DECENTRALISED GOVERNANCE ARRANGEMENTS IN PAPUA NEW GUINEA: A FRAMEWORK FOR A NATIONAL CONVERSATION

Cheryl Saunders
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Cheryl Saunders
Anna Dziedzic
THE NATIONAL RESEARCH INSTITUTE
PAPUA NEW GUINEA

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(a) The promotion of research into Papua New Guinea society and the economy; and,
(b) The undertaking of research into social, political and economic problems of Papua New Guinea in order to enable practical solutions to such problems to be formulated.

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The Constitution Transformation Network at Melbourne Law School explores the role of constitutions and governance in a rapidly changing globalised world. It combines research and practice to provide support to efforts to improve governance, to make and amend constitutions, and implement change, globally and in the Asia-Pacific Region in particular.
Methodology

The paper is based on desk research into the laws governing decentralisation in Papua New Guinea (PNG), and their operation in practice, in the past and today. It draws in particular on previous studies of the different phases of decentralisation in PNG by the PNG National Research Institute (PNG NRI), the PNG Constitutional and Law Reform Commission (CLRC) and other policy papers and scholarly works. Comparative and theoretical scholarship on decentralisation were used to identify the reasons why countries adopt decentralisation and to map the different forms that arrangements for decentralisation may take. Placing PNG’s arrangements for decentralisation in global context also provides insights into a range of possible reforms, and the challenges and benefits associated with them. The analysis presented in this paper greatly benefitted from a series of discussions between the authors, Dr Thomas Webster (the leader of PNG NRI’s Autonomy and Decentralisation Research Project) and political leaders, senior public servants, and legal and political scholars in PNG. Drafts of this paper were presented to a meeting of senior public servants and academics in Port Moresby on 10 November 2021 and to the National Conference on Autonomy and Decentralisation on 16–17 February 2022. These discussions with PNG experts sought to ensure that the eight issues set out in this paper took account of PNG’s unique experiences of decentralisation, the operation of arrangements for decentralisation in practice and PNG’s future needs.
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<tr>
<th>Abbreviation</th>
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<tr>
<td>CLRC</td>
<td>Constitutional and Law Reform Commission</td>
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<tr>
<td>CPC</td>
<td>Constitutional Planning Committee</td>
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<td>CPC PNG</td>
<td>Constitutional Planning Committee Papua New Guinea</td>
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<td>DDA</td>
<td>District Development Authority</td>
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<td>MP</td>
<td>Member of Parliament</td>
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<td>NEC</td>
<td>National Executive Council</td>
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<td>National Economic and Fiscal Commission</td>
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<tr>
<td>OLPGLLG</td>
<td>Organic Law on Provincial Governments and Local-level Governments</td>
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<td>PNG</td>
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<td>PNG NRI</td>
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<td>Service Improvement Program</td>
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Decentralisation is widely used across the world as an aid to good governance. It is a longstanding feature of governance in PNG. 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 PNG NRI’s project on Autonomy and Decentralisation seeks to encourage informed national conversation on the design and operation of decentralisation as an aid to policymakers 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 support 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 governance 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 canvasses eight issues that arise in designing any decentralised system of governance, in a format that highlights their relevance in PNG:

1. Levels of government

PNG has three levels of government — the national level, the provincial level and the local-level government. In addition, districts and wards, while originally designed for electoral purposes, are now also used for some governance functions. The issues to be considered include the following:

- 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?

2. Political institutions

Each level of government in a decentralised system has its own political decision-making institutions. Their design and effective operation are important for the quality of governance, 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 the use of the same elected representatives at national, provincial and district levels. The issues to be considered include the following:

- To achieve goals of decentralisation, should each level of government be directly elected by the people at the local, provincial and national level respectively?
- What are the advantages and disadvantages of using national Members of Parliament (MPs) at multiple levels of government?
3. Division of legislative and executive power

A key criterion for the division of power in decentralised systems is to allocate power to the most local level of government that is capable of effectively exercising it. The underlying assumption is that subnational 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. The issues to be considered include the following:

• 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?

4. Administrative support

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 (where each level of government has its own separate public service) and with a single public service that serves all levels of government. The issues to be considered include the following:

• 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 at the national level (such as the Auditor General or Ombudsman) support decentralisation?

5. 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, subnational 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. The issues to be considered include the following:

• To what extent can and should subnational 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?

6. Intergovernmental arrangements

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. The issues to be considered include the following:

• How can the design of institutions (such as the national parliament and the public service) contribute to positive relations between levels of government?
• Do the arrangements for National Government oversight of subnational governments (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?

7. 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. The issues to be considered include the following:

- 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

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 is critical. The final part 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 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, specialised 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 successful operation. Implementation is often a continuing work in progress and adaptation to new arrangements may continue after a formal transition period ends.
The PNG NRI’s project on Autonomy and Decentralisation in Papua New Guinea 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 (Dion, 2016, p. 10). The project seeks to encourage an informed national conversation on the design and operation of decentralisation as an aid to policymakers as they consider options for change. It is intended to canvass 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 (OECD, 2019). 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 subnational 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 (CPC) in 1974 (Constitutional Planning Committee Papua New Guinea (CPC PNG), 1974, ch. 10). National goal 2 of PNG’s Constitution calls for ‘structures to provide for substantial decentralisation of all forms of government’s activity in recognition of ‘the rich cultural and ethnic diversity of our people’.

Since 1975, 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 (Kwa et al., 2016, pp. 36–79). These phases, the rationales for them, and their effects are described 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 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 for subnational governments (Howes et al., 2022, pp. 69–70). The use of national MPs at multiple levels of government is unusual and makes 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. 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.
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
   - How should the legislative and executive institutions of each of the subnational levels of government be constituted?
   - To achieve goals of decentralisation, should each level of government be directly elected by the people at the local, provincial and national level respectively?
   - 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 subnational 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 arrangements
   - What structural intergovernmental arrangements (including the design of existing institutions) 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 section 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.
Decentralisation involves the distribution of governmental powers, responsibilities, and resources between a national 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 (OECD, 2019). This part of the paper 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.

2.1 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 more local 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 governments more inclusive. The existence of multiple levels of government provides 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 local 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 of policy and delivery of services in the areas 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.

2.2 Forms of decentralisation

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

1 For a discussion of the benefits of empowering local leaders and family groups through decentralisation see Ketan. 2016, pp. 269–74.
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 when exercising its own protected powers and is directly accountable to its citizens.

The other points along the spectrum (represented in the diagram in the lighter shade) 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. PNG 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 laws that establish the provincial governments.

At the opposite end of the spectrum of decentralisation is **delegation**. Under delegation arrangements, all public power is held by central institutions, but some power is given to subnational 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. (Saunders, 2018; Choudhry and Stacey, 2015; Böckenförde, 2011). 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 the extent of the power effectively held by subnational 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.

### 2.3 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 the following:

- 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 work effectively in practice. Challenges of decentralisation in practice 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 are usually raised in relation to subnational 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 subnational 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 when deciding the allocation of powers between levels of government and determining the extent of national control. Issues of capability can and should be met in other ways as well, however, to ensure that subnational 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 of power or an 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 recentralisation. Signs include the assertion of central power in areas of subnational authority; an overuse of legal controls of subnational decision-making by central institutions; and the use of funding by the national level of government to influence subnational activity. Another sign may be an alliance between the national and most local level governments 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 governments require.

• 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 it relies on citizens to engage with government and to hold decision makers to account. In the absence of public understanding, decentralisation will not work as it should.3

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.3 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 are 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 specialised role that the national level of government plays.

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2 On the issue of distance between government and the people in PNG's decentralised system see Reilly et al., 2015, pp. 35–6.
3 On public consultations in relation to decentralisation in PNG, see Kwa et al., 2017.
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. The sections are organised under the same key issues that are used in part 4 to discuss the issues of decentralisation currently being considered in PNG; namely, levels of governments, political institutions, division of power, administrative support, revenue raising and allocation and intergovernmental relations. Each section also identifies some of the criticisms of each phase of decentralisation and drivers for change. The purpose of this overview is to set out the context for decentralisation in PNG and provide a foundation for assessing proposed changes, as well as and the challenges for implementation once changes have been agreed and put in place.

### 3.1 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 CPC, a parliamentary committee charged with developing a draft Constitution for the Independent State of PNG. The CPC 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 (CPC PNG, 1974, ch. 10, para. 8). 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 (May, 1999, pp. 126–27). As a result, decentralisation was included in the National Goals and Directive Principles, but 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.¹

### 3.2 First phase: Organic Law on Provincial Government — 1976 to 1995

The first phase of decentralisation in PNG began in 1976.² 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’ (Kwa et al., 2016, p. 1). At least in terms of design, these arrangements gave PNG a relatively deep form of decentralisation.

#### Levels of Government

The first phase of decentralisation established provincial governments. There were 19 provinces and the National Capital District (NCD), which mapped on to the pre-independence districts established by the colonial administration. Provincial governments had authority over local village-level governments within their area and there were some constitutional limits on the unilateral abolition of provincial governments by the national government.³ Because of this 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 (Kwa et al., 2017, p. 31).

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² For a detailed description of the features of this phase, see Ghai and Regan, 1992.

³ Constitution of Papua New Guinea, s. 1871 (as amended in 1976).
Political institutions

In the first phase, most members of provincial legislative assemblies were directly elected by the people of the province while a small proportion of the members could be appointed. 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 (May, 1999, p. 127). 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 were responsible to the assembly. There was some divergence, however, as four provinces adopted presidential-style elections for their premiers (May, 1999, pp. 128).

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’. 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 (May, 1999, p. 128; Peasah, 1990, p. 16).

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 lawmaking 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 levels (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 lawmaking powers over some subject matters, as well as the power to amend provincial constitutions and to disallow provincial legislation in the public interest. Laws were made to accommodate the gradual transfer of power to some provinces, which, with the approval of the national parliament, could refuse or delay assuming some powers. 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 (May, 1999, p. 131; Duncan and Banga, 2018, p. 498).

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 (May, 1999, p. 131).

Funding in this phase of decentralisation has been described as based on meeting the costs of the functions and responsibilities given to provinces (Gelu and Axline, 2008, p. 7). Problems arose when the transfer of functions to the provincial level was not accompanied by financial transfers to provinces to meet the costs (Duncan and Banga, 2018, p. 497).

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7 *Organic Law on Provincial Government*, s. 16(2).
8 This was consistent with the recommendations of the CPC PNG 1974, ch. 10, paras. 52–3.
9 *Constitution of Papua New Guinea*, s. 187C(5) and (6) (as amended in 1976).
10 *Organic Law on Provincial Government*, s. 100.
Intergovernmental relations

The complexity of the legal provisions for decentralisation reflected, in part, the premise that governments would cooperate closely (Ghai and Regan, 2006, p. 594–95). There were procedures for both levels of government to notify and consult each other; for example, when allocating new powers or entering major investments.\(^\text{12}\) Intergovernmental institutions were established, including a National Fiscal Commission to review provincial taxation arrangements and make recommendations on equalisation grants. A Premiers Council was to meet 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.\(^\text{13}\)

In extreme cases of non-compliance, the National Executive Council (NEC) 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 national unity'.\(^\text{14}\)

Drivers for change

Reviews of the first phase of decentralisation identified issues of inefficient administration, nepotism, corruption, and financial mismanagement (May, 1999, p. 133). 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 to provide even basic services.

Politics played a strong role in attitudes towards the system of government established in this first phase of decentralisation. Provincial governments did not have much support from 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 competition, displacing them as visible benefactors to the people (Gelu and Axline, 2008, p. 9; Peasah, 1990, p. 14). Similarly, provincial politicians saw some local-level government leaders as a threat to their political base (Howes et al., 2022, pp. 77–8; May, 1999, p. 132). As a result, national and local-level politicians aligned in their criticism of the system of provincial government and called for change (May, 1999, pp. 134–39; Peasah, 1990, p. 13).

3.3 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 (Kwa et al., 2016, p. 1). 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 (May, 1999, p. 144).

Levels of Government

The second phase of decentralisation retained the provincial level of government, although the number of provincial governments has increased to 22 (including the NCD and the Autonomous Region of Bougainville). In this phase, local-level governments received greater formal recognition and responsibilities (Barcson, 2015, p. 154). Control over local-level governments was removed from provincial governments and vested instead in the National Government. There are presently 396 local-level governments in PNG, classified as either urban or rural.\(^\text{15}\) Since 2015, three urban local-level governments have been granted a special status as city authorities.\(^\text{16}\)

\(^{12}\) Organic Law on Provincial Government, ss. 30, 31, 85.
\(^{13}\) Organic Law on Provincial Government, s. 84.
\(^{14}\) Constitution of Papua New Guinea, s. 187E.
\(^{15}\) 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, 2019).
\(^{16}\) Kokopo City Authority Act, 2015; Lae City Authority Act, 2015; Mt Hagen City Authority Act, 2015.
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.17

Executive Governments 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 (May, 1999, p. 141). The function of the executive is to implement provincial laws and national laws applying to the province.18 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).19 A governor may be dismissed for failure or negligence in performance of his or her duties.20 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 are elected by each ward in the local government area and two or three additional members may be appointed.21 The head of each local government (variously known as ‘Mayor’, ‘Lord Mayor’ or ‘President’22) 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 6,375 wards in PNG (Commonwealth Local Government Forum, 2019). 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.23

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 lawmaking power of the provincial governments.24 Consistently with their increased status, local-level governments were also vested with lawmaking powers over a range of subject matters, subject to the power of provincial governments to legislate in the provincial interest.25

The 1995 reforms did away with the complex categories of primary, concurrent and unoccupied fields. The 1995 Organic Law consolidated the National Parliament’s powers to make laws on any subject in the provincial or local-level government list when it was in the national interest to do so, and following consultation with the other levels of government concerned.26 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 that ordinary legislation would identify the administrative and

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17 Organic Law on Provincial Governments and Local-level Governments, s. 10(3).
18 Organic Law on Provincial Governments and Local-level Governments, s. 23(5).
19 Organic Law on Provincial Governments and Local-level Governments, ss. 18–9.
20 Organic Law on Provincial Governments and Local-level Governments, s. 20.
22 Local-level Governments Administration Act, 1997, ss. 27.
23 Organic Law on Provincial Governments and Local-level Governments, s. 42.
24 Organic Law on Provincial Governments and Local-level Governments, ss. 40(1)(e), 44.
25 Organic Law on Provincial Governments and Local-level Governments, s. 41(2) and (3).
service-delivery functions of provincial governments. Subsequent legislation listed a range of 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 District Development Authorities (DDAs) by the Head of State, acting on the advice of the NEC.

**Administrative support**

The 1995 reforms centralised the public service at the national level. While provinces retain the ability to hire staff under contract, nearly all public servants, including frontline service delivery (e.g. 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 (Ketan, 2016, p. 261). 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 that generated it; to cover the salaries of staff; and to support development. The National Economic and Fiscal Commission (NEFC), 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 below.

**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. Disputes between governments could be referred to mediation and the NEC retained the constitutional power to suspend provincial governments.

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 (Gelu and Axline, 2008, p. 5; Duncan and Banga, 2018, p. 498). 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 (Duncan and Banga, 2018, p. 498). 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 (Gelu and Axline, 2008, p. 9; Duncan and Banga, 2018, p. 498).

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27 Provincial Governments Administration Act, 1997, s. 16.
28 Intergovernmental Relations (Functions and Funding) Act, 2009, s. 5.
29 Organic Law on Provincial Governments and Local-level Governments, s. 73(2).
30 Organic Law on Provincial Governments and Local-level Governments, ss. 86–87.
31 Organic Law on Provincial Governments and Local-level Governments, ss. 82–82I.
32 Organic Law on Provincial Governments and Local-level Governments, s. 110.
33 Constitution of Papua New Guinea, s. 187E.
3.4 Third phase: The rise of districts — 1996 to today

The third phase of decentralisation has seen districts play an increasing role in 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.

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 *Organic Law on Provincial Governments and Local-level Governments*, s. 33A, in 1996 established the Joint District Planning and Budget Priorities Committees, with further changes in 2006 consolidating their role. One committee was established in each district, each 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. 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 DDAs and members of the provincial governments, national MPs play the key role in allocating funds and controlling the budgets of all other levels of subnational 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 (Duncan and Banga, 2018, p. 502; Banga, 2018, pp. 8–9; Barcson, 2015, p. 153).

Division of power

Districts do not have lawmaking powers. The role of the former Joint Committees, and now the DDAs, is to coordinate the planning, implementation and monitoring of development projects at the district and provincial levels. 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. Once approved, project funds are 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 (Duncan and Banga, 2018, p. 497).

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 (Ugyel et al., 2021, p. 145). Otherwise, the DDA is a separate legal entity, with its own staff. Some concerns have been raised about how DDA staff work with political

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34 Organic Law on Provincial Governments and Local-level Governments, s. 33A.
35 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).
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.\(^{36}\)

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 (SIP), funds are provided to MPs to distribute to their constituents at the provincial, district and local level.\(^{37}\) 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.

The administration of SIP funds is set out in the Service Improvement Program Finance Instructions and Administrative Guidelines, issued by the NEC. Between 2012 and 2016, the Guidelines directed the proportion of funds to be spent on different sectors: infrastructure (30%), health services (20%), education (20%), law and order (20%), economic support (10%) and administration (10%). In 2016, these guidelines were relaxed, so that much of the allocation is now left to the discretion of the DDA and MPs (Lavel, 2021).

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 actually pursue such options (e.g. East New Britain (Ugyel, et al., 2021, p. 146).

Intergovernmental relations

The district’s role has been described as integrating the ‘top down’ planning done at the provincial and national levels, with the ‘bottom up’ planning of local-level governments and wards (Barcson, 2015, p. 153). 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 (Ugyel et al., 2021, p. 147).

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 the provincial and district levels, which also gives them a high degree of control over local-level governments and wards. MPs have largely displaced public servants in the technical tasks of implementing policy and service delivery (Gelu and Axline, 2008, p. 6). 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 (Howes, et al., 2022, p. 77–9). The second is the reliance on funds provided to MPs to distribute within their constituencies, such as the SIP, to fund decentralisation and service delivery, rather than unconditional grants to subnational 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 (e.g. East New Britain (Gelu and Axline, 2008, pp. 16–21; New Ireland (Radio New Zealand, 2016)). In 2018, the National Government entered into an intergovernmental 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 (O’Keeffe, 2018). Some have proposed a staged or differential

\(^{36}\) Organic Law on Provincial Governments and Local-level Governments, ss. 95A and 95B.
\(^{37}\) To the point that ‘PNG seems to rely more heavily on constituency funding to disburse its budget than any other government in the world’ (Howes et al., 2014, p. 129).
approach to decentralisation, in which provincial governments might qualify for more powers and autonomy if they meet certain standards of governance and capacity.\textsuperscript{38}

There have been many studies and reviews of decentralisation in PNG. Gelu and Axline (2008), in a report for the PNG NRI, provided a critical review of efforts at reform up to 2008. Since then, a major review was conducted by the CLRC which recommended wide-ranging reforms (Kwa et al., 2016). Issues identified in these and other reports concerned the quality of service delivery, standards of governance, lack of accountability, and the workability of the system, generating calls for reform that continue today.

\textsuperscript{38}As recommended by the CLRC in 2015.
Ch. 4 Key issues in decentralisation in PNG

This part provides a framework for explaining the eight key issues raised by decentralisation in PNG. Each section follows the same structure.

A. **Issues**: a description of the issue raised by decentralisation;

B. **Relevance for PNG**: an explanation of how this issue is relevant in the PNG context; and

C. **Matters for consideration**: a discussion of potential options to deal with the issues in a way that is responsive 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.

4.1. Levels of government

A. 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 communities and their governments, to allow expertise to develop and to build constructive relationships 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?

B. 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 NCD 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 6,375 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 subnational governments and the powers exercised by them are taken up in later sections of part 4.

C. 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 responsibility for a relatively small geographical area and relatively small sections of the people and for this reason is often described as being closest to the people. The intermediate level of government

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39 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, 2019).
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 governments, 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 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. The additional complexity this fourth level 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**

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 subnational governments. Other factors may also be taken into account when drawing boundaries. 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.

In PNG, 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, positioned between the small but numerous local-level governments and the less numerous but more substantial provincial governments. The use of electoral boundaries to determine the configuration of subnational governments raises its own issues. 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 districts 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 if the use of electoral boundaries to define the districts discouraged changes to electoral boundaries when that is needed to equalise voting constituencies. 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.

**4.2 Political institutions**

**A. 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 elected by the people which that level of government is
designed to serve. These institutions need to be accepted as legitimate by the communities that they serve and by the other levels of government. The design and effective operation of political institutions at all levels of government is particularly important for securing the goals of decentralisation including quality of government, service-delivery and inclusive government.

The key issues for consideration in this section are as follows:

- How should the legislative and executive institutions of each of the subnational levels of government be constituted?
- To achieve goals of decentralisation, should each level of government be directly elected by the people at the local, provincial and national level respectively?
- What are the advantages and disadvantages of using national MPs at multiple levels of government?

B. Relevance for PNG

PNG presently has three general levels of government (national, provincial and local) and two other levels that perform some governance functions (districts and wards). 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 were constituted by MPs elected to the national parliament from the open electorates in the province, while the office of provincial governor was held by the MP elected to the national parliament from the province-wide electorate. In a subsequent development, after the establishment of the DDAs, 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 mean that, in relation to each province, the same individuals hold political office at national, provincial and district levels.

C. 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 subnational and national levels or between different subnational 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, subnational political institutions are appointed by elected officials of another higher level of government. In this case, the subnational legislature derives its legitimacy from the higher level of government and is accountable to the people through the higher level of government. This kind of arrangement tends to be found in systems where decentralisation is relatively shallow. The appointment rather than election of members of subnational political institutions 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 PNG NRI 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 section 4.6 of this paper, in the context of intergovernmental relations.

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 it 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 adversely affect the development of effective and responsive governments 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 executives 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 PNG’s 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 decentralised government, this causes national politicians to seek ways to be associated with subnational issues, including through the distribution of grants, whether or not they represent value for money. It can lead national MPs to focus on provincial and district matters at the expense of fulfilling their lawmaking and accountability responsibilities at the national level (Kabuni, 2001; Dion, 2016, p. 12). 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.

4.3 Division of legislative and executive power

A. 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?
B. Relevance in PNG

The Constitution and the OLPGLLG allocate lawmaking and executive powers to the provinces and local-level governments. On the face of it, the particular powers allocated to provincial and local-level governments are broadly appropriate for exercise by them, consistent 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 subnational 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.

C. 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.

Is it 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. 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, legislative power is allocated to different 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 lawmaking power to each other.

Under the Constitution and the OLPGLLG, the National Parliament retains all other lawmaking power. It may also make laws on matters allocated to provinces and local-level governments ‘where the matter is of national interest’, subject to some consultation requirements.\footnote{Organic Law on Provincial Governments and Local-level Governments, s. 41.} 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.\footnote{Organic Law on Provincial Governments and Local-level Governments, s. 40(1)(e).} Powers may be withdrawn from a provincial or local-level government if there are irregularities 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 lawmaking 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 to its community for this purpose, although necessarily it is bound by the national legislation and will be accountable to the national government in some way 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 OLPG LLG require the national parliament to make laws to provide for the administrative and service delivery responsibilities of provincial and local-level governments respectively. The provinces’ administrative functions are set out 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 of these functions are linked to specific national legislation and some functions clearly are not; for example, the responsibilities of ‘maintaining peace, harmony and good-will in the province’ and of ‘providing support to non-government agencies’. 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 accountability. 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 of money involved may be substantial when a policy involves the delivery of public services (e.g. health programs) or the maintenance of public infrastructure (e.g. roads and bridges). In most systems of decentralisation, decisions about expenditure are an integral part of exercising a power. The revenues available either will be raised by the subnational government exercising their powers or will be received as a transfer from another level of government, in ways that are examined more closely in section 4.5. Typically, the subnational government makes a decision about the allocation of resources among 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 SIP) provides an alternative source of funds for programs administered at the subnational level. In principle, it provides a mechanism whereby at least some 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 subnational level of government.

Secondly, funding is fragmented as a result of the separation of legislative, administrative and service delivery functions, 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 section 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 for the problems of service delivery linked to the division of powers between levels of government have been canvassed in this section. It is convenient to draw them together here, noting that many problems are likely to arise from 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 subnational 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 power 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 DDAs — including through the provision of funds to MPs to distribute within their constituencies.

- 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, coordination and delivery of services and infrastructure across the province.
4.4 Administrative support

A. 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?

B. 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 policymaking 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.

C. 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
   hiring 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 subnational levels of government have the loyalty and
  commitment from those parts of the public service working for them. For this reason, it may be that
  subnational governments should have more of a role in the hiring and placement of public servants.
In a single public service, divided responsibilities can also 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 the provincial administrator is appointed by the national executive. 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. As in many other countries, PNG also has 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 (Ugyel et al., 2021).

If PNG continues to rely on a single public service model, aspects of its structure may require attention to address issues arising from decentralisation, including lines of accountability, the risk of duplication and capability. 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 (Howes et al., 2014, p. 7). 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 2014. As CEO, this same person is an agent of the DDA, responsible for implementing the decisions of the DDA, dual roles which can give rise to conflicting loyalties and duties.

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 each level 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 coordination 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 lawmaking on the one hand, and implementation and administration on the other, has been blurred (Auditor General’s Office, 2019, p. 14; Gelu and Axline, 2008, p. 9; Ketan, 2016).

Independent institutions

There are similar options for the establishment of independent institutions in decentralised systems. Independent institutions 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

46 Organic Law on Provincial Governments and Local-level Governments, s. 78.
47 This is described in the literature as the ‘multiple principal problem’ in PNG (see Ugyel et al., 2021).
appropriate services to all levels of government in a way that encourages compliance and preserves public confidence. There are occasional signs that there is more to be done in this regard. Audits of the accounts of all provinces, districts and local-level governments have not always been conducted 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 (Pedastsaar et al., 2015, para. 75). One possibility for consideration is to further decentralise independent agencies, so that they have offices outside of the capital (e.g. the Ombudsman has offices in Port Moresby, Kokopo, Mt Hagen, Lae and Buka). Another is to require reports (e.g. the Auditor General’s reports) to be submitted and examined by legislatures at all levels of government, and not just the national level.

4.5 Revenue raising and allocation

A. 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 if each level of government raises money for its own purposes. Usually this is not the case, however, and subnational governments often rely heavily on the national level for transfers. Designing arrangements for transfers raises important issues. One is where the balance lies between transfers that can be used by subnational governments for general purposes, which tend to reinforce autonomy, and those that are tied to particular purposes or functions, which favours national influence and control. The other is how decisions are made about the amounts to be transferred to other levels of government and the distribution between governments within the same level across the country.

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 subnational 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?

B. 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, the provinces and local-level governments have some revenue raising powers, but these are limited to the extent that they are useful at all. Governments at the provincial and local levels are reliant on transfers from the National Government. 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 subnational 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 NEFC.

C. Matters for consideration

To what extent can and should subnational governments be reliant on their own financial resources?

Most arrangements for decentralisation authorise subnational 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 subnational governments to raise some of their own revenues encourages self-reliance, one of the goals of decentralisation.
Subnational revenue raising is only a partial solution, at best, to the problem of funding programs and services at the subnational level. Subnational 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 subnational 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 subnational 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 that an organic law will 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 subnational 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 subnational 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 subnational governments in a range of different forms. The principal contrast is between unconditional transfers, to be used by subnational governments to fund their own priorities, and transfers that are tied to particular purposes or subject to conditions prescribed by the National Government. There are many variations in between these two extremes. Transfers might, for example, be sought by a subnational 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 subnational 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 subnational autonomy, while transfers that are subject to conditions offer a means for greater national control over subnational 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, it may be relevant to 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

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48 Constitution of Papua New Guinea, s. 187C 40(b).
49 For example, head tax has long since been abolished and that other measures may be particularly unsuitable for rural local-level governments (Ketan. 2016, p. 261).
may be made ‘subject to conditions’. Additional payments are made for staffing at the provincial and local levels of government, 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’ 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.

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

- The appropriate balance between general unconditional transfers on the one hand, and specific conditional transfers on the other, with an eye to maintaining the desired level of autonomy at the subnational levels.
- The projects or purposes to which such grants are tied ideally should be developed in consultation between the National Government and the subnational governments affected. This is both because grants that are tied to projects affect the priorities of the subnational levels of government, and like all such initiatives, it is important that they are targeted to local needs, on which subnational 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 subnational level of government.

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 programs and has made conditional transfers, accountability is likely to be shared between levels of government, with all the complexities involved. 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 subnational 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 subnational governments is to determine the basis on which transfers are made. This issue affects all forms of transfers but attracts most attention in relation to transfers in the nature of general revenue. Subnational governments rely on funds 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 subnational governments to plan.

In determining the amounts to be transferred, two different dimensions require consideration. One is the totality of the funds distributed to subnational 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’.

There are various options for distributing revenue raised at the national level **between levels of government** (see

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50 Organic Law on Provincial Governments and Local-level Governments, s. 82E(3)(a).
51 Organic Law on Provincial Governments and Local-level Governments, s. 82F.
52 Organic Law on Provincial Governments and Local-level Governments, s. 82J.
53 Organic Law on Provincial Governments and Local-level Governments, ss. 82K, 82L.
54 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.
generally Bird and Smart, 2002). One is tax-sharing. This involves the allocation of particular tax revenues, or a proportion of particular tax revenues, to subnational levels of government. One advantage of this system is that it gives subnational governments a sense of entitlement to such revenues, which more obviously are ‘shared’, rather than ‘granted’ by the national level of government. Another advantage 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 percent transferred to the province in which it was collected.55

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.

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 subnational 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 subnational 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.56 The OLPGLLG identifies a series of principles to be taken into account by the national level of government in dealing with revenue redistribution.57 As a generalisation, these principles require the government to take into account economic and other disparities between parts of the country. 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.58

The Constitution also provides for a NEFC to ‘make recommendations to the National Executive Council and

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55 Intergovernmental Relations (Functions and Funding) Act 2009, s. 40.
56 Constitution of Papua New Guinea, s. 187C(4).
57 Organic Law on Provincial Governments and Local-level Governments, s. 82A.
58 Organic Law on Provincial Governments and Local-level Governments, s. 82A(l).
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 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, 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 subnational 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 projects and deliver services.

4.6 Intergovernmental arrangements

A. Issues

Formal and informal relationships between levels of government are inevitable in any decentralised system. Arrangements for intergovernmental relations 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 the following:

- 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 and what purposes can they properly serve?

B. 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, some intergovernmental arrangements have distinctive aspects that merit consideration in a national conversation about decentralisation. In particular, the involvement of national MPs in provincial institutions and the DDAs is an unusual form.

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59 Constitution of Papua New Guinea, s. 187H.
60 A statement of the NEFC’s functions was previously set out in Organic Law on Provincial Governments and Local-level Governments, s. 117(8), but this provision was repealed in 2008.
61 They are not all necessarily classified as intergovernmental relations in PNG discourse, however, as the matters covered by the Intergovernmental Relations (Functions and Funding Act) 2009 suggests.
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.

C. 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, subnational jurisdictions are represented in the second chamber of the national legislature. This works out differently in different states. In some decentralised systems, 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.

In PNG, the National Parliament is unicameral, with a single chamber. MPs are elected, one from each district (in PNG called ‘open electorates’) and one 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. 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 (Ketan, 2016; Kabuni, 2001). 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 the MPs from the open electorates and provincial electorate in the one province to discuss provincial and national matters.

The public service also has a role in structural intergovernmental arrangements. 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 in section 4.4. 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 subnational 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 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. The challenge is to strike the right balance between the effectiveness of subnational decision-making and national oversight, avoiding the temptation of overcentralisation.

In PNG, regulatory intergovernmental arrangements include the following:

- 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.⁶² 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.⁶³

- 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 be 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 SIP funds from the creation of development plans at the ward, district and local government levels (Barcson, 2015) to the submission and approval of funding proposals and reporting on the acquittal of funds (Auditor General’s Office, 2019).

- Another regulatory arrangement 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 decentralisation⁶⁴.

- 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

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⁶² Organic Law on Provincial Governments and Local-level Governments, s. 41.
⁶³ Organic Law on Provincial Governments and Local-level Governments, s. 73(2).
⁶⁴ 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, 1999, p. 133).
How are collaborative intergovernmental relations conducted and 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. Collaborative 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 levels of government in a decentralised system serve at least three important purposes:

- **Information sharing:** Subnational governments will have specialist knowledge about the needs and conditions in their own local areas, while 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 subnational 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 policymaking 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 coordination. 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. Another example is mitigating the effects of climate change. Intergovernmental arrangements provide a means of sharing understanding 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, including:

- **Courts:** If a dispute involves legal questions, it may sometimes be appropriate to use the courts. While some constitutional provisions for decentralisation (such as lawmaking 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).

- **A specific dispute resolution body:** 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. 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 (e.g. the Premiers Conference under the 1976 arrangements, or the Annual Provincial Governors Conference);
- National MPs from the provincial and open electorates from the one province;
- Lord mayors, mayors and presidents of local-level governments of a district or province;\(^67\)
- Officials, such as provincial administrators and heads of departments at the national level.

Meetings of these 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 subcommittees to deal with complex issues (e.g. management of natural resources or rural development).

4.7 Legal framework for decentralisation

A. Issues

All decentralised governance arrangements have a legal framework. The legal 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 constitutions, organic laws and ordinary legislation. 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?

B. Relevance for PNG

In PNG, the framework for decentralisation is spread across the *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. Section 187H of the Constitution also makes provision for a National Economic and Fiscal Commission with powers to give advice and recommendations on, for example, the allocation of grants but, again, leaves other details to organic law. 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. Other parts of the *Constitution* also affect the operation of decentralisation, including Parts VII and VIIA.

\(^67\) For one recent example, see the recent New Guinea Islands Mayors Conference (*Loop PNG*, 2021).
providing for the State services and regulatory statutory authorities; Parts VIII and IX providing for constitutional officeholders such as the Ombudsman and Auditor General; and the Leadership Code set out in sections 26–31, which applies to leaders at all levels of government.

- 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 that ordinary legislation set out 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 legislation.

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

The availability of Organic law gives PNG a useful additional option in designing a framework for decentralisation that appropriately balances flexibility and protection, although it should be noted that both the *Constitution* and Organic laws are relatively easy to change by a majority of the national parliament,\(^\text{68}\) which leaves decentralisation arrangements mostly in the hands of national politicians (Howes et al., 2022, p. 71).

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 is particularly important 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 if the arrangements are revised again.

C. 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 are also 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 to PNG’s 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 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. Constitutional amendments would be needed in any event if the arrangements for decentralisation were to be significantly changed.

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\(^\text{68}\)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).
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 been changed, sometimes very significantly, over more than 40 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 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 basis on which it acts.

4.8 Implementation in practice

A. Issues

Much of this paper has been concerned with 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 are 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 governments at all levels to perform the functions for which each is responsible. It requires different modes of operation to centralised governments, including mutual respect, power sharing and collaboration between levels of government. Decentralisation calls for institutions and procedures that may be new, unfamiliar, or 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. 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 (Constitution Transformation Network and International IDEA, 2018).

B. 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 (Barcson, 2015). 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 (Peasah, 1990, pp. 12–3). As Gelu and Axline (2008, pp. 10–1) pointed out, making new laws (which themselves assume the capacity and willingness to implement) is not the answer to such issues of implementation.

Inevitably, if new institutions are created, new powers conferred and new processes introduced, the focus of implementation will be on subnational 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. There are two key problems with implementation institutions. The first is that they conceive implementation too narrowly to cover the range of activities that are critical to implement, 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 (Constitution Transformation Network and International IDEA, 2018, pp. 6).

C. 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 are 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 in part 2 of this paper.

- **Education and training**: Implementation requires 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 as well as in form. In the past,
efforts were made to build education and training into decentralisation. For example, the OLPGLLG 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 (Auditor General’s Office, 2019).

• **Capability:** Capability includes the funding, human resources and ability to make independent administrative decisions. The design of decentralisation can itself support capability. For example, the point was made in section 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, negatively impacts on capability. Even where decentralisation provides a strong and secure framework for building capacity, it is likely that additional special efforts 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 (May, 1999, pp. 142–43).

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

The first relates to the timing of new arrangements for decentralisation. 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.

The second point relates to the 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.
This paper was written to assist an informed national conversation on decentralisation in PNG. While it draws on global experiences, it is designed with the very distinctive circumstances of PNG’s system of decentralisation in mind. Its aim was to provide a way to think through the issues of decentralisation in a way that is relevant to the context of PNG.

The result is a framework that identifies eight key areas for discussions on decentralisation in PNG:

1. Levels of government, including questions about how many levels of government PNG should have, and how the boundaries of government areas should be defined;
2. Political institutions, including the distinctive use of national MPs across several levels of government;
3. Division of legislative and executive power, including the effect on the division of power by the fragmentation of funding by the provision of funds to MPs, the separation of legislative, administrative and service delivery functions, and the use of conditional grants;
4. Administrative support, including whether and how a single national public service can be designed to meet the goals of decentralisation;
5. Revenue raising and allocation, in particular how to achieve a balance between general unconditional grants and specific conditional grants from the National Government to subnational governments;
6. Arrangements to support constructive relationships between governments at different levels, and governments of the same level across PNG;
7. The need for a consistent and coherent legal framework to support decentralisation; and,
8. The challenges of implementation and how to address them.

Each of these eight areas raises questions that deserve further empirical research and critical analysis in the context of PNG in their own right. Further, while it is helpful, for the purposes of discussion, to separate out these eight areas, in the end all of these issues must combine in a single, integrated system that works effectively to achieve the goals of decentralisation in PNG. None of the components of decentralisation exist independently: the challenge is to design a system in which they work harmoniously in principle and in practice. The identification of the goals of decentralisation and agreement about the depth of decentralisation — measured by the extent of the powers of subnational governments and their autonomy in exercising those powers — can guide choices between different options.
References


