

DECENTRALISATION: TWO STEPS FORWARD, ONE STEP BACK*

Introduction

Local governments were established in Papua New Guinea during the colonial period. By the time of independence in 1975 a new tier of sub-national bodies, area authorities, had been created to provide some coordination of local government activities at the administrative district level.¹ Following independence a system of provincial government was introduced, within a unitary constitution. In each of the former administrative districts, renamed provinces, an elected provincial assembly was established, and substantial powers were transferred to the provincial governments, though the national government maintained overriding authority.

From the outset, however, provincial governments came under attack, both from local government councillors, who attributed an accelerated decline in the local government system to indifference or hostility on the part of provincial politicians, and from national politicians who saw the provincial government system as undermining their local power bases. Many bureau-

* This paper was presented at a workshop at the University of Canberra in 1997. It was subsequently published in Mark Turner (ed.), *Central-Local Relations in Asia-Pacific. Convergence or Divergence* (1999) and is reproduced with the kind permission of Polgrave Publishers.

¹ At the end of the colonial period there were 18 administrative districts, each headed by a district commissioner. In 1975 one of the larger provinces was divided into two. Somewhat confusingly, what were previously sub-districts were renamed districts. A National Capital District was also created for the capital, Port Moresby.

crats also resisted the decentralisation of policy making and implementation. In 1995 new legislation was passed, in the face of some opposition, to substantially 'reform' the provincial and local-level government system. The new arrangements, whose stated objective was to achieve a further decentralisation of the political system, did away with elected provincial governments, replacing them with assemblies comprising the national MPs from each province, representatives of elected local-level governments, and a small number of sectoral and community representatives. It was intended to hold elections for the local-level governments concurrently with national elections in June 1997, but the local elections were postponed. Meanwhile, there is a great deal of discussion about how the new system is intended to work, and suggestions that in many provinces it is not working at all. In the lead-up to the 1997 national elections some candidates promised, if elected, to repeal the 1995 legislation.

This paper examines the rationale, structure and performance of the former provincial government system, which operated for about two decades,² and attempts to describe the new scheme of decentralisation, which is still in the process of articulation and whose future is by no means assured.

Early devolution: local government councils

As in most colonial territories, local government councils were introduced into Papua New Guinea by the Australian colonial administration primarily as a tutelary device to give Papua New Guineans experience in the operation of formal democratic-style institutions. The first local councils (initially termed 'village councils'), established under the *Native Local Government Councils Ordinance, 1949*, were given some of the powers previously en-

² For a more detailed analysis of the previous provincial government system see Conyers (1976), Ballard (1981), Ghai and Regan (1992) and May and Regan with Ley (1997). May and Regan with Ley (1997) also includes an extensive bibliography.

trusted to village constables (in Papua) and *luluais* (in New Guinea), in relation to local peacekeeping and organising certain community activities, as well as more usual local government functions. They were also given authority to raise taxes (their main source of revenue being a head tax, which varied from council to council and frequently set different rates for men and women, and young and old), and to engage in business, and they instituted 'council work days', which involved all adults contributing unpaid labour for community work (principally road building and maintenance) one day a week. A special section was set up within the (then) Department of Native Affairs to oversee the establishment of councils and at the district level patrol officers were assigned as council advisers (*kaunsil kiap*). Subsequently the office of Commissioner for Local Government was created. Although the role of the council advisers was to advise and educate, it was often claimed that some at least exercised a dominant influence over council affairs, and questions were frequently raised as to the extent to which councils were autonomous bodies or merely extensions of the colonial administration in Port Moresby. From the mid 1960s the position of council adviser was progressively localised.

By 1951 five councils had been established, covering a population of around 18000; by 1960 the number had increased to 36 (covering 250 000), and by 1965 to 114 (1 250 000). In 1961 councils were used in the indirect election of 'native members' for the newly-created Legislative Council.

The 1949 ordinance was replaced in 1963 by a *Local Government Ordinance*, whose preamble foresaw the progressive acceptance by individual councils of increasing responsibilities and authority. Controversially, the new ordinance changed councils from being 'native' to being multi-racial. The 1963 ordinance extended the powers of local government councils to include: the provision, maintenance and management of roads and bridges, parks and gardens, aid posts, ambulance services and public latrines, housing schemes, markets, water, light and power sup-

plies, land reclamation, agricultural, pastoral, horticultural and forestry industries, airstrips, bus services, and fire prevention; the making of rules regulating public health, building, town planning, the control of livestock, and school attendance; the provision of agency functions for the administration, and engaging in business. Further, to improve their performance councils were provided with 'model rules' in several areas, to guide their activities, and were required to formulate five-year plans setting development priorities.

In the early 1960s the population served by a local government council ranged from around 5000 to over 50 000. To provide better linkage between village people and the councils, particularly in the larger council areas, the 1963 ordinance made provision for the creation of ward committees chaired by the elected councillors. Initially essentially advisory bodies, the powers of the ward committees were subsequently widened to include the promotion of community self-help projects and disbursement of funds allocated by the council.

As well as extending links downwards, from around 1959 there were moves to establish links between councils. In that year the first nationwide local government conference was held. Six years later, with the growth in council numbers making national conferences difficult, regional conferences (based on the territory's four supra-district administrative regions) replaced the national conference, though in 1968 the regional delegates created a Local Government Association to represent council interests nationally. In the early 1960s, also, regular council conferences were being organised at district level.

In recognition of this trend a *Local Government (Authorities) Act, 1970* provided for the creation of area authorities at district level. These authorities, consisting mostly of local government council nominees, served as advisory bodies to the district commissioners (progressively replacing the former district advisory councils) and played a role in the provincial allocation of certain development funds (see Conyers 1976:13-15). However, they also

helped promote a sense of provincial identity, and in the early 1970s it was principally the area authorities which voiced the demand for provincial government and later provided the membership for interim provincial governments and constituent assemblies.

The provincial government system, 1976-1995

History

With movement towards independence gaining momentum from around the late 1960s, there was some popular advocacy of political decentralisation, and when in 1972 a Constitutional Planning Commission (CPC) was established to draft a constitution for an independent state, decentralisation was on its agenda.

In its *2nd Interim Report* (1973) the CPC supported the idea of district-level government,

... as an important step towards accommodating strong political pressures for the granting of significant autonomy to particular areas of the country which have been building up over the last five years. [CPC 1973:4/4]

It argued that decentralisation of decision making should be 'political and not merely bureaucratic', and recommended that 'certain powers should be vested by law in provincial governments' (ibid.:4/3-4). The subject of central-provincial government relations was referred to consultants William Tordoff and Ronald L. Watts in 1974. Bearing in mind the views of the CPC, the consultants' report recommended

... that a fully decentralised system of unitary government should be constitutionally assured as an ultimate goal, but that it evolve by stages, with each province beginning at that stage most consistent with provincial capacity. [Tordoff-Watts Report 1974:3/9]

The CPC's final report was presented in 1974. It included detailed recommendations for the establishment of provincial government, including a schedule of proposed national, provincial and concurrent powers. The report was accompanied by a government 'white paper' (*Proposals on Constitutional Principles and Explanatory Notes*, 1974), which challenged the CPC's recommendations on several points. On the subject of provincial government, the white paper 'strongly supported' the principle of decentralisation, but raised four substantive reservations:

- 'that the CPC proposals could result in an undue concentration of power at the provincial centre';
- 'that the law should also safeguard the interests of local government bodies . . .';
- that 'The type of near-federal system proposed by the CPC would create many legal and administrative problems if introduced suddenly';
- that 'The schedule . . . dealing with the functions and powers of provincial governments should be used only as a guide' (the government also argued that it was not essential for all provinces to reach the same stage of decentralisation). [ibid.:35, 37]

The subsequent discussion of the provincial government proposals attracted considerable controversy, and by the time the relevant chapter of the CPC's report was under debate a compromise had been arrived at, in which the essential principles of provincial government would be included in the constitution but the detailed arrangements would be set out in a subsidiary organic law. But in July 1975, as the proposed organic law on provincial government was under discussion, Prime Minister Somare successfully moved in the national parliament (which was sitting as a constituent assembly) that the provincial government proposals simply be deleted from the constitution.

The demands of Bougainvilleans, whose province (Bougainville, or North Solomons) was home to a vast gold and copper mine, had been a significant factor in the move towards provin-

cial government. A provincial (then called district) government had been set up on Bougainville in early 1974, and an agreement made to pay the provincial government a grant, in lieu of royalties, from revenue from the mine. A *Provincial Government (Preparatory Arrangements) Act, 1974* had been passed to give formal status to what in July became the Bougainville Interim Provincial Government, but, within a policy context of denying special deals with Bougainville, making similar provision for all other provinces. Growing tensions in relations between the national government and Bougainvillean leaders, who were seeking a larger share of mining revenue and talking separatism, probably influenced the Somare government's move in July 1975. However, the Bougainvillean response, on 1 September 1975 – two weeks before Papua New Guinea's independence – was a unilateral declaration of independence.

Negotiations between the national government and Bougainvillean leaders during 1975-76 culminated in the signing of a Bougainville Agreement in August 1976, the reinstating of the provincial government provisions through amendment to the constitution, and the passage of the Organic Law on Provincial Government (OLPG). The provisions of the OLPG were based on the Bougainville Agreement of 1976, which in turn derived largely from the earlier CPC/Tordoff-Watts proposals.

Meanwhile, in most other provinces by 1976 constituent assemblies (generally based on the area authorities' membership) had been established and progress was being made towards the establishment of provincial governments. By the end of 1978 all 19 provinces had been granted charters under the OLPG, though it was another two years before all had elected provincial assemblies.

Political structures

The OLPG provided that all provinces have legislatures of at least 15 members, and an executive; but it left much of the detail con-

cerning political structures for the provincial constituent assemblies to decide. In practice, all provincial constitutions provided for assemblies popularly elected from single member constituencies every four or five years, though most made provision also for the assembly to appoint up to three members to represent specified special interests (women, churches, and business). A 1981 amendment to the OLPG made national MPs *ex officio* non-voting members of their respective province's assemblies.

By the early 1990s four provinces had opted for a presidential-style direct election of the chief executive (the premier) but all other provinces had broadly Westminster-style systems, with the premier elected by the members of the legislature. The small size of the assemblies and the absence (at least in the early years) of a well developed political party system in the provinces frequently made for a personalistic, patronage-based style of government, especially in provinces where a relatively large cabinet (in several cases more than half of the assembly) was used as a means of buying support and stability. As against this, in the absence of parties, provincial assemblies were often characterised by divisions along personal and regional lines and wracked by factionalism and frequent votes of no confidence.

Although, over the years, much was made of the 'cost' of provincial governments, the amount allocated to salaries and overheads for the provincial legislatures and executives (as opposed to the cost of providing services which otherwise would have had to have been largely met by the national government) was calculated in the 1980s at, on average, around 5 per cent of provincial spending (Axline 1988:table 20).

Powers and functions

In allocating powers and functions between the national and provincial governments, the OLPG 'sought to secure the autonomy of provincial government without undermining the role of the national government as guardian of the overall interest'

(CPC 1974:10/23/198). In practice, this principle was embodied in a complex but flexible set of provisions which allowed for the possibility of extensive provincial powers being negotiated with the national government. The OLPG specified a small number of exclusively national powers (essentially, powers needed to implement the constitution and deal with emergencies) and reserved some taxation fields (principally land and retail sales taxes) to the provinces; but the bulk of legislative responsibilities was listed under one of two categories: 'primarily provincial' subjects and 'concurrent' subjects. The first – which included primary education (excluding curriculum), village courts, local government, liquor licensing, housing, and sporting and cultural activities – was open to both levels of government but in the event of any inconsistency provincial laws took precedence. The second and much longer list was also open to both levels of government, but with the national laws prevailing in the event of a clash. This list included education generally, health, agriculture, forestry, community and rural development, land, labour, and transport and communications. Provinces were further empowered to make laws in areas normally covered by national legislation (including national security and international relations) if those areas were 'unoccupied' by national legislation. Provision was also made for each level to delegate powers to the other. Particularly in view of the fact that national legislation on most subjects existed before the creation of provincial governments, provision was made in the OLPG to limit national law-making in the 'concurrent' field to matters of 'national interest' and give provinces the right to seek repeal of national legislation not covering matters of national interest. Nevertheless, reflecting the essentially unitary nature of the Papua New Guinea state, the National Parliament was given overriding power to disallow a provincial law if it considered such action to be 'in the public interest'. (This power was exercised only once – to prevent a provincial government extending the term of its provincial assembly.)

However, while it was intended that provincial governments develop their own body of legislation, initially a range of functions was transferred to the provincial governments by the national government under the arrangements for delegation. These functions were delegated, uniformly to all provinces, in two stages in 1977. They comprised:

- provincial affairs (what had previously been termed 'district administration');
- health (including aid posts, health centres and provincial hospitals, and malaria eradication programmes);
- primary industry (including agricultural extension and forestry management);
- education (including community schools, provincial high schools, and vocational centres);
- business development extension services;
- government information services;
- public works (construction and maintenance);
- the Rural Improvement Programme (which funded small projects through the local government system);
- and
- government financial and accounting services (the functions of the Bureau of Management Services).

Commenting on this delegation of functions Anthony Regan has noted:

. . . functions determined for transfer . . . were not based on any coherent concept of the role and responsibilities of provincial government. Rather, they bore all the marks of the series of *ad hoc* decisions that led to their transfer . . . More importantly, the arrangements tend to tie the provincial staff to operating under national government laws and so answering to national departments in a variety of ways, thereby weakening the capacity of provincial governments to plan and manage their activities and organise their staff. [May and Regan with Ley 1997:34]

In fact, after an initial flurry by provincial governments to pass the basic legislation necessary for them to function (in many instances model legislation drafted by national government officials), most provinces were legislatively inactive. Though some enacted new policies and even challenged existing national policies (for example, East Sepik on customary land registration, and Manus on sustainable forestry management [see, respectively, May in May and Regan with Ley 1997:248-52, and Taylor 1991]), others did no more than pass their annual appropriation acts.

Finance

As in most federal-type situations, the perceived need to control major fiscal resources nationally, and the marked inequality of provincial fiscal capacity, dictated that, while provinces were given exclusive revenue sources, their main source of revenue would be transfers from the national government. And as in most federal-type systems, the distribution of grants amongst provinces acknowledged three basic allocative principles: derivation, equity, and needs.

For all provinces the largest single element of the fiscal transfer was a 'minimum unconditional grant' (MUG).³ Essentially, the MUG was intended to meet the cost, for each province, of the functions transferred from the national government in 1977, with provision for changes in prices and national government revenue. Inherent problems in the MUG grant formula were addressed in a series of reviews, but proposed amendments introduced into the National Parliament were never passed. The national government also paid an annual (uniform) grant to provinces to meet the salary costs of a six-person provincial secretariat.⁴

³ The complexities surrounding the MUG (including the issue of 'full financial responsibility') are discussed elsewhere – see May (1981); Department of Provincial Affairs (1984); Axline (1986:79-84); Ghai and Regan (1992:238-46); May and Regan (1997:39-40).

⁴ Public servants in the provinces were assigned from the national public service, and their salaries covered (in effect) by the MUG arrangements. But in recognition of existing arrangements on Bougainville in 1976, each

A third transfer, designed to placate the wealthier provinces (particularly, in 1976, Bougainville) but also to provide an incentive to provincial economic development, was an annual derivation grant. This was calculated at 1.25 per cent of the export value of produce originating in the province, less any royalties paid to the province. (Problems with the derivation grant formula – particularly concerning disparities between mining and timber royalties – were also addressed in the 1990 proposed amendments to the OLPG).

A fourth transfer, 'additional unconditional grants' (AUG) were intended to achieve some degree of equalisation of development amongst the provinces, with funds allocated on the advice of an independent National Fiscal Commission. The amount paid through AUG, however, was never substantial, and after 1984 AUG were not paid. It was considered, by the national government, that the issue of equity could be better addressed through the government's five-year rolling National Public Expenditure Plan (1985-87) and subsequent Public Investment Program, which allocated capital funds for national and provincial development projects; in fact there is no evidence that the NPEP/PIP mechanism achieved equalisation between provinces.

In addition to these four 'unconditional' transfers, provision was made in the OLPG for conditional grants to provinces. However, apart from allocations (through the NPEP/PIP mechanism) to five provinces for integrated rural development programmes under a Less Developed Areas Programme, the only conditional grant paid to provinces was a small amount for town sanitary services in rural areas.

Another element of the fiscal package involved the payment to provinces of the proceeds from certain national revenue-raising measures. The most important of these were royalties, particularly royalties from mining, forestry, and petroleum. Lesser amounts were paid from motor vehicle registration and drivers'

provincial government was allowed to appoint up to six people as a secretariat, solely responsible to the provincial government.

licence fees, bookmakers' tax, and, in some provinces, tobacco excise in lieu of provincial retail sales tax on tobacco products. With respect to the distribution of transfers amongst provinces, royalty payments, along with derivation grants, tended to skew the distribution in favour of the wealthier provinces (or those having a major resource project).

Local government

By the early 1970s local government councils in most parts of the country were in decline. Poor management, inability to collect head taxes, the frequent failure of council-run businesses, the unpopularity of council workdays, a general feeling that councils were alien institutions, and, after 1963, opposition to the shift to multi-racial councils, all contributed to this decline. On Bougainville, by 1974 councils had been replaced by village-level community governments.

The CPC noted this dissatisfaction with councils; it recommended that alternative forms of spontaneous local organisation then emerging across the country (see May 1982) be given formal recognition and that all aspects of local-level government be vested in provincial governments.

In the event, the constitutional amendment of 1976 and the OLPG gave full legislative control over local government to the provinces, with the reservation that existing councils could not be abolished without the consent of both provincial and national governments. In 1977 administrative control of councils was transferred by delegation from the national government. Subsequently all but two provinces passed legislation on local-level government (in the remaining two, councils continued to operate under national legislation). Most provinces simply re-enacted the national law as a provincial act; four replaced local government councils by a system of community governments.

Regan (in May and Regan with Ley 1997:28) has suggested that 'in the . . . struggle for power, resources and prestige, local

government has been perhaps the biggest loser under the provincial government system'. In a few provinces, local councils continued to operate fairly effectively and their status was maintained. In a few, a new system of community governments functioned satisfactorily. In some the number of councils increased, through subdivision (generally to accommodate internal breakaway movements or in recognition of regionally-based antipathies), but without evidence of increased effectiveness. But in most provinces, lacking skilled manpower and deprived of revenue by diminished tax collection and parsimonious allocations under provincial budgets, local government councils continued to decline from the 1970s through to the mid 1990s. In urban areas, elected urban councils were frequently replaced by appointed statutory bodies.

A significant factor in the demise of local government councils was the fact that provincial politicians frequently saw councils or councillors as threatening their own political base. (This was sometimes exacerbated when local government councillors aligned themselves with national members of parliament.) In such circumstances councils were sometimes deliberately starved of funds and denied their proper status. Not surprisingly, therefore, local government councils made a conspicuous contribution to the opposition to the provincial government system which developed during the 1980s and early 1990s.

Performance

Balanced assessment of the performance of the provincial government system from 1976 to 1995 is not easy. There was certainly no shortage of critics of the system; even its supporters, like John Momis, the acknowledged 'father' of decentralisation and long-time minister for provincial affairs, were frequently scathing in their comments on provincial governments. When, eventually, the auditor-general produced reports on provincial governments' finances the reports pointed to numerous instances of minor and

major irregularities. And there was copious documented and anecdotal evidence of lax and inefficient administration, nepotism and outright corruption, some of it confirmed by my own observations in the field.⁵ Several premiers and a large number of provincial ministers were charged with various forms of financial mismanagement. By 1994 all but five of the nineteen provincial governments had been suspended, some more than once; three of those five were in the Islands region.

However, the failings of provincial governments have to be seen in the context of a declining level of government performance and a rising level of mismanagement and corruption nationally. There is little doubt that in some provinces, particularly in the Islands region, the performance of governments was generally sound and the delivery of services was better than would have been the case if provincial governments had not existed. In the only detailed sectoral analysis of provincial government performance, in the health sector, the editors of the study concluded:

... decentralisation has brought both benefits and costs to the provinces. On the positive side provinces have greater autonomy in making decisions about their own services. The implementation of local health projects has shown some improvement, as has the ability of provinces to plan for and coordinate their own human and material resources. On the negative side, the political interference in health programs and in the work of public servants has increased considerably. Limited management skills have, in some provinces, led to poor management of services, while inadequate budgetary control has contributed to the continual shortfalls in the recurrent financial allocations for services in recent years.

⁵ For a number of years I have conducted fieldwork in East Sepik Province. In 1991 the East Sepik provincial government was suspended on grounds of financial mismanagement. Soon after this the provincial headquarters were burned down. The outgoing premier was one of several people arrested over the incident. Several members of the provincial cabinet were subsequently charged over misuse of government funds.

Perhaps the primary question to ask, however, is whether the decentralisation of administrative and political authority for health services has improved the health of the people. This question is impossible to answer with any degree of certainty. [Thomason, Kolehmainen-Aitken and Newbrander 1991:139]

With the added comment that the record varied from province to province, and, within provinces, between activities and over time, much the same might be said of the provincial government system's performance generally.⁶

'Reform' of the provincial government system, 1995–

History

Following the 1992 national elections, the coalition government of Pias Wingti began a new assault on the provincial government system. Within weeks of taking office, Village Services and Provincial Affairs minister John Nilkare introduced a Village Services Programme (see *Post-Courier* 14 August 1992:24-25). The programme, which according to Nilkare represented 'the most fundamental policy shift in our national history', sought to empower some 240 'community governments' through the provision of information, training and resources. Operating through the Department of Village Services and Provincial Affairs, and largely bypassing provincial governments, the programme was to link the national government with village groups through a structure of district centres and community councils; the latter were to comprise representatives from village groups or settlements, national MPs, provincial MPs, and church, women and youth group representatives. Under the programme allowances would be paid to village services personnel, including 'custom-

⁶ In the absence of adequate quantitative data, the contributors to May and Regan with Ley (1997) examine in some detail the performance of 11 of the provincial governments.

ary leaders' and village court officials, working in the areas of education, health, agriculture, land mediation, law and order, and women, youth and sports. Ultimately, it was envisaged that the programme would create up to 40 000 new jobs and have a budget of K140 million. (A later statement is given in *Times of PNG* 12 November 1992:32-33).

Subsequently Prime Minister Wingti announced that he intended to overhaul the provincial government system, reduce the number of provincial politicians, and give greater powers to national MPs; he described the provincial government system as costly and divisive and marred by gross mismanagement and corruption (*Post-Courier* 2 October 1992. Also see *Post-Courier* 8 October 1992). Shortly after this it was announced that the National Executive Council had agreed to the abolition of the provincial government system (*Post-Courier* 12, 16 October 1992), a decision which was endorsed by opposition leader Sir Michael Somare (*Post-Courier* 20 October 1992). Legislation for amendment of the constitution to enable the repeal of the Organic Law on Provincial Government was drafted. Around the same time four provincial governments were suspended; three more were suspended in 1993. Some welcomed the Wingti-Nilkare initiatives, but in all four regions there was strong opposition from within provincial governments and in the New Guinea Islands there were threats of secession. The Islands premiers were said to be preparing their own flag and anthem, and a committee of provincial government representatives was to tour the region seeking peoples' views on secession. Solomon Islands Prime Minister Solomon Mamaloni was invited over for talks (*Post-Courier* 20, 23 October 1992).

The national government responded with threats to suspend the provincial governments in the Islands region and to prosecute their leaders. Nevertheless, in the face of this opposition, Wingti modified his stance and in November announced the creation of a Bi-partisan Parliamentary Select Committee on provincial government, headed by Kavieng MP Ben Micah (Peoples

Progress Party), to again review the future of provincial government.

The Bi-partisan Committee presented an initial report in March 1993. The report confirmed that there was widespread disenchantment with provincial governments. It recommended that they be replaced by a system of decentralisation comprising provincial-level authorities (consisting of national politicians and representatives of local government councils, community governments, or traditional authority structures), with more circumscribed powers than provincial governments, and strengthened local-level structures. The NEC endorsed the committee's report and agreed to widen its terms of reference. Five months later the committee presented a second and final report which contained more specific proposals for a comprehensive restructuring of the provincial government system. It also recommended the establishment of a Constitutional Commission to implement and monitor its recommendations and to review the national constitution.

Legislation establishing the Constitutional Review Commission (CRC) was eventually passed in late 1993. The CRC, which was chaired by Micah, comprised representatives from both sides of the parliament as well as representatives from the National Premiers' Council, trade unions, churches, women, and urban authorities, and three 'prominent citizens'. Early in 1994 the CRC presented draft legislation, including a bill for an Organic Law on Provincial Authorities and Local-level Governments. This was tabled in the National Parliament in March and passed the first reading stage.

The provisions of the bill – the so-called 'Bi-partisan model' – involved a substantial reduction in the role of provincial governments. Not only were elected assemblies to be replaced by authorities comprising national MPs and non-elective members, but the law-making powers of the provincial authorities were confined to: the provincial budget; supervision and control of national and local-level governments' development policies;

alcohol licensing; lower-level education; local health centres; tourism; libraries, museums and cultural centres of provincial interest, and 'any other powers which have been delegated to it by law'. In contrast, some thirty powers were given to local-level governments. 'The general principle which underpins the proposed Organic Law', the CRC explained, 'is a system of a greater decentralisation . . . in that more powers are decentralised further to local-level governments' (quoted from a Constitutional Commission brief published in *Times of PNG* 7 April 1994, pp. 31-42). 'The provincial authority', in the words of Prime Minister Wingti, 'would only become a facilitator with limited powers' (*Media Statement* 9 February 1994). Other significant features included a shift from cabinet government at provincial level to a committee system; proposals for a separate 'Provincial and Local Level Governments Support Service' within the national public service (but under a commissioner); provisions for district administrative structures ('electoral development authorities') within each electoral boundary, and tighter financial control through a provincial and district treasury system.

But with continuing opposition from provincial premiers and from some national MPs, the second reading of the bill was postponed pending further public consultation. Meanwhile two prominent members of the CRC resigned, complaining that decisions were being bulldozed through without consultation.

The continuing concerns of the New Guinea Islands region were addressed in April 1994 by a New Guinea Islands Leaders Summit attended by provincial assembly members, senior regional public servants, national MPs from the New Guinea Islands region, and observers from two mainland provinces. The Islands leaders drew up a constitution for a Federated Melanesian Republic (FMR), comprising East and West New Britain, Manus and New Ireland (with Bougainville having an 'automatic right' to join) and demanded greater autonomy; if greater autonomy were not forthcoming they threatened to pursue 'the FMR option' (*Post-Courier* 6, 7, 8, 11 April 1994).

As a result of further consultation, changes were made to the draft legislation: provincial authorities were granted increased legislative powers and renamed provincial governments; financial arrangements for provincial governments were improved; and provisions were included to guarantee consultation between national, provincial and local-level governments and landowners in respect of projects exploiting natural resources. A redrafted Organic Law on Provincial Government and Local-Level Governments was approved by cabinet and legislation was prepared for gazettal, though some equivocation continued (see, for example, *Post-Courier* 29 July 1994).

In August 1994 a mid-term change of government occurred; in a reshuffle of coalition partners, deputy prime minister Sir Julius Chan (PPP) replaced Wingti, heading a coalition which included Pangu and the Melanesian Alliance. Chan was not long in making clear his intention to support the initiative of his New Ireland and PPP colleague. With a change of membership (but with Micah still chairman), the CRC was reactivated. The commission subsequently reported to the NEC in November and in January 1995 the latter approved drafting instructions. The following month a revised bill for an Organic Law on Provincial Governments and Local-Level Governments was gazetted (*National Gazette* No. G19 27 February 1995). Speaking to provincial premiers at a National Premiers' Council conference at that time Chan said: 'The reforms we are putting forward will help bring to an early close a clumsy chapter in the political history of Papua New Guinea' (quoted by Micah, *Post-Courier* 22 May 1995, p.17).

In fact, however, the 'clumsy chapter' was still unfolding. In September 1994 a further meeting of the New Guinea Islands Leaders Forum, deploring the 'appalling financial mismanagement by the national government', resolved to demand 'absolute autonomy' in major areas of government activity (police, public service, agriculture, fisheries, forestry, mining and petroleum, health, education, lands, transport, commerce and industry, and environment and conservation). If their demands were

not met, they threatened, they would, by 6 January 1995, declare their independence (see *Post-Courier* 8, 9, 12 September 1994). The demands of the Islands premiers were somewhat overshadowed at the time by volcanic eruptions in Rabaul. However, in October 1994 the government responded, following a meeting of the National Security Council, by ordering that the four Islands premiers and the forum chairman be charged with treason, that staff of the Islands Regional Secretariat be arrested, that expatriates involved in the move be deported, that the provincial secretaries be suspended and charged, and that grants and loan guarantees to Manus Province be frozen (*Post-Courier* 14, 17, 18 November 1994). Although the Islands leaders were not arrested, legal action against them was still proceeding in mid 1995 – though by November 1994 secession was said to be no longer an issue (*Post-Courier* 21 November 1994). Chan rejected calls for further negotiations and maintained a hard line against the premiers and other opponents of the proposed changes to the system.

In March 1995 the redrafted Organic Law and enabling legislation were tabled in the National Parliament and, with minor amendments, passed through the second reading stage with a substantial majority. ‘History was made yesterday’, Chan said. Papua New Guinea had been freed from the burden of a provincial government system that had handicapped the country for the best part of 20 years.

As against this, the acknowledged father of provincial government in Papua New Guinea, John Momis, urged members to reject the bill. ‘At this time in our history’, he said, ‘attempts to abolish and replace the provincial government system will be deeply divisive and destructive’; there had been ‘grossly inadequate public discussion’ and ‘meetings were stage-managed’. Momis predicted that the new legislation would create ‘an administrative nightmare’. Not only was the local government system ‘almost dead in most provinces’, but the new arrangements ‘will make many provincial governments tools in national level

conflict on a level and to a degree of intensity never before imagined' (*Post-Courier* 4 April 1995).

Notwithstanding the clear vote for the draft legislation in March, with the third reading adjourned till June 1995 it appeared that others were coming round, at least partly, to Momis's persuasion. In addition to continuing opposition from provincial premiers – particularly the Islands premiers, who at an Islands Premiers' Council meeting in May announced the formation of a new political party, the Movement for Greater Autonomy, and proposed the formation of an Islands State Government (*Post-Courier* 26 April, 8 May 1995) – several national MPs began talking about opposing the legislation at its third reading, and even calling for the rescinding of the first and second readings (see *Post-Courier* 28 April, 1, 5 May, 16 June 1995). Rescinding of the first two readings was also recommended by the Permanent Parliamentary Referral Committee on Justice, which criticised the government for 'bulldozing' the legislation through the house (*National* 1 May 1995; *Post-Courier* 22 June 1995). With two major parties opposing the bill, in early June it was reported that Pangu would call for amendments to the bill, which Somare described as 'grossly deficient' (*Post-Courier* 19 June 1995; also see *Post-Courier* 7, 8, 9, 13 June 1995). In his determination to ensure the passage of the bill Chan urged members to vote for it and move amendments at a later stage, and he threatened to take action against those who were disloyal to him.

In the event, when the legislation came to a vote on 27 June a majority of Pangu members voted to support the bill, and it was passed by 86 votes to 15. Those who voted against the bill or abstained from voting included five cabinet ministers; the following week all five were sacked from cabinet.

While the redrafted Organic Law was before parliament, progress towards reconciliation of the conflict on Bougainville (and the inadvertent lapsing of the suspension of the North Solomons provincial government) resulted in the establishment of a Bougainville Transitional Government (BTG). In recognition of

the special circumstances on Bougainville, the BTG was exempted from the provisions of the Organic Law. Special arrangements were also made for the National Capital District.

Political structures

The Organic Law on Provincial Governments and Local-Level Governments (OLPGLLG) effectively abolishes the provincial government system established in the 1970s.⁷ In place of the existing elected provincial assemblies the new legislation establishes bodies (still referred to as provincial assemblies) comprising:

- all members of the National Parliament from the province;
- heads of rural local-level governments;
- one representative of the heads of urban authorities and urban councils;
- up to three ‘paramount chiefs or their appointed nominees representing local areas where the chieftaincy system is in existence and is accepted’;
- one nominated woman representative;
- up to three other members appointed from time to time by the provincial assembly. [OLPGLLG s.10 (3)]

All members, including nominated members, have voting powers.

⁷ In a briefing paper prepared by the Constitutional Review Commission, however, the question was asked, ‘Will provincial governments be abolished?’ and it was answered, ‘No’ (see *Post-Courier* 31 May 1995, pp.18-19). On the other hand, another paper, apparently authored by Micah (*Post-Courier* 22 May 1995) concluded: ‘By finally approving the Bills the National Parliament will be sending a clear message to the Nation that provincial governments are subsequent of [*sic*] and not equal to national interest. They are not a second source of political or governmental power. They are part of the national Government, largely delegated, but subject to supervision and ultimate control of the state’.

The chairman of the provincial assembly and head of the provincial government, to be called 'governor', is normally the member of the National Parliament representing the provincial electorate. The governor may be dismissed, however, by a two-thirds majority of the provincial assembly, in which case another person must be elected from amongst the other national MPs. The governor may not be in an executive position in government, or speaker or deputy speaker of the house, or leader or deputy leader of the opposition (s.19). (If the provincial MP accepts such a position, or is otherwise removed, he is to be replaced by another MP.) The governor is constitutionally responsible to the minister for provincial and local-level governments (s.22). The deputy governor is to be elected from amongst the representatives of the local-level governments (as an interim measure existing premiers served as deputy governors).

The former ministerial system was replaced by a committee system; the provincial executive council comprises the governor and deputy governor, and the chairmen of the permanent committees (not exceeding in total a third of the membership of the assembly). Since the governor appoints the committee chairmen, this provision gives the governor considerable authority.

The idea of a separate provincial and local-level service was dropped from the revised legislation. Administratively, provincial departments have been abolished; their operations now come under the relevant national departments through a provincial administrator. The provincial administrator, who is chief executive officer of the provincial government and 'the administrative head of the staff in the province' (ss. 73-74), is chosen by the National Executive Council from a list of persons nominated by the provincial executive council. Below the provincial administrator is a stratum of divisional administrators. The framers of the Organic Law foresaw a decentralisation of administration from Waigani to the provinces and from provincial capitals to the districts. In fact, however, these provisions have been a source of some confusion: although the provincial administrator 'shall

maintain overall supervision and direction' over all public servants in the province (excluding law enforcement agencies), and 'shall coordinate and monitor the roles and functions' of the national departments and agencies (s.74(1)(d), (e)), it is not clear how this authority relates to the chain of command within national departments and agencies, nor is it entirely clear what control the provincial administrator exercises over district administrators.

Local-level governments – which form the cornerstone of the new system – are 'in principle' elective bodies representing local communities. They may comprise commissions, urban authorities or councils, community governments, local government councils, 'traditional form(s) of governmental structure', or some combination of these (s.26). The particular form(s) of local-level government is to be determined by the national government on recommendation from the provincial assembly, with a normal maximum of three rural local-level governments in each open (national) electorate.⁸ A significant amendment to the Organic Law (s.33A) provides for the establishment, in each district, of a joint district planning and budget priorities committee. Each committee consists of the MP representing the open electorate (as chair), the provincial MP, the heads of the local-level governments in the district, and up to three other members appointed by the open MP in consultation with heads of the district's local-level governments. The provincial administrator is executive officer to the committee. These committees will oversee and coordinate district planning (including a rolling five year development plan) and budget priorities 'for consideration by' the pro-

⁸ Because the boundaries of local government councils and community governments did not necessarily coincide with those of open electorates, it has been necessary to carry out an extensive redrawing of local-level government boundaries. A number of provinces with more than three local-level governments in an open electorate have also had to amalgamate former councils or community governments. By June 1997 the NEC had approved 284 reformed local-level governments; this did not include Bougainville.

vincial and national governments, determine and control budget allocation priorities for local-level governments, and approve local-level government budgets. Local-level governments are promised full legal status and 'significant funding and manpower'. The shifting of responsibility for local-level government from the provinces to the national government is an important aspect of the 1995 reforms.

Powers and functions

Provinces retain their present primary powers, including financial powers, but concurrent powers revert to the national government. Local-level governments are also given significant law-making powers, covering such subjects as labour and employment, self-help schools (excluding curriculum), dispute settlement, local environment, and local aid posts. (See ss.42-45.) The incorporation in the Organic Law of a list of local-level law-making powers reflects the increased status the new legislation grants to local-level governments. It is on this basis that the CRC argued (in explanatory notes) that 'the reform is not "centralising" powers as claimed by critics. This reform is in fact decentralising powers further to the Local Level Governments'. The argument is less than convincing, however, since the Organic Law also provides that when there is any inconsistency between provincial and local-level laws and national laws, the latter will prevail (s.41(6)).

In some areas of provincial government jurisdiction it has been possible to re-enact the legislation of the former provincial governments (though there is some doubt as to whether the necessary procedures have been observed in all cases). Given the changes in local-level boundaries this is not a straightforward option at the local level. In any case, a huge legislative programme will be required to formally empower the two levels of government. To facilitate the process at least one national department (Health) has drafted model laws to assist provincial legislatures.

The CRC's explanatory notes state that 'There will be no general suspension of Provincial and Local-level Governments except where there is a war or national emergency or where a Provincial or Local-level Government undermines or tries to undermine the authority of the national government'; however, the national government's powers to suspend or to withdraw functions and finances from provincial and local-level governments, though subject to referral to an independent National Investigation Committee set up under the Organic Law, remain substantial (see ss.51-71).

A Provincial and Local-Level Service Monitoring Authority has been established, comprising representatives of several national departments and agencies chaired by a representative of the Department of Provincial Government and Local-Level Government, whose function is to coordinate national policies at the provincial and local level and monitor various aspects of the system, including assessment of 'the effectiveness and efficiency of the provincial governments and local-level governments' (s.110 (4)(e)).

Disputes between and amongst national, provincial and local-level governments are to be referred to a Mediation and Arbitration Tribunal (of undetermined composition).

Finance

The CRC's explanatory notes claim that, 'Provinces will, under the reform, get a lot more finance from the national government and will have full autonomy within powers and functions in the law to apply its finances'. To supplement existing internal revenue sources provinces will receive grants from the national government of six types (ss.91-97): a provincial and local-level administration grant, a provincial infrastructure development grant, and a local-level government and village services grant (all based variously on population and land and sea area); a town and urban services grant (based on urban population); a provin-

cial and local-level staffing grant (related to provincial administrative and teaching service salaries), and the derivation grant (which will be increased from its previous 1.25 per cent to 5 per cent). Part of the annual allocation (not less than K300000) will be paid directly to districts to fund a Rural Action Programme⁹ and urban rehabilitation (s.95A). Estimated outlays for provincial and local-level governments in the first year of the new system were K490 million, compared to K374 million (including K74 million in village service grants and Electoral Development Fund) in 1994. In 1997 this figure had risen to K568 million.

The new Organic Law also provides for the creation of an independent National Economic and Fiscal Commission with broad fiscal and economic functions, including oversight of provincial finances – a successor to the long moribund National Fiscal Commission.

A set of provisions added to the initial draft of the new Organic Law addresses the question of participation of landowners and local leaders in deliberations relating to the exploitation of natural resources and payments to provincial and local-level governments from resource revenues.

Assessment

In May 1997 Provincial and Local Government Affairs Minister Peter Barter told a seminar in Port Moresby,

... in the 22 months since the reforms commenced, little improvement has been achieved in the operations of provincial administrations and almost nothing in most of their sub-units, the districts.
[*The Independent*, 30 May 1997]

Earlier he had told the National Parliament that 'it will defi-

⁹ The Rural Action Programme replaces the former, controversial, Electoral Development Fund (commonly known as 'slush fund'), which gave each national MP an amount (in 1995, K0.5 million) to allocate, at his/her discretion, in his/her electorate.

nately take time, may be five years or more before the results of the system are realised' (*Draft Hansard* 11 February 1997, p. 14). Clearly, assessment of the new system would be premature. Some general observations might, however, be offered.

(i) The Organic Law was pushed through parliament hurriedly, and bears the marks of haste. Four sets of amendments have been passed,¹⁰ to meet promises made to get the legislation through in 1995 and to rectify confusion and omissions. A huge programme of legislative amendment, repeal and enactment remains to be completed before the system can be described as operative. Meanwhile, there is much in the new arrangements to cause uncertainty and confusion, not least in the provisions concerning the respective roles of national line departments, provincial administrators and district administrators.¹¹

(ii) The avowed purpose of the 'reform' of decentralisation was to shift power towards local-level government. It must be seriously questioned whether local-level government will have the capacity to carry this load. As argued above, local governments in most of Papua New Guinea were in a state of decline by the 1990s and it is difficult to see how the necessary political and administrative expertise can be mobilised, for some 300 local-level governments, in a relatively short space of time. Initial attempts to decentralise by relocating administrative personnel from provincial headquarters to districts have also been constrained by lack of adequate infrastructure (especially housing and offices).

(iii) In the absence of a strong local-level government structure,

¹⁰ Of 141 sections of the original OLPGLLG, 13 had been repealed or replaced and 38 amended, and six new sections had been added.

¹¹ A workshop was held in Port Moresby in May 1997 to review the status of the implementation of the reforms. Its report summarises the problems and contains a number of recommendations.

the new system is likely to substantially increase the political role of national MPs. Arguably, this was the real objective of the reforms. One of the arguments levelled against the previous provincial government system was that it created competitive tensions between the different levels of government. In fact, however, as Momis warned in 1995 (see above), the new system seems much more likely to foster political intervention and the use of government resources for political purposes, particularly if local-level governments remain weak.¹²

¹² According to a report in the *National* newspaper (7 August 1997) outgoing provincial and local-level government minister Peter Barter, in a brief to his successor, identified four shortcomings in the reform process: first, 'that dominant MPs were directly involved in making decisions on allocating resources just to meet their own political ends' (MPs and local politicians, he said, 'should not be allowed to dominate the decision-making process'); second, that the national government was withholding funds guaranteed to the provinces; third, that there was no clarification of the allocation of responsibilities between the provincial and local-level governments; and, fourth, that there was 'an urgent need to put infrastructure before services, and ensure adequate staffing at all levels of government'.