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INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

ALTERATION TO THE CONSTITUTION

THE Honourable Member for Esa'ala Open, Moses Maladina, proposes to alter the Constitution and, pursuant to the requirements of Section 14(2) (making of alterations to the Constitution and Organic Laws) of the Constitution, I, Jeffrey Nape, the Speaker of the National Parliament, hereby publish the proposed Law—

Draft of 17/10/2008

INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

PROPOSED LAW TO ALTER THE CONSTITUTION

entitled

*Constitution (Amendment) Law*

ARRANGEMENT OF CLAUSES

1. Responsibilities of office (Amendment of Section 27).
2. Further provisions (Amendment of Section 28).
3. Prosecution of misconduct in office (Amendment of Section 29).
4. The Ombudsman Commission (Amendment of Section 217).
5. New Section—219A.

"219A. OMBUDSMAN COMMISSION COMMITTEE."

INDEPENDENT STATE OF PAPUA NEW GUINEA

PROPOSED LAW TO ALTER THE CONSTITUTION

entitled

*Constitution (Amendment) Law*

being

**Proposed Law to Alter the Constitution—continued**

MADE by the National Parliament to come into operation in accordance with a notice in the *National Gazette* by the Head of State, acting with, and in accordance with, the advice of the Minister.

**1. RESPONSIBILITIES OF OFFICE (AMENDMENT OF SECTION 27).**

Section 27 of the Constitution is amended:—

(a) in Subsection (3)—

(i) in Paragraph (b) by repealing the full stop after the word “doubt” and replacing it with the following:—

“; and”; and

(ii) by adding a new Paragraph after Paragraph (b):—

“(c) particularly, a head of department who has control of the expenditure of public funds, shall ensure that himself or his officers, authorised to expend public funds:—

(i) properly expend public funds to implement National Government policies and directives; or

(ii) perform their respective legislative duties in relation to the expenditure of public funds; or

(iii) implement the National Government's budgetary allocation.”; or

(iv) do not inappropriately apply or misuse public funds.”; and

(b) by repealing Subsection (5) and replacing it with the following:—

“(5) Notwithstanding Subsection (4), powers conferred on the Commission in this Section, does not include the power to give directives that prevent the implementation of National Governments policies and directives, including the implementation of the National Government's annual budgetary allocation.

(6) A person to whom this Division applies who—

(a) is convicted of an offence in respect of his office position or in relation to the performance of his functions or duties; or

(b) fails to comply with a direction under Subsection (4) or otherwise fails to carry out the obligations imposed by Subsections (1), (2) or (3), is guilty of misconduct in office.”

**2. FURTHER PROVISIONS (AMENDMENT OF SECTION 28).**

Section 28 of the Constitution is amended —

(a) in Subsection (1A) and repealing the full stop after the word “imposed” and adding after the word “imposed” the following:—

“or make such a directive that is necessary or convenient for attaining the objects of this Division, to that person.”; and

(b) by repealing Subsection (5) and replacing it with the following:—

“(5) Proceedings under Subsection (1)(g) are not judicial proceedings but are subject to the principles of natural justice, and an Organic Law may provide—

(a) for such proceedings for the purposes of this Division to be a bar to a proceeding under

**Proposed Law to Alter the Constitution—*continued***

**3. PROSECUTION OF MISCONDUCT IN OFFICE (AMENDMENT OF SECTION 29).**

Section 29 of the Constitution is amended —

(a) by repealing Subsection (1) and replacing it with the following:—

“(1) Where the Ombudsman Commission or other authority referred to in Section 28(1)(f)(*further provisions*) is of the opinion that there is evidence of misconduct in office by a person to whom this Division applies, it may refer the matter to the Public Prosecutor for prosecution before a tribunal established under Section 28(1)(g)(*further provisions*).”; and

(b) by adding a new Subsection after Subsection (2):—

“(3) Notwithstanding Subsection (1), if the Ombudsman Commission or other authority referred to in Section 28(1)(f)(*further provisions*) is of the opinion that—

- (a) there is no serious culpability on the part of the person alleged to have been guilty of misconduct in office and public policy and public good do not require dismissal; or
- (b) the evidence of misconduct in office by a person to whom this Division applies, is trivial or in the nature of a minor offence and the objects of this Division can be achieved without prosecution, it may give such a directive that is necessary or convenient for attaining the objects of this Division, to that person.”

**3. THE OMBUDSMAN COMMISSION (AMENDMENT OF SECTION 217).**

Section 217 of the Constitution is amended by repealing Subsection (8).

**5. NEW SECTION—219A.**

The Constitution is amended by adding after Section 219 the following new Section:—

**“219A. OMBUDSMAN COMMISSION COMMITTEE.**

- (1) An Organic Law or an Act of Parliament may provide for the establishment of an Ombudsman Commission Committee, which is a Permanent Parliamentary Committee for the purposes of Subdivision VI.2.E (*the Committee system*).
- (2) The primary function of the Ombudsman Commission Committee is, in accordance with an Organic Law or an Act of Parliament:—
  - (a) to consider and report on any report relating to an administrative complaint; and
  - (b) to monitor and review any aspect of the workings, functions, operations and administration of the Ombudsman Commission; and
  - (c) to investigate, on its own initiative or on complaint by a person affected and report to Parliament, any conduct on the part of—
    - (i) the Ombudsman Commission or an Ombudsman Commissioner; or
    - (ii) government body or an officer or employee of a governmental body, where the conduct is or may be wrong; and
  - (d) to refer a matter to the appropriate authorities for further investigation and prosecution, disciplinary action and to ensure compliance with the laws, as the case may be.

**Proposed Law to Alter the Organic Law on the Duties and Responsibilities of Leadership—*continued***

- (b) who, by an act or omission, knowingly dissuades or prevents a person from obeying a summons; or
- (c) who, without reasonable excuse, refuses—
  - (i) to be sworn or make an affirmation; or
  - (ii) to answer a question put to him by the Committee or by a member of the Committee; or
  - (iii) to produce a document that he is required by the Committee to produce; or
- (d) who uses, inflicts or procures any violence, punishment, damage, loss or disadvantage to or on any person for or on account of evidence lawfully given by him before the Committee; or
- (e) who willfully gives false evidence on oath or affirmation before the Committee, is guilty of misconduct in office.”

**3. COMPLAINTS (AMENDMENT OF SECTION 18).**

Section 18 of the *Organic Law* is amended:—

(a) in Subsection (3):—

- (i) in Paragraph (b), by adding before the word “the” the following words:—  
“subject to Subsection (5)”; or
- (ii) in Paragraph (d), by repealing the comma after the word “investigation” and replacing it with the following:—  
“; or” ; and
- (iii) by adding after Paragraph (d), the following new Paragraph:—  
“(e) it is a matter referred to in Section 30.”; and

(b) by adding after Subsection (4), the following new Subsection:—

“(5) Notwithstanding anything in this Law, the Commission or other authority shall cease to investigate and hold any hearing on a complaint on the conduct of a person to whom this law applies, where the Commission or other authority fails.”

- (a) to complete its investigations on the complaint within 2 years from the date of the making of the complaint of the alleged misconduct in office; or
- (b) to refer the matter to the Public Prosecutor within 2 years from the date of the making of the complaint of the alleged misconduct in office.”

**4. PROCEEDINGS OF THE COMMISSION (AMENDMENT OF SECTION 20).**

Section 20 of the *Organic Law* is amended by repealing Subsection (2), (3) and (4) and replacing them with the following:—

“(2) The Commission or other authority in the course of conducting its investigation, shall not divulge any information of such investigation, which is capable of—

- (a) prejudicing the outcome of a tribunal inquiry; or
- (b) imputing guilt on a person who is been investigated, to the public media in any form.

(3) Where the Commission or other authority undertakes an investigation contrary to Subsection (2)—

- (a) such an investigation shall be deemed to have been undertaken contrary to the principles of

**Proposed Law to Alter the Organic Law on the Duties and Responsibilities of Leadership—*continued***

- (4) The Commission or other authority may hear or obtain information from any person who the Commission considers can assist and may make whatever inquiries it thinks fit and shall, before taking action under Subsections (6), (7) or (11), notify the person whose conduct is being investigated.
  - (5) Nothing in this Law compels the Commission or other authority to hold a hearing and no person, other than the person whose conduct is being investigated, is entitled as of right to be heard by the Commission.
  - (6) Notwithstanding any provision in this Law, where the Commission or other authority is satisfied, on receipt of a complaint, that there is evidence of misconduct in office—
    - (a) by a person to whom this Law applies; or
    - (b) by an officer, authorized to expend public monies, under the control and supervision of a person to whom this Law applies referred to in Section 16A,  
before taking an action under Subsection (11), it shall, within thirty days of the receipt of a complaint, in writing, notify and consult the person to whom this Law applies, to take the appropriate action that is necessary or convenient for attaining the objects of this Law or any other law.
  - (7) Notwithstanding any provision in this Law, where the Commission or other authority is satisfied, after an inquiry into a matter on its own initiative, that there is evidence of misconduct in office—
    - (c) by a person to whom this Law applies; or
    - (d) by an officer, authorized to expend public monies, under the control and supervision of a person to whom this Law applies referred to in Section 16A,  
before taking an action under Subsection (11), it shall, within thirty days of the commencement of its inquiry, in writing, notify and consult the person to whom this Law applies, to take the appropriate action that is necessary or convenient for attaining the objects of this Law or any other law.
  - (8) Nothing in this Law, prevents the Commission from consulting a person to whom this Law applies referred to in Subsection (6) or (7) for any duration and number of times, it thinks fit, that is necessary and convenient to attain the objects of this Law.
  - (9) Subject to Subsection (12), where a person to whom this Law applies fails to comply with Subsection (6), (7) or (11)(b), the Commission shall take an action under Subsection (11)(a).
  - (10) Nothing in this Section prevents the Commission from referring an officer referred to in Subsection (6)(b) or (7)(b) for prosecution.
  - (11) Subject to Subsection (6), (7) or (12), if, after an investigation, the Commission is of the opinion that there is evidence of misconduct in office by a person to whom this Law applies, it may—
    - (a) refer the matter to the Public Prosecutor for prosecution by him before the appropriate tribunal; or
    - (b) if there is no serious culpability on the part of the person found guilty of misconduct in office and public policy and public good do not require dismissal or the evidence of misconduct in office is trivial or in the nature of a minor offence and the objects of this Law can be achieved without prosecution, make such a directive that is necessary or convenient for attaining the objects of this Law, to that person.
  - (12) Notwithstanding anything in this Law or this Section, the Commission shall not take any action under Subsection (11)(a), within 12 months before the fifth anniversary of the date fixed for the return of the writs at the previous general election.”
5. TRIBUNALS (AMENDMENT OF SECTION 27).
- Section 27 of the *Organic Law* is amended:—

**Proposed Law to Alter the Organic Law on the Duties and Responsibilities of Leadership—continued**

(b) by adding the following new Subsection after Subsection (1):—

“(1A) Notwithstanding Subsection (1), if the Commission is satisfied that there is evidence of misconduct in office by a person to whom this Law applies, and if—

- (i) there is no serious culpability on the part of the person found guilty of misconduct in office and public policy and public good do not require dismissal; or
- (ii) the evidence of misconduct in office is trivial or in the nature of a minor offence and the objects of this Law can be achieved without prosecution,

make such a directive that is necessary or convenient for attaining the objects of this Law, to that person.”; and

(c) by adding a new Subsection after Subsection (4):—

“(4A) For the purposes of Subsection (4), the standard of proof to be applied in tribunal proceedings is that of proof beyond reasonable doubt and the onus is on the prosecution.”; and

(d) in Subsection (5):—

- (i) in Paragraph (b), by deleting the full stop after the word “imposed” and inserting the following:—

“; or”; and

- (ii) by adding the following new Paragraph after Paragraph (b):—

“(c) the person comply with such a directive that is necessary or convenient for attaining the objects of this Law.”; and

(e) in Subsection (7), in Paragraph (e) by repealing the words “& a tribunal consisting of a Judge (who shall be the Chairman) and two senior magistrates appointed by the Chief Justice” and replacing them with the following:—

“ - a tribunal appointed by the Chief Justice, consisting of a Judge (who shall be the Chairman) and two other members, all of whom must be—

- (i) senior magistrate; or
- (ii) Judges of the National or Supreme Court; or
- (iii) former Judges of the National Court; or
- (iv) former Judges of the pre-Independence Supreme Court of Papua New Guinea; or
- (v) Judges or former Judges of an equivalent court of a country that has a legal system similar to that of Papua New Guinea.”

## 6. REPEAL AND REPLACEMENT OF SECTION 30.

Section 30 of the *Organic Law* is repealed and replaced with the following:—

### “30. Effect of Proceedings.

- (1) The result of any proceedings in respect of a charge of misconduct in office, is a bar to proceedings in respect of the same act under any other provision of the Constitution or any other law.
- (2) The result of any proceedings under any other provision of the Constitution or of any other law, is a bar to proceedings in respect of the same act under this Law.
- (3) It is the duty of the Supreme Court and the National Court to ensure:—
  - (a) that advantage is not taken of Subsection (1) or (2) in cases that are truly vexatious or oppressive; or
  - (b) that proceedings under one provision or law are not used primarily with a view to obtaining evidence

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- (4) Where a charge of misconduct in office is also capable of being dealt with in proceedings in respect of the same act under any other provision of the Constitution or any other law:—
- (a) the Commission may inquire into the charge of misconduct in office under this Law, which is not provided for in Paragraph (b); or
  - (b) another authority, may inquire into the charge of misconduct in office under any other provision of the Constitution or any other law, which relates to an offence or cause of action prescribed by or under the criminal or civil law.
- (5) Subsection (4) does not prevent:—
- (a) the Commission from referring, in writing, the charge of misconduct in office to another authority to inquire into under any other provision of the Constitution or any other law; or
  - (b) another authority from referring, in writing, the charge of misconduct in office, other than a charge of misconduct referred to in Subsection (4)(b), to the Commission to inquire into under this Law,
- if it is necessary or convenient to attain the objects of this Law or any other provision of the Constitution or any other law.
- (6) The Commission shall not inquire into a charge of misconduct in office referred to in Subsection (4)(b) or (5)(a).
- (7) Another authority shall not inquire into a charge of misconduct in office referred to in Subsection (4)(a) or (5)(b)."
- (8) Notwithstanding anything in this Organic Law, this Section shall not apply to an investigation to a charge of misconduct in office commenced prior to the period on and from the date of coming into operation of this *Organic Law on the Duties and Responsibilities of Leadership (Amendment) Law*.
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