

# 'Joint creation'

## The Bougainville Peace Agreement – and beyond

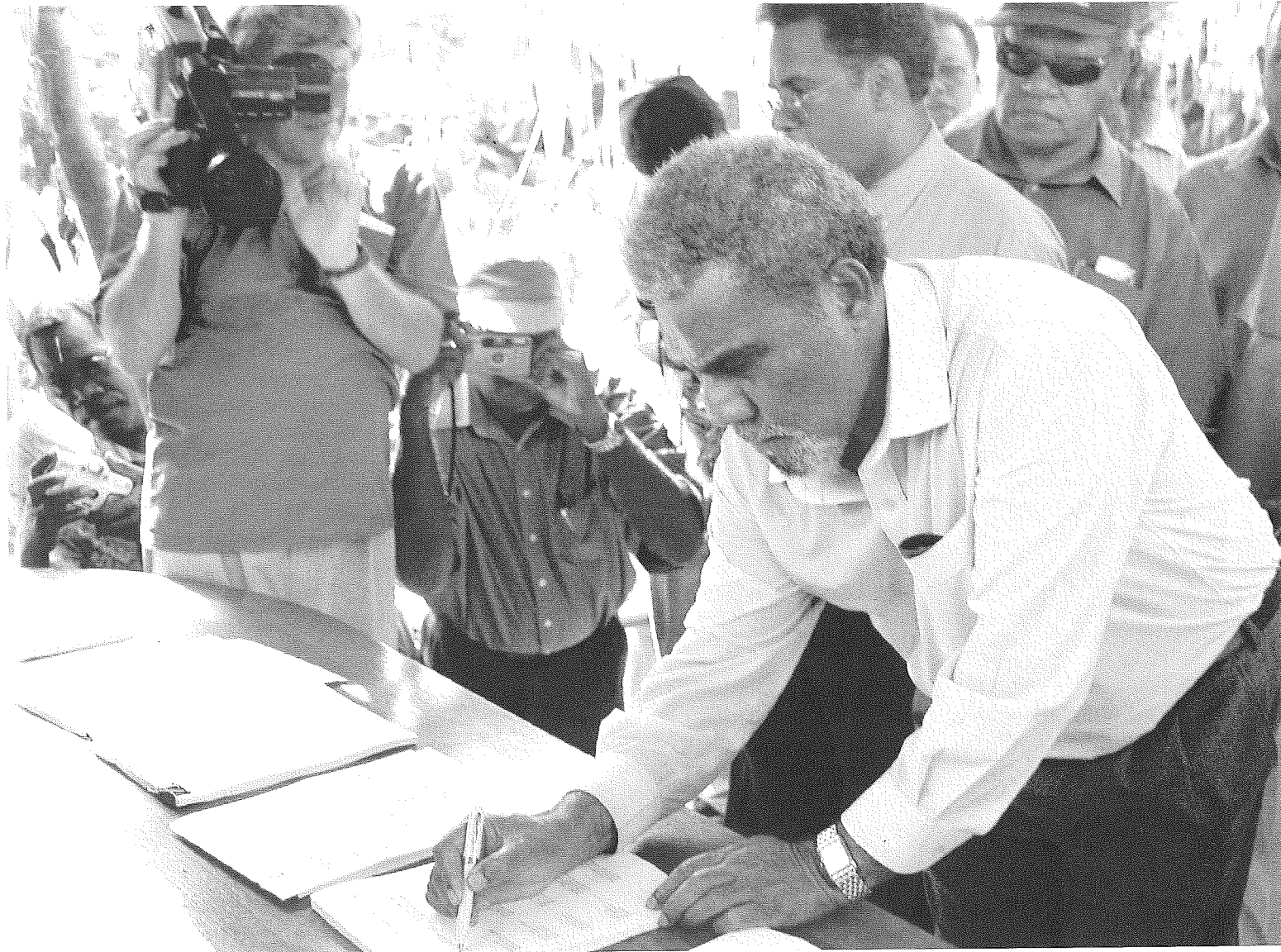
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With the signing of *The Lincoln Agreement on Peace, Security and Development on Bougainville* on 23 January 1998, the parties undertook to consult and co-operate in implementing a comprehensive peacebuilding agenda. In pledging themselves to 'achieve and maintain peace by peaceful means', they committed themselves to peace not only as their shared objective but as integral to the process by which they would work to attain it.

The means by which the parties then tried to promote a progressive political settlement was based on negotiation and compromise – between disparate interests among Bougainvilleans and in Papua New Guinea as a whole. In a very particular sense, implementation of the *Bougainville Peace Agreement* picks up where the preceding progressive political settlement left off, requiring an ongoing process of consultation and co-operation in establishing, developing, and operating, the 'joint creation' set out in the *Agreement*, and specifying the arrangements to be used for this purpose.

Probably no one who was directly involved is entitled to be confident that they know exactly what was happening at each stage – which positions were firm, at least at a particular time, and which were advanced in the expectation of having to compromise. The same is true when it comes to tactics, including the rejection of particular sets of proposals at different times and the walk-out by Bougainville leaders in December 2000 (which might well have owed as much, at least implicitly, to growing mutual confidence in the strength of the process as to apparent frustration). It is just as difficult to be certain when trying to distinguish whether and which of the personal and political frictions that arose along the way were calculated (and not unintended by-products of lengthy, intense and sometimes exhausting negotiations). The history of the way in which 'the political issue' was addressed and advanced must, therefore, be told – and read – with caution.



Initially too divisive and sensitive to be more closely defined, it took much more time and effort to build mutual confidence and common positions on 'the political issue' than the signatories to the *Lincoln Agreement* seem to have foreseen. Both of the specific deadlines set in the *Lincoln Agreement* – to meet on 'the political issue' by 30 June and to hold elections for the Bougainville Reconciliation Government (BRG) before the end of 1998 – were missed. It was, in fact, the middle of 1999 when the Bougainville People's Congress (BPC) presented a paper entitled 'Fundamental Principles for the Future of Bougainville' which put the questions of autonomy and a referendum on Bougainville's political future squarely on the public agenda. The combination was critical, allowing for a compromise by enabling the people to ultimately decide. It was only after the referendum issue had been resolved in January 2001, that it became possible to make real progress on details concerning the phased implementation of autonomy for Bougainville within the *Papua New Guinea Constitution*. Meanwhile, weapons disposal and other crucial issues were discussed in different fora, including the Peace Process Consultative Committee (PPCC).

Progress was made readily visible in various agreements and statements issued by or on behalf of the parties along the way – although successive agreements did not always build on each other, and some were eventually rendered largely irrelevant by subsequent events. Progress was also more subtly apparent in matters of detail and changes in language.

## Finding the way

The *Lincoln Agreement* commits the parties to continue the 1997 truce, and to resolve the conflict that erupted into violence in late 1988 and spread throughout Bougainville following the withdrawal of state services in early 1990. In doing so, it sets out a comprehensive agenda of principles and activities intended to support peacebuilding.

The principles and activities covered by the *Lincoln Agreement* extend from withdrawal of the Papua New Guinea Defence Force (PNGDF) and the transition to civilian peacetime policing – through reconciliation and the removal of bounties and obstacles to free movement – to co-operation in 'restoration and development in ...

both the public and private sectors.' But, as the failure to meet the two deadlines already mentioned suggests, follow-up and implementation were not as simple or direct as the parties had hoped, or even expected.

The parties put a great deal of attention, energy and time into ensuring the peace process would not be derailed by other events, such as the automatic application in Bougainville of the provincial government 'reforms' which had applied everywhere else in Papua New Guinea (apart from Bougainville and the National Capital District) following amendment of the *Papua New Guinea Constitution* and passing of a new *Organic Law on Provincial Governments and Local-level Governments* in 1995. The key issue was the very strong opposition of key Bougainvillian leaders and groups, especially the BIG and the BRA, to coming under or agreeing to participate in institutions established under the reforms.

In mid-December 1998, the national government and the Bougainville parties met in Buka and drew up the *Basic Agreement concerning the Bougainville Reconciliation Government*. It provided that the Bougainville parties would meet on their own and agree to rules and procedures for the establishment and operation of the BRG in the 'legal space' which would be provided if the Bougainville Provincial Government were suspended after the new Organic Law applied to Bougainville on 1 January 1999.

On 24 December 1998, the Bougainville parties met in Arawa and adopted a document which they described as the BRG's 'Constitution'. The Leitana Council of Elders opposed the proposed arrangements. When Bougainville came under the new *Organic Law*, the National Executive Council (NEC) met and decided the Provincial Government should be provisionally suspended, on the grounds that the very formation of the Bougainville Provincial Government under the reforms would, in its judgment, 'undermine... national unity'.

The Governor of Bougainville, Hon. John Momis, subsequently took the Government's actions to court. The eventual outcome of hearings in the National and Supreme Courts was that the purported suspension was found to have been invalid, and that a provincial government should be established in Bougainville under the interim provisions in the new *Organic Law* (which allowed for the appointment of members of the provincial executive and assembly until elections are held). On 30 March 1999, the Bougainville Interim Provincial Government was sworn in by the Governor-General.

Meanwhile, as 1999 advanced, concerns were growing that the peace process might be losing momentum on the ground. The New Zealand Government, therefore, offered to host a study-tour by Bougainville leaders and

ex-combatants in April. The Leitana Council of Elders was included (the first time its members had participated in such a meeting as a distinct group). Towards the end of their visit, they were joined by the Prime Minister, Hon. Bill Skate, the Special State Negotiator for Bougainville and other national government officials.

The outcome was the *Matakana and Okataina Understanding*, which, among other things, reaffirmed the parties' commitment to full implementation of the *Lincoln Agreement*, and stressed that the national government should exercise the functions and powers of the suspended Bougainville Provincial Government 'only on advice that is broadly representative of the people of Bougainville', and consider lifting the suspension if Bougainville leaders agreed. Key provisions, as far as the progressive political settlement was concerned, included agreement that the election/selection process that was then under way for the Bougainville People's Congress (BPC) should be allowed to proceed. Following their election/selection, the BPC became the joint spokesperson for the Bougainville parties to the Lincoln Agreement (though not for the Leitana Council of Elders or all of the Bougainville MPs).

On 30 June, the Prime Minister, Hon. Bill Skate, flew to Buka at the BPC's invitation, and received their proposals. The *Fundamental Principles for the Future of Bougainville* were the first set of proposals presented on behalf of the Bougainville parties since the *Lincoln Agreement* was signed almost eighteen months before.

## Engaging

The document presented to the Prime Minister by the BPC was in the form of a draft agreement ready for his own and BPC President Joseph Kabui's signature. It outlined two main provisions:

- (i) a referendum on independence for Bougainville at a time of the BPC's (or its successor's) choosing – with the result binding on the State; and
- (ii) that Bougainville could achieve 'immediate and effective self-government', in which the Bougainville government 'shall assume responsibility for a full range of powers and functions of Government save for agreed essential powers reserved primarily' for the national government.

The draft agreement called for the treaty to be subject to change only with the consent of the people of Bougainville. Significant aspects of the proposal came as a surprise to the Prime Minister's party. The language employed (which resonated with issues raised and widely regarded as resolved before independence) added to their concern. In a passionate speech, the Prime Minister made clear that Bougainville would achieve a separate state 'only over Bill Skate's dead body.' But he promised to bring the paper to the NEC for consideration.

Officials from Bougainville travelled to Port Moresby to work with the national government on a document explaining the agreed terms on which the BPC's proposals were being presented to the NEC. The *Hutjena Minute*, the first agreed paper since Lincoln to address the substance of 'the political issue' in the long term, was the result. While it accepted that Bougainville should be able to 'exercise the powers of government with the exception of certain powers to be negotiated that shall be retained by the Government of Papua New Guinea', it promised no more on the question of a referendum than advice that 'the Government would be prepared to consider the proposal.'

The commitment to take the proposal to the NEC was honoured shortly before the Prime Minister resigned in the face of an imminent vote of no-confidence and a new government was formed. In his very first statement on coming to office in July, the new Prime Minister, Hon. Sir Mekere Morauta, made clear that furthering the Bougainville peace process was one of the new government's five main policy objectives. The terms in which he did so made plain that the existing bipartisan approach would be maintained. Determined to give priority to the progressive political settlement, the Prime Minister initially decided to keep the Bougainville Affairs Ministry for himself, until he transferred it in August to Rt Hon. Sir Michael Somare.

In October, the BPC and the four Bougainville MPs met at Nehan and agreed to pursue the 'highest form of autonomy for Bougainville', as well as a binding referendum on Bougainville's political future. They subsequently came up with a more detailed 'Joint Negotiating Position', which they presented to the national government in December. The two main issues promoted in the new paper were immediate autonomy – which was described as 'the highest level of self-government short of independence', with the transfer of all functions and powers of government exclusive to Bougainville, other than those on a list agreed to be 'essential' to the national government – and a referendum among Bougainvilleans on independence, the result of which would be legally binding. The Minister's response was contained in the *Hutjena Record*, which reported agreement to negotiate the terms of 'the highest possible Autonomy' for Bougainville, and to present the Bougainville proposals on referendum to the NEC for consideration.

Early in 2000, the national government then strengthened its bipartisan approach to the Bougainville peace process by setting up a National Committee on Bougainville including both government ministers and Opposition MPs. In Bougainville, the BPC and the Leitana Council of Elders met and agreed to co-operate in future political talks.

In March 2000, the National Committee went to Bougainville and presented its proposed 'Framework for Developing Autonomy in Bougainville' to a combined Bougainville delegation, which immediately rejected them 'unanimously and unreservedly'. Follow-up talks were then held in Port Moresby, the first occasion that many Bougainville leaders and ex-combatants had been willing to come there since the crisis began. Both delegations then developed their positions.

The *Loloata Understanding* recorded the progress made in reaching agreement. Some of that progress was very clear, for example the agreement to the phased transfer of functions and powers to a Bougainville government which would have its own constitution – significantly – within the Papua New Guinea *Constitution*. Some was more subtle, such as the inclusion of the term 'national government' and the commitment to Bougainville being able 'to express and develop both its own identity and its relationship with the rest of Papua New Guinea' – the first time since the truce that some of the Bougainville parties agreed to a document which openly acknowledged Bougainville as part of Papua New Guinea. When it came to the Bougainville proposal of a referendum, the parties agreed only to address the issue.

The *Loloata Understanding* also recorded the growth in understanding and co-operation that had been occurring among the Bougainville parties, and the arrangement through which the Bougainville Interim Provincial Government had agreed to consult with the BPC and Councils of Elders before making important decisions.

At intervals over the next few months, the parties held meetings in Port Moresby, Rabaul and Bougainville to develop the details of autonomy for Bougainville and reach agreement on the referendum issue. Progress was more readily achieved on autonomy than the referendum question, on which divisions remained deep, especially over the Bougainville delegation's insistence that independence should be an option in the referendum and the result should be legally binding on the State.

Agreements produced along the way included: the *Gateway Communiqué* of 9 June, in which the national government delegation agreed to refer more detailed proposals prepared by the Bougainville delegation to the NEC and the *Agreed Record of Outcome* issued on behalf of the parties by the United Nations Observer Mission in Bougainville (UNOMB) at the conclusion of further political talks in Rabaul on 6 September.

Meanwhile, as the issues, including differences, in the political talks became clearer and centred on details and technical aspects, the composition of both delegations changed. Bougainvilleans with particular interests as well as advisers and officials from various national

government agencies participated in talks on subjects where they had special expertise or responsibilities. Political leaders increasingly left officials to meet and work through outstanding issues on their own, returning mainly when further policy direction or formal approval was required.

In October 2000, the officials developed a *Composite Draft Agreement on Autonomy* that included both agreed text as well as the stated positions of both delegations where there were significant differences. Though the *Composite Draft* was not formally accepted on the Bougainville side, parts of it were eventually used as a basis for the emerging *Bougainville Peace Agreement*.

But, even as progress was subsequently being made, misunderstandings, frustrations and even some modest confrontations arose, particularly over the referendum issue. The Bougainville delegation increasingly saw it as necessary to resolve this issue before going on to develop the details of autonomy for Bougainville. At one point in December, during a series of meetings held in the National Parliament, the Bougainville delegation responded to a paper on the referendum issue prepared by Sir Michael Somare by walking out.

Then, shortly before Christmas, the Australian Minister for Foreign Affairs and Trade, Hon. Alexander Downer, visited Buka and Port Moresby, and floated a compromise position – a constitutional guarantee of a deferred and conditional referendum, in 10-15 years time, with the outcome subject to ratification (which was subsequently defined as subject to the ‘final decision-making authority’) by the National Parliament. His proposal embodied options that had been previously considered and discussed by both sides – but not then agreed. However, as the Australian Minister observed when briefing the national government on his previous visit to Buka, it is sometimes not what is said but who says it that counts. Both Bougainville and national government leaders now seemed to accept the proposal.

Hon. Moi Avei (now, Sir), who succeeded Sir Michael Somare as Minister for Bougainville Affairs, followed up on Downer’s consultations by flying to Bougainville early in the new year. The compromise was confirmed at an informal meeting in Buka between the Minister and key Bougainville leaders.

## Negotiating the *Bougainville Peace Agreement*

Later in January 2001, political leaders and officials from both the combined Bougainville and bipartisan national government delegations met in Kokopo, East New Britain, and confirmed the details of their previous, in-principle agreement on referendum.

With the referendum issue largely resolved, the parties now turned their attention to developing the details of Bougainville autonomy and an agreed weapons disposal plan.

Progress on both issues was facilitated by the Australian government’s offer to host a meeting in Townsville, Queensland, at which leading ex-combatants could meet, discuss and try to agree on weapons disposal, while political leaders and officials met separately to progress autonomy. The Townsville discussions on weapons disposal helped lay the groundwork for a subsequent meeting on weapons disposal between leading ex-combatants at Togarau, Central Bougainville, in late April. That meeting, in turn, produced agreement on a number of issues which allowed the PPCC to conclude an agreed weapons disposal plan in May (later incorporated in the *Bougainville Peace Agreement* unchanged).

The exchanges on autonomy in the margins of the Townsville meeting gave rise to the shared conception that the evolving agreement on autonomy and referendum should be regarded as a ‘joint creation’ by all of the parties. They also led to the national government dropping its previous insistence that it should retain the power to suspend, withdraw functions and powers, or otherwise retain the right to ultimate direct control over the autonomous Bougainville government’s affairs.

The political talks then resumed in Port Moresby, and continued, almost around the clock, seven days a week, until the ‘Agreed Basis for Comprehensive Political Settlement’, was produced in late June to guide drafting of the final agreement. Important breakthroughs were achieved on such technical issues as whether there should be one or two lists of functions and powers (two were eventually agreed – one for the national government, and the other for the autonomous Bougainville government), the financial arrangements, and on matters such as the need and process for developing joint implementation plans to facilitate the transition to the establishment of Bougainville counterparts to state services.

In early July, the Prime Minister then arranged a special four-day briefing for the NEC on the agreed texts to date. The text of the *Bougainville Peace Agreement* was then finalised, ready for signature – before a large gathering of Bougainvilleans, other Papua New Guineans and visiting dignitaries from other countries – in Arawa on 30 August 2001.

Throughout the period of his direct involvement as the responsible Minister in the ‘joint creation’ that became the *Bougainville Peace Agreement*, Hon. Moi Avei focused on peace and peacebuilding, rather than the technical, constitutional issues requiring resolution. He encouraged others to do the same. The Prime Minister and the

Minister also dealt with concerns at the precedents the emerging *Agreement* might set – and the ‘flow-on’ effects that might follow – by stressing the need to respond to the particular post-conflict situation in Bougainville, and for the wider possible implications to be addressed separately. The overall effect was to attract sympathy, support and shared determination to support peace- and nation-building from many different political groupings, including otherwise critical and reluctant Members on all sides of the National Parliament. The approach not only convinced but attracted the strong support of the Highlands Governors’ Conference, the NEC and, ultimately, the entire National Parliament when they came to consider the final *Agreement*.

## Practical implementation

A priority after the official signing of the *Bougainville Peace Agreement* was to draft the legislation required to give it legal effect. This process was made all the more pressing by the approach of the next Papua New Guinea elections in mid-2002, and the minimum time required to comply with the procedures for making and changing Constitutional Laws (one month’s notice after publication of Bills in the *National Gazette*, and then two months between two successive votes in the national Parliament).

Beginning within a few weeks of the official signing of the *Agreement* on 30 August, the process of ‘joint creation’ continued, with officials attached to the national government and Bougainville delegations working together with the draftsmen.

The final draft was gazetted on 13 November. Following the precedent allowing the use of materials used in preparing the independence *Constitution* as aids to interpretation, the legislation provides for the *Agreement* itself to be used as a source and a guide (as per the *Agreement* itself). The *Agreement* itself was then prepared for publication in the *National Gazette* (No. G146 of 16 November 2001).

Consistent with the focus that had helped the government to counter doubts and criticisms and mobilise support for the *Agreement*, the Bill to amend the *Constitution* was formally named the ‘*Constitutional Amendment on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*’. The Bill for the *Organic Law* containing the detailed provisions to which the proposed *Constitutional Amendment* was intended to give authority was given the same name (*‘Organic Law on Peace-Building in Bougainville ...’*).

The Bills were put to the first vote in the National Parliament on 23 January – and were passed, without dissent, by votes of 85-0 and 86-0 respectively (more than the two-thirds absolute majority – or 73 / 109 possible votes required). The only amendment, which originated

in the government caucus, has since been accepted on all sides and had the effect of retaining final authority over the function and power of firearms control with the national government. The second (and final) votes, when the National Parliament resumed its consideration of the Bills on 27 March, were 85-0 and 87-0 respectively. The outcome bore eloquent testimony to the effectiveness of the Government’s lobbying, the strength of the bipartisan commitment to lasting peace by peaceful means, and progress in implementing the agreed weapons disposal plan in Bougainville.

With strong, public encouragement from the Prime Minister and the Minister for Bougainville Affairs, the progress achieved in practical weapons disposal was both substantial and influential (as the sensitivity to weapons displayed in the only amendment to the *Constitutional Amendment* showed). By the time of the second vote, more than 900 weapons had been put away, including some in every District around Bougainville; most in trunks (Stage One), but some in containers (Stage Two), and a few finally destroyed (Stage Three). Over 200 of the weapons were classified as high-powered factory-made guns (the rest were classified as hunting and sporting guns, home-mades, and World War II relics).

At time of writing (in early June 2002), the Bills are expected to become law very soon, though weapons disposal has slowed (the total number of guns put away stands at 1555, including 234 high-powered, factory-mades). Progress towards the achievement of Stage Two throughout Bougainville seems to have slowed too – with obvious implications for verification and certification by UNOMB, and the date of operational commencement for the autonomy and referendum provisions in the Bills to give the *Bougainville Peace Agreement* legal effect.

Both the national government and the Bougainville parties have produced their own plans for the early stages of implementation, though actual progress has been slow.

Debate on the wider potential implications and possible application elsewhere in Papua New Guinea of the arrangements agreed for Bougainville, especially the financial provisions, continues to grow. The process of ‘joint creation’ in respect of Bougainville also continues – with the preparation of joint recommendations for implementation of the *Lincoln Agreement’s* provisions on amnesty (defined as ‘immunity from prosecution’) and pardon for crisis-related activities on all sides for presentation to the NEC, and a combined meeting of the Bougainville Interim Provincial Government and the BPC.

While a great deal more practical progress will be required before one can be confident that the peace process, let alone peace, is self-sustaining, the shared commitment to lasting peace by peaceful means remains firm in Bougainville and nationally.