



AUTONOMOUS BOUGAINVILLE GOVERNMENT
BOUGAINVILLE CONSTITUTIONAL PLANNING COMMISSION
FIRST DRAFT OF THE NEW BOUGAINVILLE CONSTITUTION:
SUMMARY

The Bougainville Constitutional Planning Commission (‘BCPC’) was established by the Autonomous Bougainville Government (‘ABG’) in April 2022. The BCPC conducted an extensive and intensive process of awareness and consultation with the people of Bougainville, both those all over Bougainville and those living in key PNG urban centres. The Secretariat supporting the BCPC then compiled the views received from the Bougainville people. In October 2023 the BCPC began a series of six long meetings where it considered the views received from the people, and made decisions on the content of the first draft of the proposed Bougainville independence Constitution. The ABG identified an experienced legislative drafter who is also a constitutional lawyer, who has strong marriage, family and other connections in the island Pacific, and that drafter has worked closely with the BCPC as it made its decisions on the proposed first draft.

The completed first draft of the Bougainville independence Constitution is now available for public awareness, consultation, analysis and comment. The full text of the draft Constitution is publicly available, and copies will be circulated, both some physical copies, but many more via WhatsApp, Facebook, email etc. The BCPC is now engaging in a second awareness and consultation process with the people of Bougainville: those all over Bougainville, or living in other centres in PNG, and this time also those living in Solomon Islands.

This summary document has been prepared to provide brief information about the key proposals in each of the 14 chapters of the draft Constitution, and the eight schedules that mainly provide some details of matters covered by statements of principles in the 14 chapters.

When the awareness and consultation process is over (probably about the end of July 2024), the BCPC will reconsider and revise the first draft, taking full account of the views expressed by the people of Bougainville about the first draft.

Everyone is welcome to access the copy of this First Draft via the ABG Website; [https://abg.gov.pg/uploads/documents/Constitution_of_the_Republic_of_Bougainville - FIRST DRAFT - 6 May 2024.pdf](https://abg.gov.pg/uploads/documents/Constitution_of_the_Republic_of_Bougainville_-_FIRST_DRAFT_-_6_May_2024.pdf). Anyone wishing to make a written or recorded audio submission commenting on the first draft should email it to: bcpc.arob@gmail.com.

THE PREAMBLE

The preamble is a short introduction to the *Constitution*. It contains a brief outline of Bougainville's history, concerns and goals. It recognises the guidance of Almighty God, the connection of Bougainvilleans to the land that they own, and their unique cultures, customs, traditions and languages.

CHAPTER 1 – FOUNDING PROVISIONS

This chapter names the proposed new state as '*the Republic of Bougainville*'. As a republic, the British monarch will not be the Head of State as in PNG. Instead, the *President* will be the Head of State (see chapter 7). As the *Constitution* will be the *Mama Lo blo Bogenvil*, other laws applying in Bougainville will get their authority from the *Constitution*, and they must be consistent with, or follow, it.

The *Republic*'s area will include land and ocean defined in Schedule 1 as well as the atmosphere above those areas. The sea area will extend for 12 nautical miles out from the coast of all of the land area. It may also include some ocean areas between both Buka and Bougainville and the nearest islands and atolls (which for 'archipelagic states' under international law are called 'archipelagic waters'). These waters are yet to be defined by clear boundaries (a complex process), but in the meantime, under the draft *Constitution* the *Republic* will be one of the few 'archipelagic states' (able to control its 'archipelagic waters').

The *Constitution* states basic guiding principles intended to be followed by all government officeholders that serve the people of Bougainville. It also states the key social and economic objectives of the *Republic of Bougainville*.

On citizenship, due to abuse of the current Constitution by some non-Bougainvilleans marrying Bougainvilleans seeking access to customary land and businesses, non-Bougainvilleans will **not** automatically become citizens by marrying Bougainvilleans or clan adoption. Instead, all non-citizens seeking citizenship must meet requirements such as a lengthy period of residence in Bougainville before applying for citizenship. Citizenship applications will be subject to careful scrutiny. Dual citizenship will be available.

The flag of the *Republic of Bougainville* will be the current Bougainville flag.

CHAPTER 2 – LAND, RESOURCES AND ENVIRONMENT

This chapter recognises customary ownership of both land, and all resources, on, in and under such land in Bougainville, and also in coastal areas of sea owned under Bougainville custom. The chapter requires the government of the *Republic of Bougainville* to monitor and protect the natural environment.

Development of natural resources will need to balance interests of: customary resource owner's benefit; well-being of those affected; Bougainvilleans' economic security; and environmental protection. Before a licence can be granted for a natural resources project, customary owners and other affected persons must

be informed and consulted and concerns addressed, and the general public informed and invited to make submissions about it.

CHAPTER 3 – GOOD GOVERNANCE AND LEADERSHIP

This chapter provides that ‘*public officers*’ of all kinds (including judges, *independent public office-holders*, heads of government *services* etc.) are required to serve the people of Bougainville with integrity. They must be persons of integrity and good character. The *Leadership Code* will apply to all of them. Public officers will not be able to escape action under that *Code* by resigning from office, as possible for leaders under the PNG Code.

The *Constitution* establishes a single body - the *Ombudsman and Integrity Commission* - to administer the *Code*, and carry out related functions. The *Leadership Code* not only prohibits criminal conduct by public officers, but also lesser conduct inconsistent with a leader’s roles. If breaches of the *Code* involve both non-criminal and criminal conduct, then the *Ombudsman and Integrity Commission* can not only prosecute for misconduct in office, but can also recommend a criminal prosecution to the *Director of Public Prosecutions*. If no prosecution occurs within a reasonable time, the *Ombudsman and Integrity Commission* can itself commence the criminal prosecution.

A Bougainville law will be required to provide, on conviction for any ‘criminal offence relating to corruption and other forms of misconduct in office’, for:

- Forfeiture of any financial or other material benefit obtained; and
- Imposition of a period of disqualification from holding public office of an ‘appropriate’ period (depending on how serious the offence is) ranging from a minimum of 3 years to a maximum of 20 years.

A ‘whistle blower’ – a person who publicises the facts that government bodies or officials have failed to obey the *Constitution* or a law, or act in a way likely to endanger people’s health or safety, or damaging the environment - is protected from prosecution for publicising such facts.

CHAPTER 4 – HUMAN RIGHTS AND FREEDOMS

This chapter recognises and protects much the same range of what are often called civil and political rights and freedoms of people as does the PNG Constitution, but with some significant expansion. They are the rights: to life; to human dignity; to equality and freedom from discrimination; of the child; to freedom from slavery, servitude, forced labour and trafficking; to liberty and personal security; to privacy; to freedom of religion, belief and opinion; to freedom of expression, publication and media; to freedom of movement and residence; to freedom of association; to freedom of assembly, demonstration, picket and petition; to political rights; to access to information; to executive and administrative justice;

to access to courts or tribunals; to freedoms and protections of arrested and detained persons, and prisoners; and of accused persons to a fair trial.

Unlike PNG, the *Constitution* will require the *Republic of Bougainville* to work, within the limits of its available resources, to gradually achieve the honouring of new ‘social, economic and cultural rights’. This new category of rights has been slowly gaining international recognition since after the PNG Constitution was enacted, in September 1975. They are the rights to: education; economic participation; an adequate standard of living; fair employment relations; freedom from arbitrary expropriation; and a clean and healthy environment.

Provision is also included for other rights not included in the PNG Constitution, notably rights and freedoms of particular groups. They involve: rights of persons with disabilities; rights to equality among the sexes and of relationships; and rights of the elderly. These rights too will need to be achieved gradually, as resources permit.

All of these rights and freedoms can only be limited by law, and only to a limited extent. For a limitation to be valid, if challenged it must be shown that the limitation ‘is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom’. Most rights (but **not** rights to life, freedom from inhuman treatment, and freedom of conscience, thought and religion) can also be limited by laws passed to respond to a declared state of emergency (see discussion of chapter 13, below). Such a limitation must be one ‘strictly required by the emergency’.

A person claiming that a right or freedom has been breached can seek its enforcement through a complaint to the *Bougainville Human Rights Commission* or a claim to the *Bougainville Supreme Court*.

CHAPTER 5 – SYSTEM OF GOVERNMENT, AND ELECTIONS

This chapter, together with several following chapters, provides for a system of government, and for election arrangements, all quite similar to the present arrangements for the ABG. In particular, the *Republic’s* national level of government will have three main separate arms - a legislature, an executive and a judiciary. There will also be sub-national governments, inclusive of a *Bougainville Chiefs Congress*.

For the national legislature, just s with the current ABG House of Representatives, there will two main categories of constituencies: both ‘regional’, and ‘single member’ constituencies. For the ‘single member’ constituencies, the minimum and maximum numbers have yet to be decided. The issues involved will be considered by the BCPC after the ABG Boundaries Commissioner who is currently undertaking a boundaries review makes a report and recommendations, expected in July. Under the new *Constitution*, a *Boundaries Commissioner* will review and determine both the number of single member constituencies from time

to time, and the boundaries of all constituencies. General elections will be required at least every 5 years. Only citizens who are registered to vote will have a right to vote.

CHAPTER 6 – THE LEGISLATURE

Under this chapter, the legislature for the *Republic* will be called the *House of Representatives*. Its members will be: the *President*, elected – as in the ABG – by voters from the whole of Bougainville; four women’s representatives, one for each of four regions (including a new Nissan/Atolls Region); four veterans’ representatives, one for each of the same four regions; and the yet to be decided number of members for single member constituencies. Qualifications for membership will include: citizenship; minimum age of 25; and residency in the constituency to be contested for at least five years before nomination.

The members of the *House* from each region will form a *regional committee* for that region which play several roles. *The Speaker* will be at least 40 years old, and will be elected by vote of the *House* from persons nominated by the regional committees of persons that are not members of the *House*.

Each member of the *House* (including the *President*) will be able to be recalled through a recall petition lodged with the *Electoral Commissioner*, only able to be lodged more than 18 months after the member’s election, and not in the last 15 months of the 5-year term of the *House*. There must be:

- A preliminary recall petition signed by at least 250 registered constituency voters whose signatures are verified by a local community government; and
- A ‘full’ recall petition, that must be signed by two thirds of the registered voters for the constituency.

A position of ‘leader of the opposition’ will be recognised, but only if there are at least 5 members that do not support the *President* in the *House*. Those members will elect their *leader*, who will be entitled to access an office and limited resources paid for by the government.

Approval of the *House* will be required for international agreements (treaties) that are intended to bind the *Republic of Bougainville*, the only exception being agreements that are ‘purely technical or administrative in nature’.

CHAPTER 7 – THE EXECUTIVE

Under this chapter, the main executive body (now the Bougainville Executive Council) will instead be called the *National Executive Council* (‘*NEC*’). Its membership will be drawn only from members of the *House*, as follows:

- The *President*, who will be Head of State, and will chair *NEC* meetings;

- The *Vice-President*, appointed by the *President*, and from a different region to that of the *President*;
- A female member of the *House* chosen by all female members;
- 7 members, 2 from each of the 4 regions, selected by the *President* from amongst 5 members for each region nominated by the *regional committees* for north, central and south, the exception being the Nissan/Atolls Region, from which the *President* will appoint the member nominated by the members from that region; and
- Up to 8 other members appointed by the *President*.

The President will have authority to dismiss any member of the *NEC*. To be qualified for election as the *President*, a person will have to be at least 50 and not older than 70 years of age, have no criminal record, and have high moral, Christian and customary values.

CHAPTER 8 – THE COURTS, JUSTICE AND THE RULE OF LAW

This chapter provides that the *Judiciary* of the *Republic* will be made up of the Bougainville *Supreme Court*, and other lower levels of courts determined by laws made later by the *House*. There will be a *Chief Justice*, who will head the *Judiciary*. The *Chief Justice* and all other Bougainville *judges* will be appointed by an independent *Judicial and Legal Appointments Commission*. The *Supreme Court* will: be the final court of appeal from decisions of all other courts; have authority to determine all constitutional issues; and able to deal with claims of breach of human rights.

Independence of the *Judiciary* will be protected by: a prohibition on interference with judicial activities; a requirement for all *Republic* government bodies to assist and support such activities; a guarantee of provision by government of adequate financial and other resources; and control by the *Judiciary* of its own budget.

The *Constitution* will establish offices of the *Public Solicitor* (to provide legal support to people in need of it), and a *Director of Public Prosecutions*.

CHAPTER 9 – INDEPENDENT PUBLIC OFFICES

Under this chapter, provision is made for 11 institutions or offices classified as *independent public offices*, including: the *Auditor General*; the *Boundaries Commissioner*; the *Director of Public Prosecutions*; the *Human Rights Commission*; the *Ombudsman and Integrity Commission*; the *Truth, Justice and Reconciliation Commission*; and the *Senior Appointments Committee*.

The protection of the independence of these institutions is provided by measures similar to those mentioned in relation to the *Judiciary* (above). Most appointments to them will be made by the *Senior Appointments Committee*. That body will consist of: the *President*; the *Speaker*; the *Leader of the Opposition* (if

any); a women's and a church representative; a chief appointed by the *Bougainville Chiefs Congress*; and a 'practising lawyer'.

CHAPTER 10 – PUBLIC FINANCE

This chapter provides that there will be an annual budget prepared through decisions made by the *NEC*. Any proposal for either raising or expenditure of government revenue must be initiated only by the *NEC* or a minister. But any such proposal must be approved by the *House of Representatives* before it can proceed, and the *House* has power to reject such proposals.

The *Constitution* also establishes a *sovereign wealth fund*. Revenue received by the *Republic of Bougainville* from natural resources development will need to be paid into the *sovereign wealth fund*, so that it can be invested. The capital of the *fund* will not be available to fund government expenditure. A proportion of the interest will be available for expenditure.

In the interests of financial accountability, the *Constitution* will establish both:

- An independent office of the *Auditor General*, with responsibility to examine, and report publicly on, the financial records of the *Republic of Bougainville*, on an annual basis; and
- A special committee of the *House*, called the *Public Accounts Committee*, with responsibility to critically examine the annual reports of the *Auditor General*, and generally to hold the Executive Government of the *Republic of Bougainville* accountable for its use of government finances, and in the interests of this committee being independent of the Executive Government, no minister is permitted to be a committee member.

CHAPTER 11 – GOVERNMENT SERVICES

The purpose of this chapter is to establish the main separate *services* of the government. These services are used to organise the public employees that carry out activities of government, such as delivery of government programs, including health and education. The main distinct *services* proposed will be:

- The *public service*;
- The *teaching service*;
- The *corrections service*;
- The *police force*; and
- The *defence force*.

The *Constitution* also provides for the establishing of each such body, and makes brief provision on key roles, and one or two other matters, but leaves the details of arrangements for each *service* to be made in laws of the *Republic*. To foster

the development of the necessary capacity in these services, provision is made for establishing a *public sector training college* for Bougainville.

CHAPTER 12 – THIS CONSTITUTION

This short chapter contains provisions on the basic rules to be used by courts and others interpreting the *Constitution*. It also imposes duties on the *NEC* to make arrangements to ensure that the final *Constitution* of the *Republic of Bougainville* will be accessible to the people of Bougainville. This goal is to be achieved by translation of the *Constitution* in both Tok Pisin and as many Tok Ples as practicable, and for explanatory material about the *Constitution* to be made as widely available as possible.

Perhaps the most important provisions in this chapter are the ones about the amendment of the *Constitution* – that is, laws that aim to change the text of the *Constitution*. As the *Mama Lo* of any country, a written constitution is usually much harder to change than any ordinary law made by the legislature. This protection from easy change is usually called ‘entrenchment’. At the same time, it is usually not wise to make a constitution too hard to amend, because then a country may not be able to revise its constitution even when change is really needed.

The draft *Constitution* makes a few parts of the *Constitution* particularly hard to change, and the rest of it quite hard to change, but not impossibly difficult. Because of the importance of chapters 4 (on ‘*Human Rights*’), 9 (on ‘*Independent Public Officers*’), and 12 (on ‘*this Constitution*’, including its alteration) they are especially hard to change. All the other chapters in the *Constitution* will be easier to change.

Before any proposed law to change any part of the *Constitution* can be introduced to the *House* for discussion, it will have to first be the subject of consultation with heads of sub-national governments, the *Bougainville Chiefs Congress*, and church representatives. Then proposed changes to chapters 4, 9 and 12 will need to be approved by:

- first, two separate votes, each supported by three quarters of the total number of members of the *House*; and
- second, at least two thirds of votes validly cast in a referendum.

But for approval of proposed changes to any provision in any other chapter, support will be needed from just two thirds of the total number of the total number of members of the *House*, and no referendum vote will be required.

Chapter 12 also imposes a duty on the *NEC* to ensure that the operation of the *Constitution* is reviewed at least every 15 years. The aim of requiring such reviews is to make sure that the ‘in practice’ performance of the *Constitution* is critically evaluated from time to time.

CHAPTER 13 – EMERGENCY POWERS

This chapter provides for special powers in emergency situations, such as natural disasters, war, internal conflict etc. Only the *President* has authority to make a *declaration* of a *state of emergency*. The main legal consequences of such a *declaration* are that the *NEC* (as well as the *House*) then has power to make *emergency laws* for particular purposes (e.g. public safety and security), only applicable during the period of declared *emergency*. Such laws can only be made for purposes of responding to the *emergency* situation. They can regulate and restrict most – but not all - rights and freedoms (as noted, above, in discussion of chapter 4).

If the *House of Representatives* is not already sitting when a *state of emergency* is declared, it must be recalled within a strictly limited period. It is then responsible for supervision and control of the *NEC's* management of the emergency. Although the *NEC* can make the initial *declaration* of the *emergency*, the strictly limited time of that declaration can only be extended by decision of the *House*.

CHAPTER 14 – TRANSITIONAL PROVISIONS

This chapter is mainly concerned with providing arrangements for:

- how the main structures of government are established on the first day that the *Constitution* will operate (*'independence day'*), including the recognition of key existing ABG institutions as the equivalent institutions of the government of the *Republic of Bougainville* (for example, the ABG House of Representatives elected in the 2025 ABG elections will be recognised as the *House* for the *Republic* as from *independence day*, and will then be able to stay in office for the rest of its 5 year term, until 2030, when the first election under the new *Constitution* can be conducted);
- recognising the existing laws that now operate in Bougainville (both ABG laws and PNG laws) as laws of the *Republic*;
- establishing a *Constitution Implementation Commission*, to operate for five years from *independence day* to oversee the implementation of the *Constitution*.

SCHEDULES OF THE DRAFT CONSTITUTION

It is common for constitutions to simplify the body of a constitution by placing significant matters of detail into schedules, usually placed at the back of the constitution. Such schedules are still a part of the constitution, and so are binding in the same way as any other provision of the constitution. The draft *Constitution* of the *Republic of Bougainville* contains eight proposed *Schedules*.

Schedule 1 – Land and Sea Boundaries

The technically detailed statements of the boundaries of the Autonomous Region of Bougainville currently stated in the PNG national Constitution and the *Organic Law on Provincial Boundaries* will be largely reproduced in this *Schedule* when it is finalised. In addition, when the details of the boundaries of Bougainville’s archipelagic waters are established, they too can be described here.

Schedule 2 – Citizenship

This *Schedule* sets out key details of the broad statements about the principles of Bougainville citizenship that are stated in sections 6 and 32, and also sets some parameters for legislation of the *Republic* about citizenship.

Schedule 3 – Flag of the Republic of Bougainville

This *Schedule* contains a reproduction of the flag of Bougainville, and will possibly also include a short description of its main features.

Schedule 4 – Emblem of the Republic of Bougainville

This *Schedule* will contain at least a reproduction of the current ABG emblem, with additions directed by the BCPC.

Schedule 5 – Leadership Code of Conduct

This *Schedule* sets out the proposed *Leadership Code* for the new *Republic*. Together, the statements of principle in chapter 3 and the detailed *Code* in this *Schedule* include provisions intended to remedy serious defects in the Leadership Code contained in the PNG Constitution, and in particular:

- (a) A leader who resigns from office remains liable to investigation and sanction for alleged breach of the *Code*;
- (b) A minimum penalty of a 3-year disqualification from holding public office, the relevant court or tribunal determining the appropriate period of disqualification for a period up to 20 years;
- (c) If in investigating a breach of the *Code*, the *Ombudsman and Integrity Commissioner* (*‘OIC’*) is satisfied that there is a *prima facie* case of criminal behaviour, the *OIC* can first refer the matter to the Bougainville *Public Prosecutor* for criminal prosecution, but if no such prosecution is initiated ‘within a reasonable time’ after the referral, the *OIC* can initiate ‘the appropriate prosecution’.

- (d) A leader convicted of criminal misconduct may be ordered to pay to the State the amount of ‘financial benefit’ gained from the breach, and also an amount equal to the value of any ‘material benefit’ gained by the leader.

Schedule 6 – Standards and Procedures for Removal from Office

This *Schedule* sets out key details of the broad statements about the process for removal from office of all categories of *public officer* (inclusive of *judges*, *independent office holders*, heads of *services* etc.) stated mainly in chapters 3 and 9. Carefully controlled arrangements for removal from office of, in particular, judges and *independent office-holders*, is a significant part of the protection of independence of the holders of such positions.

Schedule 7 – Oaths and Affirmations

This *Schedule* sets out the text of the oaths or affirmations that persons elected or appointed to key public offices will need to make before they start performing the functions of their office.

Schedule 8 – Dictionary

This *Schedule*, provided for in section 140, defines key words and phrases used in the draft *Constitution*. It will assist courts and others in understanding or interpreting the intended meaning of the *Constitution*.

Overview of process for investigating alleged breach of Leadership Code of Conduct under the draft Constitution of the Republic of Bougainville

NOTE: In this flowchart—

“OIC” means the Ombudsman and Integrity Commission.

“public officer” includes a former public officer.

“wrongdoing” means acting in a way that is inconsistent with the Leadership Code of Conduct or another provision of the Constitution.

