., Saunders and Dziedzic (2022). This paper is focussed narrowly on the issue of fiscal decentralisation.

Fiscal decentralisation entails the devolution of the powers from the National Government to subnational governments for raising of revenues and delivery of services to the local public. Subnational Governments in Papua New Guinea, as explained above, include the Provincial Governments, the District Development Authorities, and Local-level Governments. The powers which are devolved under fiscal decentralisation include those to tax economic activities and spend public funds for the exercise of responsibilities assigned to the subnational government.

The purpose of this paper is to identify the guiding principles for fiscal decentralisation, and apply these principles to Papua New Guinea. The national government has over the past half a century devolved some of its powers to raise revenues and the responsibilities to deliver basic services to sub-national governments. This devolution of powers and functions however has not been uniform: some Provinces were handed more powers than others. Bougainville, in particular, was granted autonomy (with respect to all powers of government) as part of the peace agreement signed in 2001. Three other provinces - Enga, East New Britain, and New Ireland - were granted increased autonomy in 2019 (Chand, 2018; Pouru, 2021).

The powers handed over to subnational governments to set taxes and decide on public expenditures are set in legislation. The National Constitution provides the overarching framework for decentralisation, the organic laws (e.g., the Organic Law on Provincial and Local Level Governments) provide specific details, and acts of the national parliament (e.g., Intergovernmental Relations (Functions & Funding) Act 2009) address issues as they arise over time. PNG has followed international best practice in assigning responsibilities for functions to subnational governments, but has lagged in devolving the powers to raise revenues at the local level. An exception was the reforms of 1995 that recentralised some of the responsibilities for service delivery to members of the National Parliament through the newly created service-improvement grants. These grants were provided to individual members of the National Parliament from the national budget for service improvement in their electorates.

The level of fiscal decentralisation in PNG remains low. The National Government raised some 90 percent of all revenues (and 95 percent of all tax revenues) for the period 2010 to 2018, and had direct control over 70 percent of all government expenditure in that period. Furthermore, discretion on the balance of 28 percent of expenditures that subnational level governments undertook was restrained through a combination of legislation, directives from the National Government, and incentive payments (i.e., conditional grants) from the National Budget. On taxes specifically, the national government has jurisdiction over all income taxes, resource rents, GST, and border taxes meaning that Provincial Governments have very...
little powers to raise their own revenues. This has resulted in a very large vertical fiscal imbalance between the National Government and the Sub-national Governments.

How should the responsibilities for delivering public services be divided between the three (and half if Districts Development Authorities are included) levels of government? Subsidiarity, a principle that guides this division, states that functions should be allocated to the lowest level of government for economic efficiency. Governments operating at the ‘grassroot’ have access to information in real-time on the needs of the public, their satisfaction for services provided, and the ability to adapt to changing circumstances. Even more important is the fact that the public can hold their government to account if ‘grassroot democracy’ is effective. Policing, land management and mediation, and road maintenance are best served in close proximity to the clients. However, services such as national defence, immigration, currency, and aviation are best provided at the national level to minimise costs while permitting integration of the services across the nation. Invariably, all services provided by the public sector require close coordination between local and national governments for effective delivery. Transportation, healthcare, and education within the LLGs, for example, are delivered effectively if integrated at the national level (e.g., primary schooling provided in the village has to feed into secondary education in town that in turn must meet the requirements for university education in the Capital). In sum, inter-governmental coordination and cooperation is necessary for effective delivery of public services.

How should the responsibilities for raising revenues be divided between levels of government? Revenues are necessary to fund the delivery of public services: police, public servants, buildings, consumable, etc. have to be paid for. Furthermore, access to revenues between the national and subnational governments are uneven (i.e., the vertical fiscal imbalance noted above), and this unevenness is just as true between subnational governments (referred to as horizontal fiscal imbalance). The National Government has access to a much larger pool of funds given its powers over all income taxes, most indirect taxes, and the IRC. Similarly, some subnational governments have a larger capacity to raise revenues due to local endowments such as a large and highly profitable gold mine (e.g., New Ireland Province). On the flip side of the differing capacities of subnational governments to raise revenues are differences in the costs of providing services (of a given quality). The costs of delivering healthcare in a densely populated and easily accessible region (e.g., the NCD) is lower than that in a sparsely populated and inaccessible region (e.g., Western Province). Thus, fiscal imbalances arise from a combination of the differences in the ability to raise revenues and the costs of delivering services between the national and subnational governments, and across subnational governments. These imbalances have to be addressed if citizens residing across the nation are to receive similar levels of public services. Indeed, a nation is defined by similar access to public services within its boundaries. Fiscal imbalance is addressed through ‘equalising grants’ from the national budget to subnational governments.

Determining the level of transfers from the national budget that is necessary to equalise fiscal capacity across subnational governments is often controversial. In the case of PNG, this task is left to an independent agency; namely, the National Economic and Fiscal Commission (NEFC). The NEFC advises the national government on the levels of transfers based on its own assessment of fiscal capacity across subnational governments.

In designing mechanisms for fiscal decentralisation, policymakers need to ensure that:

i. subnational governments have access to adequate revenues to exercise their responsibilities for service delivery;
ii. (the transfers from the national budget to subnational governments are equitable (i.e. fair) and sustainable (i.e., can be maintained over time without creating macroeconomic distress); and,
iii. subnational governments have an incentive to raise revenues that both supplements their own resources and that of the nation at large.

In summary, fiscal decentralisation promotes local autonomy with respect to the raising of revenues and in spending of the proceeds to meet local demand. Accountability is enhanced through empowerment of the public (i.e., ‘Grassroot democracy’). The National Government provides oversight over public expenditures, ensuring that regulations relating to public expenditures are complied with and that the services delivered are integrated at the national level.
## Abbreviations and Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>CoS</td>
<td>Cost of Services</td>
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<tr>
<td>CPI</td>
<td>Consumer Price Index</td>
</tr>
<tr>
<td>DPLGA</td>
<td>Department of Provincial &amp; Local Level Government Affairs</td>
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<td>DSIP</td>
<td>District Services Improvement Program</td>
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<tr>
<td>ESR</td>
<td>Expenditure Sharing Ratio</td>
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<tr>
<td>FAD</td>
<td>Function Assignment Determination</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GFS</td>
<td>Government Finance Statistics</td>
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<td>GoPNG</td>
<td>National Government of Papua New Guinea</td>
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<td>GST</td>
<td>Goods and Services Tax</td>
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<tr>
<td>IGRFA</td>
<td>Intergovernmental Relations (Functions &amp; Funding) Act 2009</td>
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<td>IRC</td>
<td>Internal Revenue Commission</td>
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<td>LLG</td>
<td>Local-level Government</td>
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<td>NEC</td>
<td>National Executive Council</td>
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<tr>
<td>NEFC</td>
<td>National Economic &amp; Fiscal Commission</td>
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<tr>
<td>NSMA</td>
<td>National Service Monitoring Authority (proposed)</td>
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<tr>
<td>OLPLLG</td>
<td>Organic Law on Provincial &amp; Local Level Governments</td>
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<tr>
<td>PSIP</td>
<td>Provincial Services Improvement Program</td>
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<tr>
<td>PNG</td>
<td>Papua New Guinea</td>
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<tr>
<td>RSR</td>
<td>Revenue Sharing Ratio</td>
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<tr>
<td>SDPA</td>
<td>Service Delivery Partnership Agreement</td>
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<tr>
<td>SNG</td>
<td>Sub-national Government</td>
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<td>TCR</td>
<td>Tax Collection Ratio</td>
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Introduction

There has been a broad shift towards decentralisation across the world (Martínez-Vázquez, Lago-Peñas, & Sacchi, 2017; Wallace E Oates, 1999). Such a shift has been motivated by the desire to strengthen local governments, improve service delivery, and raise economic growth (Bahl, 1999). The evidence supports such a claim: Kaufman and Dilla Alfonso (1997), for example, provide case studies where local empowerment has led to improvements in economic development while Wang and Yao (2007) show that elections of officials enhanced accountability of the village committee. The success of decentralisation is assessed in terms of the efficiency with which services are delivered, the accountability of the public service to the public, and the levels of regional and local development. Demands for increased decentralisation has gained prominence with the emergence of a ‘geography of discontent’ (OECD, 2019); that is, perceptions of citizens residing away from the major hubs as being left behind from access to government services and opportunities for economic development. Demands for decentralisation within developing countries is more recent, and are aimed at bringing government to the grassroots and improving service delivery.

The mechanisms used for the decentralisation of the delivery of public services have taken a multitude of forms. It has ranged from the transfer of functions from the central bureaucracy to those in the periphery, the delegation of functions to quasi-public corporations, the devolution of the responsibility for delivery of services to local-level governments, and in specific circumstances even the transfer of functions to non-government organisations (Bardhan & Mookherjee, 2006; Bjornestad, 2009; Rondinelli, Nells, & Cheema, 1983; Work, 2002). Papua New Guinea has indeed experimented with each of the above: the National Government has delegated responsibility for delivery of specific public services to Provincial and Local-level Governments, and District Development Authorities have been established as quasi-public corporations headed by a CEO. The issues pertaining to the broader topic of decentralisation in PNG is presented in the companion paper (CTN, 2022) while this paper is focussed on the subject of fiscal decentralisation only.

Fiscal decentralisation entails the devolution of powers from the National Government to raise revenues and the autonomy to spend public funds transferred from the national budget to the governments located lower down the hierarchy (Fritzen, 2006). Such devolution hands over the powers to impose taxes, determine the tax base, and collect the proceeds to local level governments who then are also then assigned the responsibility to deliver public services. The autonomy that is granted over revenue raising and expenditure through fiscal decentralisation is accompanied with institutional reconfiguration of the relationships between the various levels of governments. The ensuing reconfiguration delineates both the powers to raise revenues and the responsibilities to deliver functions between the authorities, where any overlaps are managed collectively for the national good. The National (used synonymously as the Central) Government retains the responsibility for integration of service delivery and oversight over both revenue raising and spending by subnational governments.

Fiscal autonomy at the subnational level of government is determined by the extent to which the lower-level government is able to fund its services, and the discretion subnational governments have over both the raising of revenues and that on expenditure. Such autonomy may be constrained by higher-level governments through limits placed on the powers to impose taxes and on expenditure through issue of edicts and incentives. The National Government for example may forbid subnational governments from imposing any income taxes, and could provide matching grants to local authorities for expenditure on national priorities. Furthermore, local expenditures may be subject to standards set by the National Government including those relating to audits, rules for procurement, and minimum standards for specific services. Revenue autonomy is measured by the share of locally generated revenues in total receipts, and the power the subnational government has over raising local revenues including the authority to borrow and engage in private-public partnerships. Revenue autonomy would be 100 percent if the subnational government is able to fund all of its expenditures, and has the freedom to borrow and engage in private-public partnerships. Similarly, expenditure autonomy is assessed by the share of total local expenditure that the subnational government engages in, including those relating to the hiring (and firing) of staff. Fiscal decentralisation is necessary but not sufficient for fiscal autonomy.

Decentralisation in Papua New Guinea has entailed the devolution of decision-making powers from the national government to sub-national governments. This devolution of power has extended across legislative, fiscal, and administrative functions. Political decentralisation has involved the transfer of powers from the National Government to Provincial Governments to legislate on specific issues. Administrative decentralisation has entailed the devolution of decision-making authority over the deployment of resources and the responsibility for delivery of selected government services to both provincial and local-level governments. Both of the powers to legislate at the local level and to administer the functions are stipulated through...
legislation; that is, the Organic Law on Provincial and Local Level Governments (OLPLLG) (GoPNG, 1998).

Fiscal decentralisation has entailed the transfer of powers to raise revenues and take responsibility for specific functions. These are stipulated in legislations; that is, the OLPLLG and the Intergovernmental Relations (Functions & Funding) Act 2009 (IGRFF). While decentralisation is an evolving project, PNG has witnessed at least one episode of recentralisation. The reforms put in place in 1995 abolished elected Provincial Assemblies, handing powers to spend public funds for ‘service improvements’ to members of the National Parliament who also adjudicated on matters relating to economic development in their electorates (i.e., Districts) (see CTN, 2022).

The merits of fiscal decentralisation are many including the potential to: “improve the allocation of public spending by making it more consistent with the wishes of the citizens, and [thus] provide the glue for countries with regional ethnic diversity (Tanzi, 1995, p. 295). But there are also risks to fiscal decentralisation. It can lead to capture of the bureaucracy power by the local elite, that in turn may lead to corruption, nepotism, and waste. Democracy does not necessarily lead to improved accountability and better access to services from local governments (Bardhan & Mookherjee, 2006). These risks are particularly significant within contexts of clientelist politics where public handouts may be used to consolidate electoral support. Besides, fiscal decentralisation may also reduce the willingness of wealthy subnational governments to share their fortunes with the rest of the nation. This in turn may lead to demands for separation, thus encourage fragmentation of the nation. Consequently, fiscal decentralisation – and decentralisation more generally – entails ongoing rebalancing of the costs of the union with the ensuing benefits.

The discussion that follows extends across three areas; namely,
(i) the division of responsibilities for the delivery of specific services across the levels of governments;
(ii) the distribution of powers to raise revenues through local taxes and levies by subnational governments; and,
(iii) inter-governmental relations, including access to grants from the national budget for fiscal equalisation.

We attend to the above-enumerated raise issues within the context of contemporary PNG. Specifically, we apply the core principles of fiscal decentralisation to the assignment of functions to Provincial Governments, LLGs, and District Development Authorities. Section 2 explains the core principles of fiscal decentralisation, Section 3 discusses the application of these principles to Papua New Guinea, and the policy implications arising from the above and conclusions are presented in the final section.

Theory and practice of fiscal decentralisation

Central governments have pursued decentralisation with the aim of spreading out access to public services across the nation (Rondinelli et al., 1983) The public sector created to facilitate such access is made up of several layers with each such layer having distinct responsibilities in terms of enacting laws and regulations, administration, and delivering public services. Figure 1 presents the structure of decentralisation within a unitary state (such as PNG). The divisions of these responsibilities between the national (or central) government, the sub-national governments, and those below has attracted much debate both at the conceptual and practical levels.

This section explains why countries pursue fiscal decentralisation, explains the rationale for the assignment of responsibilities for specific functions between levels of government, the division of responsibilities for raising of revenues between tiers of government, and then identifies some of the major challenges of implementation within the context of developing countries.

The motivations for and some limitations of decentralisation

The literature on fiscal decentralisation is still evolving, and has to date progressed in two distinct phases; namely, the analyses from the first and second generations. While this is not the place to provide the full details on this literature, what I will explain here are simply the motivations for decentralisation that emanate from both strands.

The first-generation theory assumed officials to be benevolent. The resulting structure of intergovernmental relations under the assumption of benevolent officials is static in which efficient levels of services were provided by each level of government within the (physical and legislative) limits of their jurisdiction. Subnational governments in the setup above was assumed to operate much like branches of a national corporation. The second-generation theory relaxes both the assumption of benevolence and static structures: in this case public officials make choices to maximise their own interests that may include maximising votes, prospects for promotion, their budgets, etc.¹ In this case, the inter-governmental relations are the product

¹ This draws from Public Choice Theory.
of strategic interactions between the stakeholders and therefore endogenous, and would adapt to change of circumstance; i.e., the structure is dynamic (Wallace E. Oates, 2005). As an example, the discovery of rich mineral resources within the jurisdiction of one subnational government can create the incentives for the polity to cede should the prevailing system of taxes and transfers be viewed as being exploitative. Conversely, the national government together with the remaining subnational governments may have an incentive to centralise control over the rich resources for the benefit of the nation as a whole. Cession would be rational for the exploited jurisdiction when it finds that the losses exceed the benefits from remaining within the union. Consequently, a union-preserving structure would require adaptation to balance the interests of the exploited with those of the exploiters; that is, the subnational government contemplating secession with the others. These are not hypothetical scenarios but one familiar to policymakers in PNG who are currently in the process of negotiating new autonomy arrangements for subnational governments (see Ghai & Regan, 2006; Pouru, 2021).

In both these strands of the literature, the economic arguments for decentralisation rest on the premise that the devolution of the powers to tax and spend public funds brings the government closer to the people at the grassroots. This in turn helps improve flows of information between the government and the governed, allowing supply of services to be matched closely and quickly to the needs of the public. The ability to match demand with supply of public services is particularly important when citizens are spread across wide spaces, mobility across space to access services limited (such as through customary land tenure arrangements), and especially when they have diverse demands: bringing services closer to the recipients in such a situation will raise citizen welfare (Wallace E. Oates, 1999).

Preferences can differ enormously across space, and space is a significant factor in planning for the distribution of public services in any country (Tiebout, 1961). Papua New Guinea is a case in point given the rough terrain of the mainland and the many dispersed islands that limit mobility across the nation. Consequently, proximity of policymakers to the people being served is paramount for delivery of basic services. Such proximity reduces the gap of information between those responsible for supply and the consumers of the service, and lowers transaction costs for delivering services that lack economies of scale. Furthermore, provision of public services locally lends the opportunity to tailor supply to the espoused need when preferences vary significantly across regions that raises citizen welfare (Oates, 1999). But local government are able to match supply with demand when able to harness the information, have the resources to fulfil their obligations, the incentives to serve the public interest, and the autonomy/freedom to act accordingly.

The capacity of local authorities to respond to the needs of locals in a timely manner is a major motivation for decentralisation. Local governments however may not be in a position to meet all of the diverse needs of their residents. Mobility of people across the nation compensates for the absence of some local services. Mobile individuals are able ‘to vote with their feet’, and in doing so meet their own needs while forming communities with common preferences for specific services (Tiebout, 1956). Tertiary healthcare is a case in point where individuals needing the service and having the ability to move are able to access hospitals in the major urban centres of the country, or even abroad. These benefits are fully realised with perfect mobility, but this is an unrealistic assumption. The reality is that mobility is imperfect and no local governments is able to meet every need of their people. Any level of mobility helps however. As an example, specialist health care is available only in large urban hospitals and these are accessed by those in need and the capacity to move to these facilities. Not all individuals are able to move to access the services that they may need – so some unmet need is likely to remains at each locality.

The implications of the above for policymaking are several. First, a benevolent local government will work towards satisfying the needs of the public regardless of local interests while public officials pursuing their own popularity will respond to local lobbying. The latter points to the fact that decentralisation can improve allocation of resources while minimising waste when officials are accountable to the local public (Weingast, 1995). Second, and even more importantly, benevolence assumes away strategic interactions between levels of governments; that is, subnational governments accept the status quo for efficient delivery of services. In the case where subnational governments engage with the central government to maximise their own interests, fiscal decentralisation provides the opportunities for the preservation of the union as well as the risks of disintegration. Considerable efforts have been placed under the second-generation reforms to align incentives of subnational governments to raise revenues locally and take responsibility for the delivery of services that support national priorities. Some of these issues are explained in the next two subsections, dealing with assignment of the responsibilities for expenditure and division of the tasks for revenue raising between levels of government.

Some public goods are efficiently provided by the central government. Amongst them are what economists call ‘pure public goods’ which contain two characteristics; namely, those that are ‘non-excludable’ – meaning that consumers cannot be excluded once the good is provided, and ‘non-rival in consumption’ – meaning that the marginal cost of an additional
consumer is zero. National defence is an example a pure public goods since no one can be excluded from enjoying the benefits of national defence once it is provided, and that additional cost of national defence for a citizen is zero. Pure public goods are provided cheaply at scale thus services such as national defence, macroeconomic management, foreign relations, currency, etc. are provided at the level of the nation as a whole. Similarly, policies relating to the exploitation of natural resources, redistribution of income, access to education and healthcare are designed at the national level but implemented locally. Doing so allows for the integration of local supply with that of the nation as a whole; the education provided at the local primary school, as an example, has greater value if integrated within the education system of the nation as a whole. Centralised delivery of basic services, and their integration across the nation, also helps consolidate a common national identity – often a priority for a newly independent nation. Indeed, many unitary states were created under a national constitution that underwrote access to the same public services following widespread publicity as a means to nation-building.

Decentralisation has its limitations too. Four that are relevant for the subsequent discussion are enumerated next. First, some services are best provided nationally while most other services, as explained above, require integration at the level of the nation as a whole. Clean air, immigration services, and national defence are examples of services that simply cannot be provided at the local level. Others such as education, healthcare, and transportation infrastructure can be provided locally but their efficacy increases when these services are integrated across the nation (and sometimes even internationally – e.g., aviation). Second, decentralisation brings the government closer to the people, and in doing so it also offers the opportunity for elite capture and attendant risks of nepotism and corruption. These risks are significant within the contexts of clientelist politics. Third, subnational governments often lack the human, financial, and technical resources that national governments have and therefore hamstrung from delivering services. Furthermore, skilled bureaucrats have the incentive to move from the outer rings of government to the centre for advancement, compounding the problems of retaining talented staff by subnational governments. Fourth, and building on from the second is that decentralisation as a whole requires constant rebalancing so as to ensure that the benefits of ‘shared-rule’ (i.e., remaining part of the nation-state) exceed those from ‘self-rule’ (i.e., secession).

Lesson 1: Autonomy arrangements survive through constant rebalancing to maximise the net benefits arising from ‘shared-rule’, realising that a wobble in the direction of ‘self-rule’ can undermine national cohesion. Canada, Italy, and Spain have been successful in this constant rebalancing. Fiscal decentralisation is used as an instrument to bind the subnational governments into the nation state where the efforts of the individual governments to exploit national commons is kept in check.

Assignment of responsibilities for expenditure

The responsibilities for specific functions assigned to subnational governments is guided by the principle of subsidiarity. This principle asserts that:

“Taxing, spending and regulatory authority for any service should be vested in the lowest order of government unless a convincing case can be made for higher order assignment” (OECD, 2019; p. 137; emphasis added).

The economic justification for the subsidiarity principle including those relating to economic efficiency and effectiveness of service delivery has been explained above, thus the reasons for deviation from adherence to this principal is explained next. Note that a blind application of the subsidiarity principle would mean the ‘decentralisation of everything’; which is the same as complete centralisation since nation states are exactly that! However not all taxing, spending, and regulatory functions within a nation is handed over to lower levels of governments. Decentralisation entails a lot more nuanced application of the subsidiarity principle where the prevailing economic, political, administrative, social, and cultural factors are considered. We focus next on the economic motivations for vesting of the responsibility from the central government to subnational governments for public expenditure.

Some services are provided solely by the central government. As explained above, doing so minimises cost of supply and allows for integration of the services across the nation. National governments all over the world have taken responsibility for the issue of a national currency, macroeconomic management, immigration, and national defence. Furthermore, nations cooperate on matters relating to the management of the environment, international trade and communications, natural disasters such as the ongoing Covid-19 pandemic, etc. Conversely, matters relating to licencing of local businesses and municipal services are universally the responsibilities of local-level governments. Such responsibilities are delivered by local-level governments within the confines of the national framework for the named services. In-between the central and local-
level governments sit a plethora of public services such as education, healthcare, transportation services, etc that require coordination across levels of governments for effective delivery. Moreover, the peculiarities of the context may shift the balance between centralised verses decentralised delivery of a particular service – vaccination being a case in point where historically this has been within the realm of responsibilities of local health workers but since the advent of Covid has been a national if not an international responsibility.

**Lesson 2:** Efficient delivery of most public services requires close coordination and cooperation between the central government and the subnational governments, and that between subnational governments.

Not all subnational governments have to be assigned the same functions; that is, functions assigned to individual subnational governments will depend on their individual contexts. This is encapsulated in the principle of *Asymmetric decentralisation* which states that:

“To make decentralisation work, it is desirable that functional responsibilities be tailored to the local preferences and needs, demographic and geographic character (area, population size, topography, urban vs. rural, small towns vs. metropolitan areas, plains vs. mountainous region, agricultural vs. industrial towns, etc.) and fiscal capacity of local jurisdiction” (OECD, 2019; p. 137; emphasis added).

The principles of subsidiarity and asymmetric assignment provide guidance on assignment of functions to subnational governments. Note that the principle of asymmetric assignment states that functional responsibilities must be tailored to, amongst other things, the fiscal capacity of the local jurisdiction.

The provision of pure public goods, as noted above, are assigned to the national government. In contrast, responsibility for provision of impure public goods such as schooling and roads that confer disproportionately larger benefits to those close to supply are best delivered at the local level. The importance of proximity to source of supply is an important consideration when assigning functions to local-level governments. That is, the local jurisdiction should be assigned responsibility for services whose access diminishes with the distance of the place of supply from the consumer. Consequently, ‘impure’ public goods are produced within the community to meet demand in situ. Not all services may be available at each location as the costs of supply will differ across the nation, and so would the preferences of the locals for specific services. In either case, individuals may be able to move across locations to meet their individual needs. Parents, for example, move to places with good schools while market vendors move to locations where the public congregates. Thus, a combination of decentralised production of impure public goods together with the option for consumers to move and/or commute to the place of production allows individuals to meet their needs. The costs of mobility within PNG is high due to limited connectivity and the communal land tenure systems.

What is the optimal size of a subnational government? This could differ depending on the service being considered. Consider the case of an uncongested local road that is freely accessible to all but where an additional user does not diminish access to another user. The local nature of the road means that access diminishes with the distance from the user's place of residence. These considerations lead to an optimal size of local-level governments, and they lead to what are called ‘boundary problems’ in spatial economics. That is, public roads are built far enough from each other to economise costs and the boundary between them is determined by a user who at the margin is indifferent to using either of the two roads. Such endogenously determined boundaries are likely to diverge for the local primary school, secondary school, health post, police station, etc. Boundaries for local-level governments are also affected by physical barriers such as the ocean, rivers, mountains, etc and social considerations of history, language, etc. In PNG, Provinces were formed from the Colonial Districts while the districts that exist today are formed by electoral boundaries.

To sum up, the national government is assigned responsibility for access to pure public goods while local-level governments are assigned the responsibility for the remaining public functions. Assignment of responsibility for functions to the local authority has the advantages of matching local preferences with supply, allows for use of information to adapt supply to expressed need, and provides the opportunity to the recipients of the service to hold their government to account. The national government is responsible for integration of the services provided at the local level and often provides the funds from the national budget to allow local-level governments to exercise their responsibilities. This simple case illustrates an important fact regarding the assignments of functions between local and national governments: even when a public service

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1 Such movements is referred to in the literature as ‘Tiebout sorting’ (Tiebout, 1956).
may only be delivered locally, the national government has a critical role to play in overseeing the delivery and appropriate use of the funds. The arguments for oversight of locally provided public services becomes stronger when benefits spill across borders, or when there are additional benefits from integration of locally-delivered services.

**Lesson 3:** The National/Central Government is critical to the functioning of a nation with autonomous subnational governments.

**Division of responsibilities for funding**

Decentralisation requires subnational governments to have sufficient resources – human, financial, capital, consumables, etc - to exercise all of their responsibilities. Fiscal decentralisation narrows down the focus to finances only, but the issue of resourcing is a lot broader than money alone. This sub-section explains the conceptual arguments for the division of responsibilities for funding of public expenditure incurred by subnational governments. Explained next are the division of powers to tax local economic activity, the sharing of revenues collected nationally, and the role of transfers from the national budget for fiscal equalisation.

Grants are provided from the national budget to fill the gap between the costs of exercising the assigned functions by the particular subnational government and their capacity to raise revenues locally; such grants are called ‘gap filling’ as they equalise fiscal capacity across subnational governments to deliver the assigned services. Note that costs of delivering services across the subnational governments are likely to depend on population density, terrain, and the nature of the service while the capacity to raise revenues will again depend on a multitude of factors including endowments (such as gold deposits) and the level of economic activity within the jurisdiction. We revert to some of the basic principles from the literature that provide guidance on the division of responsibilities between the central and subnational governments for funding of public services.

Recall from the earlier subsection that the principle of subsidiarity mandates that the powers to tax should be devolved to the lowest levels of government for economic efficiency. The three primary considerations in assigning taxes between national and subnation governments are:

i. **Benefit taxation** (e.g., user pays) should be used at the level where users are aligned to payments made;

ii. **Taxes with mobile bases** (e.g., income taxes) should be administered at the national level; and,

iii. **Taxes whose bases are immobile across space** (e.g., land taxes) should be assigned to subnational level governments (Bird, 2011).

Most local governments do indeed administer and collect local taxes such as road user charges, business license fees, municipal rates, etc. Making users pay for the services consumed has been popular but not without its critics as explained in the next sub-section. Income taxes, border tariffs, and most indirect taxes such as the GST, in contrast, are administered and collected centrally. The income generated in an economy may be spread across the nation, thus income taxes are collected centrally. Doing so minimises the costs of collecting revenues which often is undertaken by a single (national) agency, and the opportunities to shift economic activity within a nation to minimise income tax liability is eliminated when the tax is administered at the level of the nation as a whole.

**Application of the ‘User-pays’ principle**

The first generation of this literature argued for the use of the ‘benefit principle’, meaning that users should pay for the public services that they use. Making users pay for the services has the advantage of allocating limited supply to those willing to pay (i.e., achieve allocative efficiency) with prices reflecting the marginal costs of production. The main drawback of suing users pay for public services is that this is unfair to the poor (i.e., is inequitable), and it may also encounter problems of free-riding; that is, beneficiaries not paying for the service enjoyed. The risks of free riding are particularly high when consumers cannot be excluded from enjoying the service. Notwithstanding the above deficiency, application of ‘user pays’ principle saves the need for use of distortionary taxes to fund the service and for transfers from the national budget to fill any gaps in funding. Gap-filling grants, moreover, may in themselves create disincentives for revenue raising by the recipients – this then creates a heavy dependence on the national budget.

Grants provided from the national budget to subnational governments dampens the incentives for local revenue generation. Local-level governments who have guaranteed access to grants from the national budget lose the motivation to raise their own revenues. Since tax revenues collected by local governments are dependent on the level of economic activity within their jurisdiction, grants from the national budget reduce the incentives for local-level authorities to support local economic enterprise. When other subnational governments follow suit, growth of GDP falters, budget deficits and public debt rise,
and macroeconomic management suffers. Grants from the centre also reward efforts put into lobbying for a larger share of the national pool of funds, and risk politicising the instruments for fiscal equalisation (Brinkerhoff & Johnson, 2009; Martínez-Vázquez et al., 2017).

Grants however are part necessary for fiscal equalisation. This is only because costs of delivering services across the nation vary as does the ability to raise revenues locally. The costs of delivering services in densely populated regions with good infrastructure are lower than in sparsely populated regions that are difficult to reach. Similarly, resource rich areas of the nation have greater capacity to raise revenues than those lacking such endowments. The very notion of a nation often entails equal access to public services across the nation. National Constitutions often mandate that citizens have uniform access to public services regardless of the place of their residence. In the case of unequal capacity to raise revenues locally, national governments include provisions for fiscal equalisation; that is, the levelling of financial capacity of local-level governments to allow them to provide uniform public services. The National Constitution of Papua New Guinea, for example, mandates:

“equalization of services in all parts of the country, and for every citizen to have equal access to legal processes and all services, governmental and otherwise, that are required for the fulfilment of his or her real needs and aspirations” (s. 2(4)).

In summary, the principle of fiscal equivalence posits that local services must be financed locally where the local-level government has jurisdiction over both the raising of revenues and the spending of the proceeds to meet the expressed needs of the local population. Adherence to the principle of fiscal equivalence helps engender accountability of the local government, and minimises the risks of free-riding by individuals who consume the public service but evade paying costs for the provision. Putting the principle into practice is problematic because aligning the benefits of a public service to the administrative boundaries of a local-level government is difficult. Furthermore, benefits provided by one subnational government often spill across boundaries with neighbouring jurisdictions. Such spill-overs may lead to under-provision of the service unless the central governments steps in to coordinate delivery across jurisdictional boundaries. Lastly, jurisdictional boundaries are often set by history and/or geography that may not align with the principles of fiscal equivalence.

There is alive and ongoing debates on the rationale for and the levels of fiscal equalisation that we turn to next.

Fiscal equalisation through ‘gap-filling’ grants

The capacity to raise revenues and the cost of providing specific services vary enormously both between levels of government, and that amongst subnational governments. Fiscal equalisation addresses these disparities through transfers between the central government and those at the lower levels (i.e., through vertical transfers) and that between subnational governments for horizontal equalisation of fiscal capacity. Thus, transfers from the national budget fills the gap between revenues and expenditure across the different levels of government, and equalises the capacity of individual subnational governments to deliver the services devolved to them. These equalising transfers are normally based on formulas that take into account the costs of delivering the services for which subnational governments have responsibility, their capacity to raise revenues locally, and the effort put into minimising costs of delivering services and in raising revenues locally.

The grants from the national government can either be given without conditions (i.e., in the form of unconditional grants) or come earmarked for specific purposes (i.e., functional grants). In addition to the above, derivation grants provide for the redistribution of a fixed share of taxes collected within the jurisdiction of the subnational government; in PNG, as an example, provincial governments are handed back 60 percent of GST revenues raised within the province. The main attraction of derivation grants is the incentive it provides subnational government to expand economic activities within their jurisdiction. The share of the proceeds handed back to the subnational government where the proceeds were raised may range from 0 to 100 percent. The incentives for supporting local enterprise are correlated with the share of the revenues returned to the subnational government. Conditional grants, in contrast, are used by the central government to incentivise the provision of specific services; as an example, a national government may share in the costs vaccination undertaken by the subnational government if this is seen as a national priority.

Assessing the level of fiscal decentralisation

The level of fiscal decentralisation across nations is quantified by the share of total revenues raised locally and the share of total expenditures devolved to the local-level government. That is, the Revenue Sharing Ratios (RSR) is equal to the revenues of the subnational government as a share of total general government revenues while the Expenditure Sharing Ratios (ESR) is equal to the level of total expenditure by the subnational government as a proportion of total general government expenditure
(see Pouru, 2021 for PNG). While these ratios are easy to calculate, any assessment of the level of fiscal decentralisation is complicated by the absence of data, the details of the types of expenditures, and oftentimes the overlapping responsibilities of the various levels of governments for individual services – health in PNG as an example.

**Options for assignment of revenue raising powers to subnational government**

The central government may use one or a combination of the following interventions to assign responsibility for the raising of revenues by subnational governments – arranged from that with the least autonomy to the most:

i. The National Governments sets the tax rate and defines the tax base for the nation as a whole (e.g. income taxes), and then distributes the collected revenues to subnational governments on an agreed formula;

ii. The National Governments sets the tax the base and let subnational governments set the tax rate (e.g. municipal rates);

iii. The National Governments sets the tax rate and lets subnational governments set the base; and,

iv. The National Governments sets the tax lets subnational governments set both the tax base and the tax rate.

The literature points to the fact that transfer system that include incentives for subnational governments to raise their own revenues lead to better use of available funds (Bird et al, 2002; p.899). In this context, derivation grants provide the incentives for the local government to encourage economic enterprise within its jurisdiction; matching grants reward expansion of the supply of public services by the local authorities; and, lump-sum unconditional transfers from the national budget reward free-riding. This leads us next to highlight some of the main challenges of implementation.

**Challenges of implementing fiscal decentralisation**

To conserve space, we will enumerate the five main challenges in implementing fiscal decentralisation.

1. **Risk of under-funding:** Central governments, as explained earlier, must have sufficient resources to exercise their responsibilities. This could entail transfers in the form of grants from the national budget and/or devolution of powers from the centre to raise taxes in order to match ‘finance to function’ (see sub-section above). The ‘Finance follows function’ principle requires that the transfer of responsibilities from a higher-level government must be accompanied with the necessary resources to allow effective exercise of the devolved responsibility. A significant and common failure of fiscal decentralisation has been the under-funding of responsibilities handed to subnational governments. In the most extreme case, the national government allocates responsibilities for delivery of public services to lower-level governments but without providing the necessary funding (Bahl, 2008; CPC, 1974).

2. **Risk of over-spending:** When subnational governments are highly dependent on transfers from the central government then this can create incentives for overspending and waste. This problem is particularly acute when any overspending by the subnational government is underwritten by the central government; that is, when subnational governments operate under a soft budget constraint (OECD, 2019).

3. **Risks to local revenue generation:** Highly generous transfer systems can discourage efforts at expanding the local economy that in turn dampens tax collections. Furthermore, when transfers from the national budget are made on a discretionary basis then they can encourage rent-seeking (i.e., lobbying to increase share of receipts of grants from the centre) and waste.

4. **Failure to recognise economies of scale:** many public services enjoy significant economies of scale. Delivery of such services by the subnational governments can lead to duplication of effort and raise costs of service delivery. The collection of taxes is a case in point where a national level agency may be able to collect a given amount of revenues at lower cost compared to the case when the collection is undertaken by independent subnational tax offices.

5. **Need for adaptation:** fiscal decentralisation requires constant updating as circumstances change. A large resource project within the jurisdiction of one subnational government may require adjustment to the formula used for sharing of revenues, failure of which may exacerbate the pressure for increased autonomy and in the extreme case secession.

Fiscal equalisation, including the estimation of the levels of transfers from the national budget to individual subnational governments, is often outsourced to independent institutions. The mechanisms used to determine the level of transfers by independent institutions, as elaborated later for the PNG, are through simple transparent formulas that tie the costs of delivering the services by the subnational governments to their capacity to raise revenues locally. The central government in a decentralised system takes direct responsibility for national functions including the oversight over public spending and the

\[1\] This is also referred to as the Matching or Connection principle.
integration of the services delivered by subnational governments.

International evidence supports the proposition that decentralisation is beneficial to the public. A positive correlation has been observed between the extent of decentralisation with measures of economic activity, human development, public sector efficiency, democratisation, and political stability (OECD, 2019; p.19).

The benefits of decentralisation are maximised when:

a. inter-governmental relations are designed as a comprehensive system;

b. finance follows function;

c. the national government is able to oversee fiscal effort and public expenditures;

d. transfers from the national budget for fiscal equalisation are based on a simple and transparent formula; and,

e. a hard budget constraint is in place (Bahl, 1999).

We apply the above-enumerated lessons to fiscal decentralisation in PNG next.

**Fiscal decentralisation in PNG**

**Demands for decentralisation**

It is important for the subsequent discussion to note that the demands for political and administrative decentralisation were considered in considerable detail during the drafting of the National Constitution in the leadup to independence in 1975. Demands for fiscal decentralisation was also made by the then North Solomons Province (now Bougainville) as the Bougainville Copper Limited had already commenced production in the province by then. The ‘Second National Goal and Directive principle’ of the National Constitution espouses ‘Equality and participation’ where every citizen was to have “an equal opportunity to participate in, and benefit from, the development of our country”. Self-reliance in terms of access to community services such as personal security and communal land however predates colonisation of Papua New Guinea.

PNG has always been an ethnically, culturally, linguistically, and spatially fragmented nation (Fearon, 2003). When first contact was made by western explorers, they noted that people lived in villages, had organised to defend themselves from invasion, and that each community lived independently of others but for some limited exchanges including inter-tribal fighting. The German then Australian colonial administrations that governed PNG prioritised the maintenance of law and order over democratic participation in government (Constitutional Planning Committee - CPC, 1974; Chapter 10, paragraph 158). The unitary state that got established at independence in 1975 under a centralised administration is the product of the colonial past, and motivated by the desire of the leaders then to create a unified nation.

The public however has been persistent in their demands for greater participation in government. This is evidenced by the observation of the CPC, which reported after nation-wide consultation and its own deliberations, that:

“There is widespread discontent with the present distribution of power in our country, and a deep yearning among our people for a greater say in the conduct of their affairs. If the Committee’s recommendation in Chapter 7, “The Executive”, that the Constitution should explicitly vest power in the people, is to be more than legal rhetoric, then opportunities must be provided for our people to participate meaningfully in those aspects of government that directly concern them” (Constitutional Planning Committee, 1974; Chapter 10, paragraph 1).

The people of PNG were demanding the application of the subsidiarity! The CPC acknowledged that the colonial administration had installed peace and delivered public services to the communities. In doing so, the CPC argued that the colonial administration had left the nation with a “highly centralised” and overly “bureaucratic” system of government with “all significant decisions affecting the lives of people in every part of the country [being] made in Konedobu” (ibid; page 2).

This in turn, the CPC argued, had deprived the people of self-government, recommending that:

Power must be returned to the people. Government services should be accessible to them. Decisions should be made by the people to whom the issues at stake are meaningful, easily understood, and relevant. The existing system of government should therefore be re-structured, and power should be decentralized, so that the energies and aspirations of our people can play their full part in promoting our country’s development (Constitutional Planning Committee, 1974; Chapter 10, paragraph 9).

Demands for the devolution of authority from the centre to allow for a flexible, participatory, and decentralised system of government within a unitary state is as old as the nation itself. The communities had “expressed overwhelming support for
the establishment of representative bodies with the power to govern at the district level” (Constitutional Planning Committee, 1974; Chapter 10, paragraph 257). The calls for 'representative bodies with the power to govern at the district level' are still alive even after the Central, Regional, Local, and District-level administrations were installed following independence. Demand for decentralisation has been a permanent feature of realpolitik in PNG for close to half a century.

Progress with decentralisation since independence has been limited however. This is not for a lack of effort: the National Constitution included provisions for decentralisation, leaders across generations have argued for greater devolution of powers from the nation's capital, and two major reforms were instituted to deliver decentralised government to the public. Devolution of powers from the centre to the subnational governments has been slow, and has even regressed when assessed in terms of expenditure and revenue ratios. Specifically, the national government for the two decades to 2019 took direct responsibility to spend approximately 72 percent of total government budget, leaving the balance of 28 percent to subnational level governments. But this ratio has not been steady over time: there were two short episodes when subnational governments increased their share – this being between 1994 and 1996, and then again from 2013 to 2016 (see Figure 1 – Pouru, 2021; p. 23)). The levels of expenditure have also varied markedly between the individual provincial and local level governments. Bougainville, that has been omitted from the analysis of Pouru (2021), in all likelihood has had greater autonomy over public expenditures than the other subnational governments.

Fiscal concentration when assessed in terms of revenue ratios is higher still. The national governments collected approximately 90 percent of total revenues (and 95% of total tax collections), meaning that subnational governments collected 10 percent at most (Pouru, 2021; page 25 ). In sum, the national government is responsible for collecting the bulk of the revenues and takes direct responsibility for the majority of government expenditures meaning that there has been little fiscal decentralisation since independence despite the persistent demands of the public.

**Devolution of powers to subnational governments**

This section is devoted to a discussion on the resurgence in demand for autonomy, the conversations that must be held at the level of the nation on revenue powers that may be devolved to provincial governments, and the reasons for functional grants from the national budget.

The initial demands for decentralisation were addressed through devolution of political and administrative powers to the provinces (i.e., the former districts of the colonial era). The first phase of decentralisation that extended from 1976 to 1995 involved the establishment of provincial governments with elected assemblies, following closely the recommendations from the CPC (CPC, 1974; paragraph 43). The second and third phases that commenced in 1995 and 2006 respectively, reconfigured provincial governments wherein local-level governments were given a greater role in service delivery and direct support from the national budget. The details of these reforms are provided in the companion paper (i.e., CTN, 2022), suffice here to note that the drivers for change towards greater centralisation that began with the reforms of 1995 included: (i) evidence of inefficient administration, nepotism, corruption, and financial mismanagement from reviews of the performance of provincial governments; and, (ii) national politicians seeing their elected provincial counterparts as competitors.1

The assignment of responsibility for delivery of services to subnational governments is contained in a handbook produced by the Department of Provincial and Local Government Affairs titled 'The Determination assigning Service Delivery Functions and Responsibilities to Provincial and Local-level Governments' (GoPNG, 2010). The Handbook assigns fifteen (15) service delivery functions and responsibilities to Provincial and Local-level governments; namely, Basic and Primary Education, Rural Health, HIV/AIDS, Agriculture, Fisheries, Forestry, Disaster Management, Environment, Community Development, Village Courts, Land Mediation, Commerce and Industry, Lands and Physical Planning, Non-renewable resources, Infrastructure, and local administration.

While the initial assessment of provincial governments had set in train moves for recentralisation of fiscal powers of subnational governments, the success of three subnational governments in both raising revenues and providing public services has led to renewed demand for fiscal decentralisation. East New Britain Province (ENB), Enga Province, and New Ireland Province (NIP) were granted greater autonomy in 2019 on the back of their ability to raise substantial revenues within their jurisdictions. In the case of NIP, dividends and royalties from a major resource project contributed some 86 percent of total local revenues. In the case of ENB, GST was the major source accounting for one third of total revenues for the

1 Duncan and Banga (2018) argue that “It now seems clear that provincial politicians’ threat to national members of Parliament (MPs) was the key reason for the enactment of the OLPGLLG, and not poor performance on the part of provincial governments, as many claimed at the time” (p. 498).
province (Pouru, 2021). While data from Enga is not available, dividends and royalties from the gold mine in the province would likely have accounted for a substantial share of total revenues for the provincial government. Thus, a major driver for increased autonomy by provincial governments in PNG has been their ability to raise revenues for their budget locally. Such demands are rational as resource-rich provinces weigh out the benefits of being part of the union against the costs of losing revenues to the rest of the nation. Additionally, provincial governments that have provided a conducive environment for enterprise—either because of the presence of rich natural resources (e.g., gold) or otherwise—may feel that they have a right to the proceeds from the exploitation of ‘their resources’. In any case, derivation grants provide the incentive for provincial governments to attract enterprise to their jurisdiction.

The questions to consider in a national conversation in relation to the division of responsibilities for revenue raising between the National Government and the Provincial Governments are:

1. How much of the GST collected should be returned to the source province? Specifically, why limit this share to 60 percent?
2. What proportion of royalties and dividends should accrue to the source province? This issue is being debated in NIP where 50% of royalty payments accrue to the Provincial Government, 30% to LLGs, and 20% to landowners. In Enga prior to the closure of Porgera Mine, the Provincial Government received 50% of royalty payments.
3. What additional revenue raising powers, if any, should be granted to the provinces? Pouru (2021) argues for additional revenue powers to be granted to provincial governments, but the macroeconomic implications of this proposal have not been analysed.
4. Should provinces be allowed to borrow to fund any shortfalls in revenues, and if so, then how much? How can the macroeconomic effects of such borrowing be contained?
5. Is a hard budget constraint on the Provincial Governments credible?

These questions can only be answered through a conversation with all of the stakeholders. We simulate the effects of redistributing all of GST revenues to the source province next. This is done with a view to providing Provincial Governments the maximum rewards for supporting economic activity in their province.

All of GST revenues can be returned to the source province without adversely affecting total transfers from the National Budget. Table 1 provides data depicting such a scenario where total transfers to all provinces are held constant. The first column lists down the 20 Provinces plus the NCD; the second column shows the value of GST collections currently returned to the source province (i.e. equal to 60% of GST receipts from the province); the third column shows the value of Grants provided from the national budget; the fourth column is the total revenues available to each province (i.e., equal to the sum of the second and third columns); the fourth column shows 100 percent GST receipts from the province; and the last column shows values of Grants should all of the GST be returned without affecting the national budget (i.e., where total revenues provided to the Provinces (and NCD) of K1.64 billion under the current arrangement is the same as under the new arrangement). The two subnational governments that lose out from the new arrangement are the NCD (of K160m) and Morobe (K30m) with the former home to the National Capital Port Moresby and the latter home to Lae City, the business hub of the nation. The NCD under existing arrangement receives K240m (i.e. 60%) of total GST collected in its jurisdiction and no grants from the National Budget while Morobe receives K90m from the GST collections and another K30m in grants; under a system where all GST is returned to the provinces will leave every province better off with the NCD and Morobe being significantly ahead. The NCD would need to return K160m of its GST receipts to the National Budget and for Morobe to return K30m for the total revenues handed to provinces to sum to K1.64 billion.

Incentives may be created for the provinces to support economic activity to reap the rewards from GST collections. In the case of the NCD and Morobe, they could be returned all GST collections above the current transfers to the National Budget of K160m and K30m, respectively. The rest of the provinces would retain all of their GST revenues. This simple change would ensure that the GST generated from any additional economic activity taking place in the jurisdiction accrues fully to the subnational government. Additionally, Provincial Governments could be granted complete autonomy over spending of the GST receipts; this will be a major incentive for supporting local enterprise. The only condition that could be imposed on such expenditure is that they, like all public expenditures, be subject to public finance regulations and thus subject to scrutiny of the National Audit Office. Subnational governments may also be required to provide data on the levels of access to services in their jurisdiction to the national monitoring authority.

A concern of the National Government would be the loss of control over Provincial expenditures that are funded with GST receipts. This in itself may not be a concern if it leads to improved service delivery. But in the case where Provinces hold
priorities different to those of the National Government in terms of public services to be delivered, the latter can use subsidies such as ‘matching grants’ to influence local expenditures. Thus, incentives can be used to reward increased local enterprise while the National Government can employ subsidies to prioritise national expenditures. The above could be part of the national conversation on fiscal decentralisation, as would be the answers to the remaining four questions.

**Assignment of functions to subnational governments**

The *Inter-governmental Relations (Funding and Functions) Act of 2009* spells out in considerable detail the responsibilities for service delivery that is assigned to Provincial and Local-level Governments. It would be impossible to explain all of the details contained in the legislation, thus the coverage in this section is on the use of the core principles of fiscal decentralisation.

Does funding follow function? The answer to this question is not all that clear as explained below. The National Economic and Fiscal Commission is allocated the responsibility to estimate the recurrent costs of delivering the assigned functions, assess the amount of revenue available to the subnational government, and use the above-mentioned to arrive at a figure for ‘fiscal need’ (*IGRFF*; s.21&24). The formulas used to reach the figures for fiscal equalisation for each subnational government is spelled out in detail in the legislation, but they are not easily understood by an ordinary member of the public. Thus, updating of the formulas contained in the *IGRFF* after public discussion with the view to making them simpler is overdue.

Subsidiarity has been followed. Provincial and Local-level Governments are assigned responsibility for local services in relation to Health, Education, Infrastructure maintenance, Village court, Land management, primary production, etc. This assignment is consistent with the principle of subsidiarity, in that the responsibility for delivery of these services are vested in the lowest level of government, and there are no compelling reasons why such delivery should be otherwise.

Fiscal equalisation is biased towards grants from the national budget. There is a heavy dependence on the national budget for funding of expenditure by Provincial and Local-level Governments. Grants provided from the national government to provincial governments include: service delivery function grants, administration grants, rural local-level grants, urban local-level grant, staffing grants, and developmental grants. The NEFC has primary responsibility for oversight over all expenditure that is funded through these grants (*IGRFF*; s.68), meaning that the National Government has close to complete control over these expenditures.

The National Government has close to complete control over all recurrent expenditures in the provinces. Recurrent funding attached to the assigned functions is provided though an administrative and a functions grant. The administrative grant is provided to defray incidental costs in relation to the delivery of the specific service. Similarly, functional grants are provided to fund the delivery of services devolved to Provincial and Local-level Governments. The *IGRFF* spells out in considerable detail the allowable expenditures that may use administration and function grants. Provincial Governments must secure approval from the National Treasurer for their budgets. These restrictions on the use of grants from the National Government limit autonomy of subnational level governments in spending the funds on their own priorities.

Coordination across levels of governments for integration of services could be challenging. This is because the role of District Development Authorities is unclear, and their integration with Local-level governments opaque. Consequently, coordination and integration of service delivery across levels of government would be challenging if District Development Authorities operate in competition with Local-level governments.

**Revenue autonomy**

Provincial and Local-level governments have limited autonomy with respect to setting the rate of tax, determining the tax base, and collecting the taxes. This autonomy, however, is limited to a narrow base and subject to revocation by the National Treasurer if deemed discriminatory or if the tax rate set is ‘unreasonably high’ (*IGRFF*; s.70). The National Government sets and collects all income taxes, GST, and border tariffs. The reasons for the above are simple: nationally determined taxes minimise the opportunities for tax competition between subnational governments within PNG. The collection of tax revenues, moreover, is undertaken by the Inland Revenue Commission (IRC) that operates at the national level. Again, doing so is efficient as it minimises duplication of effort and allows for national coverage of the taxpayers as a whole.

Roughly 90 percent of all taxes are collected at the national level. The revenues so collected are then shared across 22 Provincial Governments (including the NCD), 89 Districts, and 318 Local-level Governments (LLGs). Once again, the sharing of these revenues is set by legislation. The GST Revenue Distribution Act 2003 (GSTRA) and the Intergovernmental Relations (Functions & Funding) Act 2009 (*IGRFF*) for example stipulate that 60 percent of GST revenues collected in the
preceding fiscal year in the jurisdiction of a Provincial Government or a LLG is returned to them (IGRFF; s. 40; GSTRA, s. 7(2a)). Other taxes and revenues that subnational governments are entitled to receive a share of include Bookmaker turnover tax and Mining and Petroleum royalties and dividends, but these accrue to only a few of the provinces. Provincial Governments may impose their own local taxes, charge business license fee, and run their own commercial enterprises but these contribute to roughly 10 percent of their total expenditure.

The recent literature on fiscal decentralisation emphasises the importance of striking a balance between direct transfers from the national budget and the devolution of powers from the national government to subnational governments to raise their own revenues. The evidence points to the fact that subnational governments spend their revenues more responsibly when these revenues are raised by themselves (Slack, 2017). But not all subnational governments have the same capacity to raise revenues locally, thus self-reliance has to be supported at the provincial level without exacerbating fiscal imbalance between them.

Access to information for effective grassroots government

Grassroot government provide the incentive for improved service delivery only when the local public holds the executive to account for the services provided. A necessary condition for this to happen is access to timely and accurate data that allows the recipients of the service to judge the effectiveness of supply. The public, for example, will be able to assess the level of access to schooling if provided data on the proportion of school-aged children residing in the jurisdiction who are enrolled in school. Parents, similarly, would be in a position to judge the effectiveness of schooling only if they have access to results from the national examinations in real-time. Comparisons across jurisdictions of such objective information will create a climate for competition in the delivery of public services across Provinces, Districts, and LLGs.

Better information is essential for a well-functioning intergovernmental fiscal relations (Bird & Smart, 2002). The task of monitoring the use of grants by Provincial, District, and Local-level governments is currently assigned to the NEFC operating in consultation with the Chairman of the Provincial and Local-level Service Monitoring Authority and the Departmental Head of Treasury (IGRFF; s.68). This is an excellent foundation that may be built on towards an independent National Service Monitoring Authority (NSMA) operating at arms-length from both the National and subnational governments. While the details of what the proposed NSMA would look like are still to be fleshed out, it would at a minimum be required by legislation to publish timely data on levels of access to public services in all of the provincial, district, and local-level governments jurisdictions. The NSMA would also be required to report to the National Parliament and the media annually. The reports from the NSMA will be credible only if the indicators of the effectiveness of services delivery are objectively assessed and easily understood, and these are communicated to the public on a regular and timely basis. The details of the role and remit of the proposed NSMA can be part of a national conversation on structuring of incentives for improved service delivery.

Objective information on its own unfortunately is not enough for improved accountability of subnational governments. In the case where politics prevails such that parents prioritise their connections (via clan, language, ethnicity, etc) over the quality of services received in local elections then grassroots government may not deliver improved accountability. Such accountability may be eroded further when grants for service improvement are allocated to members of the national parliament directly from the national budget. Discretion in the use of such grants for ‘service improvements’ in the electorate provides the incentive for, and the opportunity to, engage in clientelist politics. Reports to the National Parliament and the media will mitigate against such a risk.

Conclusions

This paper had two aims: first, to describe the central features of the mechanisms used for fiscal decentralisation in jurisdictions similar to Papua New Guinea; and, second, to compare the above to the practice in PNG. While researching for this paper, it was also discovered that considerable thinking had been put in place in the lead up to independence of PNG in designing intergovernmental relations pertaining to the devolution of legislative, administrative, and financial powers from the Capital to the Provinces. The paper draws many of the lessons from this earlier thinking, noting that the demand for increased autonomy by the provinces and local-level governments runs deep within the veins of the nation. We have also tracked the reforms that have been instituted with regards to decentralisation: while these reforms were intended to bring governments closer to the people, the changes introduced in 1995 through the Organic Law on Provincial and Local-level Governments (OLPLLG) have had an opposite effect. That is, the OLPLLG centralised the authority to legislate, administer, and spend funds for the delivery of services within the Provinces, Districts, and Local-level Governments (LLGs) into the hands of the
members of the National Parliament. Besides, grants from the National Budget of K10m per year across the 89 Districts for service improvement falls outside of the Intergovernmental Financing Act, providing MPs the discretion and control over their expenditure.

Decentralisation in PNG began with the work of the Constitutional Planning Committee (CPC) that deliberated in 1974, with many of the recommendations put to effect in the initial design of provincial and local-level governments. The CPC had noted that its “deliberations on the distribution of powers and functions between the national government and provincial governments have been among the most difficult and time-consuming of all” (CPC, paragraph 79). Not much has changed in the 48 years since: a poignant reminder that the current deliberations on autonomy and the design of intergovernmental relations will neither be easy nor quick. Reassuringly though, the population of PNG that is dispersed across the nation have survived for centuries as autarchic and independent communities. Their demands for greater self-reliance are to be both celebrated and respected.

The focus of this paper has been on fiscal decentralisation, meaning the transfer of the powers to raise revenues and the responsibility to spend the proceeds for delivery of public services from the national government to sub-national governments (i.e., within PNG the subnational governments are the Provincial Governments, Districts Authorities, and Local-level Governments). The responsibilities assigned to subnational governments and the accompanying funding that is provided to enable them to exercise their functions are spelled out in detail in legislations; namely, the Organic Law on Provincial & Local Level Governments (OLPLLP), Intergovernmental Relations (Functions & Funding) Act 2009 (IGRFF) and Goods and Services Tax Revenue Distribution Act 2003 (GSTRDA).

PNG has taken a strong legislative route to implementing decentralisation. The National Constitution established an independent National Economic and Fiscal Commission (NEFC) with the remit to advise the National Treasurer on the magnitude of transfers for fiscal equalisation, and to monitor and report on the use of the disbursed funds. The levels of transfers from the national budget are determined through the application of formulas included in legislation, and the use of the grants provided are also spelt out in legislation. Finally, the budgets of Provincial Governments are approved by the National Treasurer and all public expenditure is subject to audit by the National Office of the Auditor General. In short, the National Government has considerable control over expenditures undertaken by provincial Governments.

The challenge taken up in this paper is to first assess the practice of fiscal decentralisation in PNG against established principles, and then use the information to propose mechanisms for fiscal decentralisation that will improve service delivery at the grassroots. In addressing this challenge, lessons are drawn from the international experience. An important area for consideration in relation to existing fiscal arrangements is the mechanisms that exist for fiscal accountability, and means to improving this.

The literature lays down five specific principles that guide the design of mechanism for fiscal decentralisation. The first is that of subsidiarity, meaning that the responsibility for the delivery of services should be devolved to the lowest level of government unless proven otherwise. Support for subsidiarity rests on the simple premise that a government serving in close proximity to the people has the information and the incentives to serve the interests of the public. In other words, grassroot democracy facilitates accountability of the public service. The second guiding principle is that of Asymmetric decentralisation, which posits that functional responsibilities of the local-level government must be tailored to the preferences and needs of locals. These two principles bring to fore the concept of ‘grass-root government’. The third proposition is that services provided to the public, to the extent possible, should be paid for by the beneficiaries; that is, with the use of ‘benefit taxation’. Fourth, ‘finance must follow function’; that is, the functions assigned to subnational governments must be funded. Last, grants must be provided from the national budget to enable each subnational government exercise all their responsibilities; that is, use fiscal equalisation. Fiscal equalisation recognises the reality of the inequities that exist both between the national government and subnational governments as much as across subnational governments in terms of their capacity to raise revenues locally, and the differing costs of delivering services. But grants for fiscal equalisation from the national budget can weaken the incentives for the recipients to raise their own revenues while encouraging lobbying and corruption to maximise the values of the transfers. Thus, fiscal equalisation through grants from the national budget has to be balanced against benefit taxation. On this, the literature points to the use of simple transparent rules administered by an independent authority to strike this balance.

How does the mechanisms for fiscal equalisation in PNG measure against the principles enumerated above? On all counts, the assignment of functions to Provincial Governments, District Authorities, and Local-level governments are consistent with the principle of subsidiarity. Similarly, most local authorities have a say through their elected representatives in the
services provided to them. These together however does not imply that ‘grassroot governments’ are delivering – missing from the above is timely and accurate information that is necessary to close the feedback loop between the governed and their local government. Provincial Governments, moreover, report to the National Government for their expenditures, and as a consequence are immune from ‘grassroot democracy’.

Access to timely, accurate, and digestible information is necessary for the public to hold its government to account. We have proposed an independent National Service Monitoring Authority (NSMA) with the remit to monitor and the mandate to report on measures of the levels of access to services across all Provinces, Districts, and LLGs. This information could be provided to the National Parliament, broadcast through a dedicated website, and via the mass media. A public that is in a position to compare the performance of its own local government with that of their neighbours will be equipped to demand accountability. Clientelist politics may erode the value of such information, but the National Parliament and the media will mitigate some of these risks.

An important lesson from PNG’s history is the perception that ‘finance has not followed function’. Lower-level governments have consistently complained of being starved of funding, and used this as the reason for their failures. Transfers from the national budget for equalisation are made on the advice of an independent National Economic and Fiscal Commission (NEFC). The value of grants provided to Provinces are calculated using legislated formulas, thus the mechanisms are transparent but the formulas are far from simple to comprehend. Furthermore, allowing provinces to raise their own revenues that they then will have discretion in terms of allocations has the potential to improve service delivery. Grants can dampen the incentives for local governments to raise their own revenues; a consideration that has led to discussion on the transfer of revenue-raising powers to the Provinces (Pouru, 2021). An idea worthy of national conversation is allowing provinces to receive all of the GST revenues collected in their jurisdiction. This then would provide a stronger incentive than the current arrangement where the National Government collects 40 percent of the GST generated in the provinces. Similarly, allowing provinces the discretion to spend revenues generated locally but subject to audit by the Auditor General and the scrutiny by the public through information provided by the NSMA has the potential to increase local autonomy.

Finally, there are at least three issues deserving in-depth national conversations. First is the question of the desired levels of decentralisation, and specifically the functions to be devolved to the Provinces, Districts, and the LLGs. Functions are assigned by the IGRFF to the National Government, Provincial Government, and LLGs with the role of DDAs elevated solely because of their access to District Support Improvement Program (DSIP) funding. Part of this conversation would be on the role of the National Government that is likely to lose direct control over local expenditures. Related to the above is the question: How much power should members of the National Parliament (and DDAs) have over service delivery in their electorates? Second, a conversation on how best to improve access to information by the public to give ‘grassroot government’ a chance is long overdue. A proposal for an independent agency given the mandate to monitor, report, and publish information on access to basic services across governments in PNG deserves discussion and fleshing out. Last, decentralisation is likely to remain a live issue as it has for the life of PNG. Being cognisant of this fact will tamper expectation from the current attempt at reform.

References


GoPNG. (2010). *The Determination assigning Service Delivery Functions and Responsibilities to Provincial and Local-level Governments*. Port Moresby


Figure 1: Decentralisation in a unitary state

Source: OECD (2019), page 32.

Figure 2: The Continuum of tax autonomy of subnational governments

Source: OECD, 2019; Figure 2.5; page 40.
Table 1: Fiscal equalisation under current regime and that with all GST returned to the Provinces

<table>
<thead>
<tr>
<th>Province</th>
<th>GST (60%)</th>
<th>Total Grants</th>
<th>Total Revenues</th>
<th>Estimated GST (100%)</th>
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**TOTAL**

**483,534,000**   **1,156,582,800**   **1,640,116,800**   **805,890,000**   **834,226,800**

Notes: Data is for 2016, figures for GST and Grants are from Erwin Pouru (supplied); the Total Grants is the sum of Goods and Services Grant, Administrative Grant, Health Function Grant, Education Function Grant, Transport Infrastructure Function Maintenance Grant, Village Court Function Grant, Agriculture Function Grant, Other Services Function Grant, Land Management Function Grant, and Rural LLG Grant; the figures in red are negative numbers.
The ineffective dual-role of PNG MPs: why it matters

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About the author
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Abstract
As per the Papua New Guinea (PNG) Constitution, the parliament has the sole right to make laws, and these lawmaking responsibilities cannot be permanently delegated. Parliament is also required to provide representation and hold the executive government accountable. This paper argues that the reforms to the Organic Law on Provincial Government in 1995, and the creation of the District Development Authority in 2014, has shifted the focus of the members of parliament (MPs) from their national duties to those of service delivery. Managing these dual-roles has not been easy, and by focusing on local needs, the MPs have neglected their national responsibilities. As PNG faces crisis on all fronts, the paper suggests that MPs focus on national priorities.
Introduction

Broadly, the role of members of parliament (MPs) in parliamentary democracies falls into three categories: debate public policy and pass laws (including appropriating budgets), provide and check the government or the executive, and represent the people. In PNG, the reforms of 1995 that eliminated the provincial government system, and the creation of the District Development Authority (DDA) in 2014, brought in an added responsibility to the MPs. Now the MPs also act as service deliverers and project managers. In the process, MPs have neglected the former three responsibilities, and the costs are high. This paper highlights these issues, and argues for the need to start a national conversation on the dual role of MPs.

Westminster model of parliamentary democracy, which Papua New Guinea’s (PNG) parliament has been modeled after, is susceptible to being dominated by the executive arm of the government. This is because the government side has monopoly over appointment of ministerial portfolios, and access or control of state resources. This can be an incentive for MPs to move to the government side, especially if there are no laws or weak enforcement of laws that ensure that resources are equally distributed. This leads to executive dominance, and a weak parliament. When parliament is weak it cannot hold the executive accountable, a phenomenon that gave rise to phrases like ‘an elaborate rubber stamp’ or ‘legislature on her knees’ (Russel & Gover, 2017).

This paper examines the three roles of parliament and how effective PNG parliament has performed over the recent years. The main argument of this paper is that, not only is parliament weak in the face of executive dominance, but the parliament demonstrates no interest in focusing on national priorities. They do not see an incentive to take their law and policy making powers seriously.

This is because their political survival depends less on their role as law makers, and more on their added responsibility as service deliverers which was created under the 1995 reform and the creation of the DDA in 2014. The neglect of lawmaking duties is a serious concern, because the Constitution of PNG exclusively vests the law making powers to the parliament. If the parliament does not engage in meaningful debate on policy and laws, no other entity will.

The paper is divided into four main parts. Part one deals with the parliament’s exclusive law making powers. It discusses its constitutional basis, and court cases which affirm this position. This provides a background for discussions about why MPs should focus on their role as law makers. The second part of the paper discusses the rise of executive dominance in PNG politics, how the parliament has been reduced to mere rubber stamp. Part three of the papers discusses the fluidity of PNG politics, and how this brings into question whether there is representation at all in the PNG parliament. The dual-role of MPs in part four of the papers attempts to provide an explanation on why PNG parliament has fared poorly on all three roles discussed in parts one to three of the paper. The main emphasis is on the additional role created under the reforms of 1995 and the creation of DDA in 2014 which diverts MPs attention to service delivery. The paper concludes on a broader concern over governance, as the parton-client model that persists when MPs strive to meet local needs instead of focusing on national issues.

Methodology

This paper is limited to desktop research, reviewing secondary sources related to the role of parliament in Westminster democracies, and its application to PNG. Apart from journal articles, court decisions, newspaper articles, and other online materials are used, the author relies on personal experience living in PNG and working in this space to inform the discussions.

Law making powers of PNG parliament

This section explores the law making powers of the parliament, its legal basis, and Supreme Court rulings which clarified the exclusive domain of parliament over law making. It then assesses PNG MPs’ performance against this role. Towards the end, it highlights some of the crises facing PNG, and argues for MPs to revert to their national duties. The role of the MPs as parliamentary committees are briefly discussed at the end of this section.

Protection and monopoly over law-making

In PNG, section 99 and 100 of the Constitution establishes the law making or legislative powers of the PNG parliament. Section 99(2)(a) of the Constitution reads:
the National Parliament, which is an elective legislature, with subject to Constitutional Laws, has unlimited powers of law-making…

This provision of the Constitution implies that only elected representatives can constitute the parliament, and unless the laws they make are contrary to Constitutional Laws, the elected representatives’ powers to make laws shall not be limited by any entity. Constitutional Laws, as defined by schedule 1.2 of the Constitution, are the Constitution and the Organic Laws. Sections 115 and 134 of the Constitution ensures that the functions of the parliament are non-justiciable, inter alia, cannot be subject to the courts. The former guarantees immunity for MPs within the parliament chamber from the courts and anyone else outside the precincts of the chamber. The latter clearly states that parliament’s activities are non-justiciable unless they violate a procedure prescribed by a Constitutional Law. Section 134 reads:

Except as is specifically provided by a Constitutional Law, the question, whether the procedures prescribed for the Parliament or its committees have been complied with, is non-justiciable…

The net effect of all of these provisions is that the proceedings of the Parliament are non-justiciable unless there is a breach of procedure provided by a Constitutional Law. If there is a breach of procedures prescribed by Constitutional, only the Supreme Court of PNG, a subset of the judiciary arm of the government, can determine whether or not parliament has violated a Constitutional Law in performing their function as law makers.

Section 100 of the Constitution provides that the law making powers of the parliament shall under no circumstances be ‘permanently’ transferred or diverted. Provincial assemblies, for instance, can make laws to cover issues that no national legislation provides for, but the provincial legislation becomes obsolete as soon as parliament passes a legislation that deals with the same subject matter. This is because parliament can never permanently delegate its law making powers. This monopoly of law-making powers by the parliament means that, if parliament neglects its law making powers, the who country is held at ransom because no other entity outside of the parliament can compensate for this vacuum.

In addition to making laws, parliament also appropriates budgets for the next year, usually in its last parliament sitting of the year. The executive arm of the government prepares the budget for the year and presents it to the parliament for debate. The parliament in this case can only debate to reduce the budget or on the allocation of the budget. The parliament cannot increase the budget presented by the executive except for the portion allocated to the judiciary (Kwa, 2001).

How well does PNG parliament perform its functions?

The question one asks now is: given the protection MPs have from the Constitution to perform their function as law makers without fear or favour, and the monopoly of law-making powers, how have they performed so far?

The answer to this question is a resounding disappointment. According to the former Commissioner and current Secretary of Constitutional and Law Reform Commission of PNG in 2018, about 370 of PNG’s laws were outdated at least by half a century, and had “no practical application in modern era” (Pumuye & Kuman, 2022:1). When this observation was made, PNG had been independent for 43 years. In 43 years, the parliament, with all the protection and monopoly it had, failed to review, amend or repel 370 outdated laws. The cases of illicit drugs below shows what happens when laws are outdated and are impractical in the modern area.

In July 2020, a plane carrying an estimated 500 kilograms of cocaine allegedly destined for Australia crashed on the outskirts of Papua New Guinea’s capital Port Moresby. Because PNG’s Drug Act of 1952, one of such outdated laws, does not cover substances such as cocaine, the pilot manning the aircraft that was only charged for illegal entry - entering the country without a passport (Kabuni, 2021a). He could not be charged for transporting 500kg of cocaine.

Then in November 2021, police discovered a methamphetamine (meth) laboratory at the Sanctuary Hotel in Port Moresby. The manufacturer was not charged manufacturing meth because the Drug Act doesn’t account for meth. He was, however, charged with the illegal possession of weapons. Police described the outdated drug laws as a “slap in the face” given the resources and time put into investigating, “yet we cannot take it to the court process” (Kabuni, 2021a).

It took these two cases of cocaine and meth offenders eluding charges before parliament introduced and passed the Controlled Substance Bill 2021. These two cases not only exposed the outdated laws, but also what happens when parliament does not make laws to cover possible crimes.
According to Section 37 (2) of the PNG Constitution, a person cannot be charged for an offence not provided by law. This provision was interpreted by the Supreme Court of PNG as:

_The fundamental proposition is: nobody may be convicted of an offence that is not defined by, and the penalty for which is not prescribed by written law._ (SC REF NOS 2, 3 & 5 OF 2014).

In the face of globalization, and increasing non-traditional security issues confronting PNG, the parliament has to be proactive in amending outdated laws. It also has to introduce new laws that are on par with those in the region.

Another role of the parliament, that is not as common as law making, but are important in keeping the government in check is to actively scrutinise government proposals through the various parliamentary committees, and holding the bureaucracy accountable. There are 34 parliamentary committees, and each is delegated a specific function. However, at most times these committees are non-existent. If these committees were in operation, every law, policy, budget, and decision would be scrutinised a panel of MPs, with expertise advise, to ensure that they are in the best interest of the country (Cohill, 2017).

The public accounts committee and the parliamentary business committee are the only two that have been active in recent years. However, the public accounts committee has not gone beyond its investigations of the public tender for health contracts. Whilst understandably, the parliamentary committee has to be active as its role is to ensure that the notice for a motion of vote of no confidence has satisfied constitutional requirements. Because votes of no confidence is a permanent feature of PNG politics, the parliament business committee, usually filled by MPs sympathetic to the incumbent prime minister, have been active through out the years.

**There is no lack of issues that need MPs attention**

PNG is inundated with crisis on all fronts and need MPs to prioritise national interests. The first climate change induced human displacement in the world will potentially come from PNG's Carteret Islands. What is the national plan for resettlement? Cases from volcano displaced Manam and Kadavor islanders show that re-settlement on traditional land is not easy.

Cyber attack on the finance department of PNG in 2021 shows how vulnerable PNG government departments are. Violence against women and sorcery related violence has reached endemic proportions. National Fisheries Authority has reported that illegal, unreported and unregulated fishing is now recognised as the single most significant threat to long-term sustainability to PNG’s marine resources.

PNG’s census is another pressing issue. Last census was conducted more than 10 years ago (2011). The next census has been pushed back to 2024, 14 years after the last census. This affects planning, distribution of service delivery, and development priorities as the government does not know its population. The common roll update is another crucial data that has been delayed. With three months to go before the issue of writs for the 2022 elections, there is still no updated common roll for PNG. These are just some of the many cases that require MPs to focus on the core business of the National Parliament as intended when the PNG Constitution was crafted.

**Keeping the executive accountable**

This section discusses the second role of parliament, which is to keep the executive arm of the government accountable. It discusses how this was supposed to work in theory, and how it works in practice in PNG. The executive arm of the government, in theory, derives from, and remains accountable to the legislative arm of the government (Heywood, 2013). The parliament votes for the head of government or the prime minister, who then appoints the cabinet that makes up the executive. However, the prime minister and the cabinet remain accountable to the parliament.

One of this accountability mechanism is the ‘vote of no confidence’ against the government. In PNG, after a government is formed following a nation general election, the government (executive) is immune to vote of no confidence for the first 18 months, commonly know as the ‘grace period’. After the 18 months grace period, the parliament can remove the government if in its view, the executive government has lost the confidence of the parliament. Since independence in 1975, only two prime ministers have completed their terms in parliament. Every other prime minister have been either removed through a vote of no confidence, or resigned to avoid the humiliation of one. Despite these revolving door of prime ministers, for the time the governments were in power, they have dominated the parliament.
Executive dominance

Assessment of the periods from 2012 to 2018 under Peter O’Neill shows how dominant the executive can be in PNG parliament. In 2012, Peter O’Neill was elected prime minister by 94 votes to 12. The 94 MPs then remained with the government for the most part until vote of no confidence in 2016. The opposition numbers decline from 12 to having less than four MPs at one time (Donge, 2015). In 2016, following a court order for parliament to reconvene after it adjourned to avoid a vote of no confidence, nine MPs switched to the opposition but 85 MPs supported O’Neill overcome a vote of no confidence. The opposition remained weak into the 2017 elections, where O’Neill again emerged as prime minister by 60 votes to 40.

Again, the opposition numbers began to dwindle immediately, starting with Sam Basil led Pangu Pati moving to the government side with 14 MPs. This dominance of the executive in parliament emerged in the 1990s, and has now become a norm in PNG politics, where, MPs tend to gravitate towards to government side, weakening the opposition (Kabuni, 2018). The implications of a weak parliament and dominant executive is that the legislative arm of the government becomes a mere rubber stamp for the government proposals. Below are details of some of the unpopular decisions O’Neill government made that would not have been possible had there been a strong parliament to restrain the government.

Between 2012 and 2019, a period of seven years under Peter O’Neill as PM, there were 14 major amendments to the Constitution of Papua New Guinea. The 14 amendments had overwhelming support from MPs in the O’Neill-led coalition. Some of these amendments were very controversial.

For instance, in 2012, the O’Neill government introduced a series of amendments to section 145 of the Constitution, which provides for a vote of no confidence. Section 145 (4) of the Constitution sets the length of the grace period at 18 months. As stated above, grace period is the period following the installation of a government, during which no-confidence motions are not permitted against the PM. The O’Neill government proposed for an extension of the grace period to 30 months, an increase in the number of MPs required to sign notice for the vote of no confidence from 11 to 21, and the increase of days for the notice for vote of no confidence from one week to four months.

These provisions essentially made vote of no confidence impractical. If the opposition wanted to change the government, they had to get more than 20 MPs to sign the notice, but the opposition numbers were less than 20 so they could not institute a vote of no confidence. The extension of the notice from one week to four weeks meant that even if the opposition was successful in getting 21 signatures, they had to wait for one month. And third, the increase of grace period from 18 months to 30 months meant the opposition had to wait for another 12 months than usual if they wanted to change the government. All these amendments were passed with minimum restraint from a very weak opposition. And then in 2013 the parliament further amended section 124 (1) of the Constitution to reduce the minimum parliamentary sitting days from 63 to 40 days in a year (Kama, 2017).

In 2015 the Supreme Court ruled that the reduced parliament sitting days, increased grace period, increased number of MPs required to sign a notice for vote of no confidence, and increased number of days required to notify parliament before a vote of no confidence was instituted as all invalid and unconstitutional. The details and its implications are discussed below.

Supreme Court interventions

Unable to stop amendments to the Constitution on the floor of parliament, the opposition sought the Supreme Court’s intervention, and in 2015 the Court ruled that all the amendments unconstitutional. The Court held that the increased number of MPs required to issue a notice for the vote of no confidence and the increased days for the notice from one week to four months (ss. 145 (1) (b)) restricted the right of MPs to “expeditiously move motions of no confidence during a crisis of bad governance as provided by under 111 of the Constitution” (Namah vs O’Neill, 2015: para 89).

The Court observed that “a motion for vote of no confidence... is a health check for parliamentary democracy” and should not be abused (Ivarature, 2016: 11). It warned the government from “using its numerical superiority in Parliament to manipulate the conduct of its business, or worse still amend the Constitution... to entrench itself in power and avoid responsibility to Parliament” (Namah vs O’Neill, 2015: para 94).

In a separate ruling in 2016, while overturning another Constitutional amendment by the government dominated parliament, the Supreme Court noted that there was a growing trend for the executive side of the government to “bulldoze legislations
through” because of a weak opposition, and cautioned that parliament should never be a rubber stamp to the executive (Namah v Pato [2016] PGSC 13).

These amendments, such as the reduction of parliament sitting days and the extension of grace period, as well as the adjournment were indeed directly contrary to the primary role of MPs. How amend the constitution to prevent them from performing the role they were elected to do, that is, prevent them from debating laws and policy issues? Even though the Supreme Court restored the minimum sitting days and grace period in 2015, parliament continues to adjourn to avoid votes of no confidence as experience in November and December 2020. In PNG, the one thing MPs are elected to do, they actively seek to avoid.

As discussed under section one, the Supreme Court cannot interfere unless a procedure specifically prescribed by a Constitution Law, or provisions of the Constitution are violated. In the cases discussed above, the parliament violated several procedures provided by the Constitution. The grace period is provided by the Constitution, as it the procedure for a vote of no confidence, and the number of parliament sitting days. The government dominated parliament violated these provisions, creating room for the Supreme Court to intervene. For decisions that did not violate the Constitutional Laws, it went unchallenged, such as introducing and passing the budget on the same day without allowing opposition time to review and debate it as is the convention in parliamentary democracies.

A legislature on her knees

Instead of holding the executive accountable, parliament in PNG is relegated to the periphery when major decision making is concerned. The risk that comes with lack of proper debate or lack of opposition to government proposals is that legislations that are politically driven gets passed, even if they are unconstitutional. The 2014 UBS loan saga is a good example of how an irresponsible executive used their numerical superiority to give legitimacy to a loan that violated the Constitution (Ombudsman Commission Report on UBS Loan, 2020). In 2014, the government obtained AUD$1.2 billion loan through the Sydney office of UBS to buy shares in ASX listed company Oil Search. This amount was in excess of total allowable for executive government to borrow. It requires parliament’s approval. The government borrowed first, and retrospectively used it huge numbers to approve it on the floor of parliament.

The opposition could not reverse this decision because they did not have the numbers. The government dominated parliament voted for the loan, eventhough it was unconstitutional. The matter is now subject of Commission of Inquiry. Without the interventions of the Supreme Courts, PNG parliament is essentially a rubber stamp, a legislature on her knees.

Providing representation

There are 111 elected representatives or MPs in PNG. They are comprised of 22 Governors or provincial MPs, and 89 Open MPs who represent the districts in the provinces. The minimum number of districts in PNG is two, with Morobe Province having the most with nine districts, and therefore having the most Open MPs. Representation has suffered on many fronts in PNG. Apart from executive dominance discussed above, the fluidity with which MPs switch parties, and sides in parliament make it impossible to determine which policy or position the MPs subscribe to.

Fluidity of MP movements

The recently created PNG MPs Database, created by researchers from University of Papua New Guinea (UPNG) and Development Policy Centre of the Australian National University's Crawford School of Public Policy, shows the frequency with which MPs switch from one party to another, and from the government to opposition since 2017. Since the elections in 2017, only 40 of the 111 MPs have remained with the party that endorsed them as candidates for the 2017 election or remained as independents MPs. 48 MPs switched between parties once, 24 moved twice, and four moved three times - going from being an independent to a party counts as moving parties (Howes & Wangi, 2022 forthcoming).

Pangu Pati, which had only nine MPs elected in 2017, now has 34 MPs after it formed the government following the election of James Marape as the PM. Marape joined Pangu after resigning from People’s National Congress Party (PNC), led by former PM Peter O’Neill. PNC, which had 29 MPs elected at the election is now down to 12 MPs. Only three parties have more than 10 MPs, and there are couple of one man parties (Howes & Wangi, 2022 forthcoming).
**Assorted coalition**

A closer look at movements of MPs since August 2019 shows are confusing it is to understand PNG politicians role in providing representation. After the election of James Marape as PM, the National Alliance members Allan Bird, Walter Snaulbelt, Ian Ling-Stuckey and Peter Isoaimo, along with other opposition MPs, including Mekere Mourata and Garry Juffa, joined the Marape-led coalition at the end of August 2019. What is of interest is the composition of the government coalition: Mekere Mourata, the opposition nominee who challenged Marape for the prime minister's position on 30 May 2019; Patrick Pruaitch, the opposition leader who sought a Supreme Court reference questioning Marape's election; and about six MPs who did not vote for Marape on May 2019 joined Marape in the government by the end of August.

Neither Kerenga Kua nor Brian Kramer, both ministers in the Marape government, had voted for Marape to become PM in 2019. Kerenga vote against Marape, whilst Kramer was absent.

As the 18 months grace period following Marape's election came to an end in November 2020, more than 20 MPs from Marape's coalition switched to the opposition side in a bid to remove Marape as the PM. They were led by Deputy Prime Minister Sam Basil, and other senior government ministers such as Minister for Foreign Affairs Patrick Pruaitch. But as a successful vote of no confidence became impractical due to government outmaneuvering the opposition, Sam Basil switched back to the government side, as was restored to the deputy prime minister position.

Marape is now surrounded by an assortment of MPs: those who voted for him, those who did not vote him, and those who wanted to see his election declared null and void. This assorted pattern extends to political parties. Parties with conflicting policies are content to be in the same coalition. Political parties and candidates forgo the policies they campaigned on during election, and make political decisions based on what they can get out from their partnerhip in the coalition.

The above discussions shows that the MPs are not interested in representing their electorates. They have no commitment to any party, or policy programs. They move at will when its convinent. Political parties are useless for all practical purposes except for the formation of government following an election. Under section 63 of the Organic Law on the Integrity of Political Parties and Candidates (OLIPPAC), party with the highest number of MPs elected during the elections is invited by the Governor General to form the government. Apart from that, MPs switch between parties, and between sides, seeking opportunities for accessing ministerial to portfolios and access to state resources.

What explains the movement of MPs to the government side? Ministerial portfolio allocations seem to be a possible explanation for coalition politics in PNG. There are 32 ministerial portfolios that the PM controls. He allocates to MPs and political parties that helps consolidate his position as PM to deter votes of no confidence. There are also appointments as chairman and members of the parliamentary committees. The other possible reasons are discussed under part 4.

**The dual role of PNG MPs**

The discussions in the first three sections of this paper focused on the conventional role of MPs, and whether MPs in PNG have been effective in performing these roles. It showed that MPs in PNG fail to perform these three functions. This final section of the paper focuses on potential explanations for why MPs not only fail, but neglect their functions as elected representatives. For instance, why are MPs not interested in debating outdated laws when they are in session? Why are MPs hesitant to remain in the opposition? Why are MPs always switching from one party to another? Why are the parliamentary committees non-existent? At the centre of these questions are the 1995 and 2014 reforms, which made PNG MPs service providers and project managers, in addition to their conventional roles as law makers, providing representation, and holding the executive accountable. MPs have since then focused on service delivery.

**The 1995 reforms and the creation of District Development Authorities**

The 1995 reforms replaced the provincial representatives with the national MPs, and gave the MPs more control over the management of the provincial affairs, which were formerly the task of a separate elected legislative and executive body led by a Premier (Gelu & Axline, 2008). The 2014 DDA then gave the open MPs control of the affairs of the districts (Wiltshire, 2014).

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1 Governors cannot take on ministries. Reforms introduced in 1995 make it mandatory for a governor to relinquish their position if they are appointed a ministerial portfolio.
The Provincial Assemblies are now chaired by the Governors of the provinces, which also constitutes the Open MPs, whilst the DDAs are chaired by the national MPs. There are elected representatives apart from the MPs, in the form of LLG presidents and town mayors, but both the provincial assemblies and the DDAs have ‘appointed’ representatives such as the church, women, chiefs or youth representatives who are usually allies of the MPs. The DDAs administrators have been swaying towards political appointments (Wiltshire & Opperman, 2015). As members of the provincial assemblies and DDAs, the national MPs are now responsible for the management of provincial and district affairs. Thus the MPs who are elected to debate public policies and pass laws, provide checks and balances to the executive government, and present their people’s views and demands in the national parliament are now pre-occupied with managing provincial and district affairs (Kabuni, 2021b).

The component of funding that these MPs have the most control over is the Constituency Development Funds, called Services Improvement Program funds, or SIPs. The governor controls the Provincial SIPs (or PSIP), and the open MP controls the District SIPs or DSIPs.

As chairs, the politicians dictate priorities and allocation of the funds, which at its height reached a total of K10 million per year after 2013. It fluctuates depending on the revenues, but remains higher than constitutional grants (Levail, 2021). A survey of the use of these funds in 2014 showed that services were regressing (Howes et al., 20014) and even though acquittals for these funds are very poor (Auditor General Report, 2019) the funds remain popular with the MPs. According to the Auditor General’s Report, only 13 of 111 MPs submitted their acquittals for the year 2016. The Auditor General reported lack of funding as a main constraint for not conducting audits of CDF funds more consistently. Ironically, despite the poor service delivery, constituenencies see the role of MPs as service deliverers and project managers, and not as lawmakers. MPs who are under pressure to be seen as delivering services become opportunistic. They seek out a position in parliament that increases their chances of accessing the DSIPs and PSIPs. This explains the dominance of the executive government. MPs support the government and the prime minister of the day, irrespective of controversial decisions as discussed under part 3, in the hope that they get their DSIP and PSIP in return.

In 2016, after MPs supported O’Neill overcome a vote of no confidence by 85 votes, the then Vice-Minister for Provincial and Local-Level Government Affairs Sungi stated:

“The reason (for the unsuccessful vote of no confidence against Peter O’Neill in 2016) is because DSIP is there that’s why we will be in the government and support the O’Neill-Dion government. It’s not about your number of qualifications you have to lead the government, so long as you have the money, you will master the numbers” (Mou, 2016).

Due to lack of access to financial data for the year 2016, it is difficult to say whether MPs supported O’Neill because of the CDFs. But by their own admission, and its is possible to deduce that DSIPs and PSIPs is a substantial motivation for MPs to support the government.

Vicious circle of patron-client relations

The direct access that MPs have to millions of kina, and the discretion they enjoy over the application of this money, creates an expectation among voters that they can transact their votes for direct personal benefits. The non-existence of acquittals means the MPs can prioritise for funding just about anything from school fees to “haus krai” contribution (money for funeral expenses). In a vicious circle of a principal-agent relationship, the MPs focus on meeting local, direct and personal benefits of the voters that improves their chances for re-election, while the voters neglect the failure of their MPs to make better laws (Kabuni, 2021b).

By focusing on provincial and district affairs, MPs are neglecting their mandated role as lawmakers. The government rushes through legislation and controversial amendments to the country’s constitution – such as the extension of the grace period under Peter O’Neil, which was intended to prevent a vote of no confidence, or the reduced parliament sitting days – without much debate. MPs are happy to vote on it, get their SIPs, and go to their provinces.

World wide survey ranks PNG among the highest clientelistic societies of the world (Woods, 2018), where voters are more inclined to vote for MPs based on direct material or monetary benefits, rather than their role as lawmakers. But this expectation from voters, to some extent, was created by the reforms engineered by politicians in 1995 and 2014, which made MPs directly responsible for the delivery of goods and services.
Conclusion

The cost of MPs neglecting national priorities is just too high to take things lightly. If the laws are poor, and the policies lack scrutiny and debate at the national level, implementation will suffer. If the public accounts committee, for instance, is underfunded and understaffed, service delivers will waste money by the millions and yet get awarded contracts.

The MP-voter relationship has also evolved into an unhealthy expectation. Instead of judging MPs by their performance on national priorities, voters judge MPs on their ability to meet immediate and local needs. MPs on the other hand, focus on meeting these personalised needs of their voters whilst neglecting national priorities.

In addition to this, such patron-client relations leads to corruption and poor governance. MPs who are under immense pressure to meet the immediate voter demands usually use funds allocated for other purposes to satisfy the voters demand. Projects that bring the MP popular support are prioritised over services that may be in actual need of funding. And sometimes, MPs engage in outright corruption to satisfy their voters (Grant, 2018). The net effect is a debilitating service delivery nationwide (Gelu & Axline, 2008), which in the long run affects and has adverse effect on the quality of life of the voters.

Papua New Guineans have to begin the conversation on the cost of neglecting national priorities. There is no lack of work for MPs at the national level. They are just focused on the wrong level of governing.

References


Howes, S. & Wangi, T. (2022). PNG MPs Database. ANU Crawford School of Public Policy Blog


Kabuni, M. (2021a). The Supreme Court and parliamentary politics in PNG. The Interpreter, Lowly Institute, Sydney.


PNG Drug Act 1952


Radio New Zealand (2013). Busy legislative activity in PNG as MPs extend votes of no-confidence grace period. 11 February.

Re Constitution Section 19(1) - Special reference by Allan Marat; In re Constitution Section 19(1) and 3(a) - Special reference by the National Parliament [2012] PGSC 20; SC1187 (21 May 2012), para 301; Namah v Pato [2016] PGSC 13; SC1497 (26 April 2016).

Report of the Auditor-General Part IV 2019 on the Accounts of Public Authorities and Statutory Bodies. Published 2020


Supreme Court Reference NOS 2, 3 & 5 OF 2014


Wiltshire, C. (2014). Without fear or favour? O’Neill’s District Authorities to build capacity and consolidate MP powers in PNG. Development Policy Blog, Crawford School of Public Policy

