

Bougainville's home-grown independence constitution: Part 1

by Anthony Regan and Katy Le Roy · 16 July 2024



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This is the first blog in a two-part series on the history, context and key features of the proposed independence constitution that is in the process of being developed for Bougainville.

On 6 May 2024, the Autonomous Bougainville Government (ABG) [released the first draft](#) of its proposed independence constitution. The ABG is a highly autonomous sub-national government in PNG, with strong aspirations for Bougainville (population about 350,000) to become the first independent country since South Sudan in 2011.

Bougainville's [violent and divisive secessionist conflict](#) (1988-1997) originated largely in longstanding and widespread discontent about environmental and social impacts of the giant Panguna copper and gold mine, as well as the distribution of revenue and other "benefits" from it. The Panguna operation was imposed without consultation on Bougainville by the Australian colonial government administration in the 1960s, mainly for the benefit of PNG as a whole. The mine was operated by a majority-owned subsidiary of the international mining giant, Rio Tinto, from 1972 to 1989, when it was prematurely shut down by the conflict. It has not resumed its operations in the succeeding 35 years.

The conflict was resolved by the **Bougainville Peace Agreement 2001** (BPA) comprising four main “pillars”: demilitarisation, autonomy status, a decision-making process on Bougainville’s future political status (including a deferred and non-binding referendum on independence, followed by a post-referendum decision-making process involving PNG and the ABG), and the BPA’s “constitutionalisation” through extensive amendments to the PNG Constitution and an associated organic law. These new provisions were all protected from unilateral PNG change by “double entrenchment”, requiring Bougainville legislature approval for any amendments.

The initial implementation of the BPA was notably successful, with the constitutional provisions enacted by early 2003, the first ABG taking office in mid-2005, and demilitarisation largely completed by 2005. The referendum was **held in late 2019**, with **97.7% of enrolled Bougainvilleans voting for independence** and rejecting the “greater autonomy” alternative. The **post-referendum process** involves ABG-PNG government consultation, and possibly a “final decision-making” PNG parliamentary vote on the referendum results. There were just three consultation meetings, between May and December 2021, that focused on the ABG demand that PNG honour the referendum vote by agreeing to Bougainville independence by 2025. PNG never explicitly rejected that demand, but expressed serious reservations. The most commonly expressed concern was that a secession precedent could see other resource-rich parts of PNG following suit. There is a deep fear that PNG’s perhaps unparalleled degree of diversity (for example, its approximately 12 million people speak over 850 distinct languages) makes its unity very fragile, which has been evident since well before its 1975 independence.

The consultations did reach agreement on extending the date for a final “political settlement” to no later than 2027. When it became clear that PNG was not agreeing to the ABG’s demand and was instead emphasising its view of the final decision-making authority of the PNG parliament on the referendum results, the ABG ended the consultations, instead seeking to reach a final agreed decision through a parliamentary vote.

The decision-making process then became mired in differences over Parliament’s role and powers. While the BPA states that “final decision-making” authority on the referendum results will be vested in Parliament, the subsequent constitutional provision is less clear. PNG claims Parliament has clear power to reject independence through a “no” vote on the results. The ABG argues that the two sides must instead seek agreement on the results, and submit that to Parliament for approval. There is no provision for the ABG legislature to play a role in the process.

In mid-2024, PNG appears **committed to tabling the referendum results** in Parliament, probably in late 2024 or early 2025, when the limited extent of support for Bougainville independence among the 118 members would almost certainly see a vote rejecting independence. The widespread fear of secession sparking the ultimate unravelling of PNG is a key factor here. The ABG is seeking to ensure that MPs are provided with much more awareness of the issues involved before a vote is taken. It also wants PNG’s agreement to extend the role of the **yet-to-be-selected international ‘moderator’** beyond assisting in the process in Parliament to also supporting renewed consultations on the ABG’s demand for independence.

Despite the absence of PNG agreement to independence, the ABG regards its independence constitution-making process as legitimate, as PNG agreed to it in a “roadmap” of process steps approved in the consultations in July 2021. The process could also provide a means of declaring independence without PNG’s legal authorisation, conferring more democratic legitimacy through both the referendum vote and the participatory independence constitution-making process than Bougainville’s two previous failed Unilateral Declarations of Independence (1975 and 1990). Enhanced legitimacy does not, however, guarantee international community recognition.

Bougainville has previously developed two (sub-national) constitutions: one establishing the **North Solomons Provincial Government** (1977) and the other **establishing the ABG** (2004). Both processes were heavily influenced by PNG’s history of conducting one of the world’s first genuinely **participatory constitution-making processes** from 1972 to 1975. It was intended to produce a PNG independence constitution that would be “home-grown” in two distinct ways: through its content being developed through public participation, and by its **legal authority coming from the PNG people** rather than the departing colonial power, Australia.

The 1977 Constitution was enacted by a broadly representative Constituent Assembly, and the 2004 document was **initially developed by the Bougainville Constitutional Commission** through a highly participatory 18-month process, then considered and enacted by a broadly representative constituent assembly. Both sub-national constitutions dealt mainly with sub-national institutions and processes. Issues such as powers, revenue, human rights, and citizenship, among others, remained as national Constitution matters. Of course, the scope of the proposed Independence Constitution is far wider.

The **Bougainville Constitutional Planning Commission** (BCPC) was established by the ABG in April 2022. Its 40 members were nominated by ABG legislature members, selected to ensure participation of multiple “interests”, including women, churches, youth, and former combatants, among others. Apart from its deputy (and de facto) chair, the ABG Attorney General and Minister for Bougainville Independence Mission Implementation, Ezekiel Masatt, there was only one qualified lawyer, and few with tertiary education.

The BCPC conducted extensive public consultations and compiled detailed consultation reports on the people’s views. The BCPC drew on these reports in deciding the content of the draft over six multi-day meetings in late 2023 to early 2024. The BCPC is currently undertaking **a two-month consultative process** on the draft. After this period, they will review the submissions received and revise the draft to produce a final version by late 2024.

What happens next will depend on the outcomes of the ongoing post-referendum process. If the Autonomous Bougainville Government (ABG) ultimately chooses to declare independence without PNG approval, it may follow much the same process by which PNG made its autochthonous Independence Constitution. That would involve a Bougainville Constituent Assembly (BCA), defined in the draft (Schedule 8) to comprise the ABG legislature members elected in the then most recent ABG election (likely to be mid-2025), plus additional members appointed by the ABG cabinet. The BCA would vest itself with authority to debate and adopt the final Bougainville Constitutional Planning Commission (BCPC) draft, which would declare independence on behalf of the people that the Assembly represents. As with PNG, the BCA would also enact “provisional laws” to be recognised by the Constitution, providing details of the new institutions established by it. A provisional law for an appointments body would empower appointment, in advance, of the heads and members of such new institutions as would be required to take office and operate from Independence Day (Supreme Court, police commissioner, and public prosecutor).

Disclosure

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