



SUMMARY

- After a protracted violent conflict, the Pacific island of Bougainville in Papua New Guinea has undergone a comprehensive and to date relatively successful process of post-conflict peacebuilding and is currently in the process of state formation.
- A home-grown state based on a hybrid political order is emerging. State formation is focused on reconciling institutions of the state with non-state customary community governance mechanisms and cultural norms.
- Peace, order and security are maintained through the combined efforts of state, customary actors and civil society. A core dimension of statehood is thus organized in a way that differs markedly from the Western Weberian notion of statehood.
- What is generally seen as a *sine qua non* of statehood, namely the capacity to implement and enforce the »rule of (state) law,« is lacking in Bougainville, due to the weakness of the police, the judiciary and other state institutions. This »deficiency,« however, has not hindered post-conflict peacebuilding, nor has it been detrimental to the establishment of political order and security. Rather, order and security are based on the positive mutual accommodation of introduced state and local customary institutions.

Case Study: Security Provision in Bougainville

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For almost ten years (1989 to 1998) the island of Bougainville was the theatre of a war of secession between the Bougainville Revolutionary Army (BRA) and the Papua New Guinea (PNG) security forces (and Bougainville auxiliaries).¹ The war was the longest and bloodiest violent conflict in the South Pacific since the end of World War Two. Over the last decade and a half Bougainville has undergone a comprehensive and to date relatively successful process of post-conflict peacebuilding. Bougainville is now an autonomous region within PNG, with its own constitution and its own government, the Autonomous Bougainville Government (ABG). Bougainvilleans today face the challenge of building an effective and legitimate polity capable of maintaining sustainable peace and order. They are currently approaching a critical juncture in this process, with a referendum on independence scheduled for some time between 2015 and 2020, as specified in the Bougainville Peace Agreement of August 2001 (BPA). Bougainville will either become a completely independent state (with autonomy as a transitional phase) or remain a largely autonomous political entity within PNG. Both options necessitate the building of state structures and institutions.²

STATE-FORMATION

In Bougainville today we witness the development of a home-grown state based on a hybrid political order on the ground.³ State-building efforts in Bougainville rely heavily on the positive experiences of the post-conflict peacebuilding phase. After customary non-state institutions proved effective in peacebuilding, there is a strong case for their utilization in the current phase of state-formation as well; accordingly, state-formation is consciously focused on reconciling institutions of the state with customary community governance mechanisms and cultural norms. A strong desire to »marry« customary and introduced institutions and processes can be felt in all quarters.

In Bougainville today, the maintenance of peace, order, and secu-

¹ Bougainville is part of the Solomon Islands archipelago in the South Pacific. It is approximately 9,000 sq km in size (the size of Cyprus) and has approximately 300,000 inhabitants.

² This contribution is based on Boege 2009, 2010, 2014.

³ On the concept of hybrid political orders see the author's »Hybridization of Security«, Think Piece No. 5 for the reflection group.

city is based on the combined efforts of state and customary actors and civil society. This means that a core dimension of statehood – maintaining law and order, controlling violence, and providing security and a framework for non-violent resolution of conflicts – is organized in a way that differs markedly from the Western Weberian notion of statehood.

The ABG has not (yet?) established a monopoly over the legitimate use of force in the entirety of Bougainville. There are still many firearms in the communities, despite a politically successful decommissioning process during the early stages of peacebuilding. Some areas of Bougainville are still controlled (to varying degrees) by armed groups that have not (yet?) joined the peace process.⁴ Some sections of the population do not acknowledge the ABG as the (only) rightful government.

The ABG recognizes that state law and order capacities (police, judiciary, correctional services) are rather weak and lack legitimacy as well as efficiency, while customary institutions and practices are well-established, relatively effective, and legitimate. The government is of course interested in improving the capacity and effectiveness of state institutions, but does not see these as the only means of security provision. It is aware that it needs to collaborate with non-state providers. In fact, it is highly remarkable that even in this »classical« field of state responsibility the Bougainvillian government and administration take a course of action that relativizes the role of the state and is open to strengthening the role of non-state customary approaches.

POLICING

Bougainville has its own police force, operating somewhat uncomfortably between the national and the ABG systems. In the peace negotiations with the central PNG government, establishing an independent Bougainville police force was one of the most crucial concerns for the Bougainville side. The BPA provides

for an autonomous Bougainville Police Service (see BPA, articles 211–241, and Bougainville Constitution, articles 148–150). The PNG police force may only be deployed to Bougainville at the request of the ABG. The Bougainville Police Service has two components: regular police and community auxiliary police (CAP). Members of the police service are constitutionally obliged to cooperate closely with Councils of Elders,⁵ and with traditional leaders in the communities (Bougainville Constitution, article 148).⁶

The emphasis on community policing is a consequence of terrible experiences with the PNG police before and during the war. The PNG police units mostly came from other parts of the country, were based mainly in urban centers, had no connection to the people on the ground, and treated them and their *kastom* with disrespect. Today's CAP operates under the auspices of the ABG and can be regarded as a »state« program, designed to build the capacity of the state's security sector. But this is only one side of the story: CAP is a hybrid institution, as CAPs are legally obliged to cooperate closely with the chiefs and elders, and the whole arrangement of Bougainville-style community policing transcends the state/non-state divide.

Interestingly, CAPs are trained by New Zealand police in the context of New Zealand aid to Bougainville state-building. The New Zealand police who run the CAP training program acknowledge the *de facto* legitimacy of »non-state« chiefs and contribute to their legitimization, as the CAPs' work would not be possible without close liaison with the chiefs and elders in their home areas. And this serves the interest of stabilizing and maintaining »law and order« – with the »law« and »order« not understood narrowly as the law and order of the state.

In most places in Bougainville today, the police only have a chance to function relatively effectively and gain legitimacy if they work together with the chiefs and elders. In some areas there is competition between chiefs and police, in others cooperation runs smoothly. Police can only gain access to most villages with an invitation by the chief (although this is not a legal provision, it is the reality on the ground). Although the CAPs are generally appreciated, the police are not really seen as an important provider of law and order.

4 In particular, one major faction has so far abstained from joining the peace-building and state-building processes. This is the Meekamui movement, a faction of the former BRA. The Meekamui people have their own structures of governance in areas they control, but have on specific occasions also cooperated with the ABG, especially on law and order and the delivery of basic social services. The »border« between Meekamui territory and the rest of Bougainville is rather porous, and there is considerable exchange. A very special state of governance has developed in the Meekamui region. While it is covered by the general provisions of the peace- and state-building processes (the PNG and ABG authorities assert that these apply to the whole of Bougainville), they are only partially implemented. On the other hand, Meekamui is itself a type of »state« – or rather a very specific political entity. The situation of dual rule does not seem to be a big problem, as it works on an everyday basis. At present a complicated process of exchange between ABG and Meekamui is underway which might lead to some kind of formal future »reunification«.

5 Councils of Elders (CoE) are the lowest level of formal government in Bougainville. They are institutions within the state structure, but legitimized by reference to local *kastom*, with the elders selected from the leadership of all the clans in the CoE areas, including chiefs, religious leaders, and representatives of women and youth.

6 The same holds true for the Bougainville Correctional Service, which is constitutionally obliged to develop alternative methods for dealing with offenders, to involve the community in its work, and to encourage the integration of offenders into the community (Bougainville Constitution, article 151).

The chiefs appear to make use of the police only under exceptional circumstances, and some see the police as powerless anyway. They have their own means of »policing« their communities.

With regard to the regular police, there are complaints about lack of discipline, inadequate training, and poor leadership, and in some instances also isolation from the community. There are numerous inconsistencies in the police's application of the law, and there is widespread awareness that their capacities are limited. In general, people do not place much trust in the police as an institution, although they acknowledge that many individual members of the service (particularly the young and the CAPs) are genuine and try their best to serve the communities. Large areas of Bougainville are off-limits to the police anyway.

KASTOM AND CUSTOMARY LAW

By comparison, customary ways of maintaining order and security are relatively strong and enjoy strong legitimacy in broad sectors of the population. The idea that what worked in the traditional context and in the peacebuilding phase should now also be utilized for the functioning of the state system is widely shared in Bougainville. This echoes positive experiences with customary ways of peacebuilding in the transitional period from war to peace and in the immediate aftermath of the war. »As Bougainville emerged from the long years of conflict there was no effective policing, almost no courts, and no prisons. Notwithstanding that, Bougainville remains one of the safest communities in PNG. This is largely a credit to traditional chiefs and other traditional leaders who accepted the burden of maintaining a community-based justice system during (and after) the conflict« (BCC 2004, 182).

Many communities and their leaders insist on the application of customary means of dispute resolution and the prerogatives of traditional authorities with regard to the maintenance of security and order even under today's circumstances. Everyday order and security for the majority of the people is provided by these local non-state institutions and actors. The chiefs and elders maintain order and security in their villages, according to kastom. In their view kastom comes first, and the law of the state only second (if it is accepted at all). Problems are solved the customary way, according to customary law. Customary law is perceived as providing solutions to many issues related to the maintenance of order and harmony in the communities. There is a lot of debate, however, on where and how to draw the line between the realms of customary law and state law. Views vary on whether the conflict par-

ties or the victim or the chiefs should decide whether an issue will be dealt with in the customary or the state law context. Some say that whenever a victim is happy with a customary resolution the case must be treated as settled, and the state law has no place, whatever the matter. Others differentiate according to severity of offence, with some believing that cases of murder and rape should go to the courts. There are also strong opinions, however, that even these serious cases can and should be dealt with in the customary context.

The emphasis is on restorative justice, which is presented as the genuine traditional form of justice. There is widespread support for restorative justice and rehabilitation in the community context.⁷ As the Bougainville Constitutional Commission (BCC) observed, people in Bougainville »want a justice system that is not solely focused on punishment of crime, but also on reconciliation and restoration of relationships damaged by disputes« (BCC 2004, 55). The restoration of relationships and harmony – and not the punishment of offenders – is emphasized as the primary objective of justice. The focus on this objective is what makes customary law highly valued in the eyes of many Bougainvilleans (Howley 2002).

The formal justice system, on the other hand, is regarded with considerable suspicion, and is distant to most Bougainvilleans, both physically and psychologically: difficult to access, costly, highly formalistic, time-consuming, with confusing procedures and unpredictable outcomes. Moreover, the distinctions between the two spheres are blurred. For instance, village courts are officially institutions of the formal state system, but often apply customary law – and in doing so they often act well beyond the limits of their formal powers. The chiefs who act as village court magistrates often are not aware that they are working in the context of a formal state institution.

Above the level of the village courts, the formal court system is very weak. Although the BPA allows for the establishment of a genuine Bougainville court system and although the Bougainville Constitution includes provisions for such a system, it can be expected that its actual implementation will take quite some time. One reason is the likely cost of administration for the institutions of such a system, another the deliberate strategic decision not to rely primarily on the formal court system, but to allow comprehensive space for customary law and traditional means of dispute res-

7 Many people in Bougainville are very critical of the Western institution of prison, believing that sending people to prison only makes them worse and does not contribute to reconciliation and the restoration of relationships and harmony in the community. Rehabilitation and reintegration possess more legitimacy in the eyes of the people than the Western-style punitive prison system.

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PEACE AND SECURITY, NO STATE MONOPOLY OF FORCE

To briefly summarize: what is generally seen as a *sine qua non of statehood*, namely the capacity to implement and enforce the »rule of (state) law,« is lacking in Bougainville. This »deficiency,« however, has not hindered post-conflict peacebuilding and maintenance of order, nor has it been detrimental to the establishment of political order and security. Bougainville state-builders demonstrate astuteness as they deliberately abstain from trying to implement a monopoly over the legitimate use of force as the means to maintain order and security. That monopoly, which is seen as decisive for order and security in fully-fledged states, has never been exercised, it is not existent and it cannot be brought into existence in the foreseeable future. Any attempt to enforce it will result only in unrest, conflict, and trouble. The enforcement of law and order and the provision of security solely by the agencies of the state is not a viable option in Bougainville. Instead, positive mutual accommodation of introduced state and local customary institutions can provide a new avenue for maintaining an orderly, safe, and just environment for the people on the ground.

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REFLECTION GROUP MONOPOLY ON THE USE OF FORCE

The Reflection Group »Monopoly on the use of force 2.0?« is a global dialogue initiative to raise awareness and discuss policy options for the concept of the monopoly for the use of force. Far from being a merely academic concern, this concept, at least theoretically and legally remains at the heart of the current international security order. However it is faced with a variety of grave challenges and hardly seems to reflect realities on the ground in various regions around the globe anymore. For more information about the work of the reflection group and its members please visit: http://www.fes.de/GPol/en/security_policy.htm

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