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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, Jeffery Nape, the Speaker of the National Parliament, hereby publish the proposed Law—

Draft of: 19/05/2009

INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

PROPOSED LAW TO ALTER THE CONSTITUTION

entitled

Constitution (Amendment) Law

ARRANGEMENT OF CLAUSES

1. Composition of the Supreme Court (Amendment to Section 161).
2. Jurisdiction of the Supreme Court (Amendment to Section 162).
3. Composition of the National Court (Amendment to Section 164).
4. Jurisdiction of the National Court (Amendment to Section 166).

Draft of: 19/05/2009

INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

PROPOSED LAW TO ALTER THE CONSTITUTION

entitled

Constitution (Amendment) Law

being

A Law to alter the Constitution by amending the provisions relating to the administration of justice, and for related purposes,

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. COMPOSITION OF THE SUPREME COURT (AMENDMENT OF SECTION 161).

Section 161 of the Constitution is amended—

- (a) in Subsection (1) by repealing the words “the other Judges of the National Court” and replacing them with the following:—

“not less than five or such other number of other Judges, appointed in accordance with this Section.”; and

- (b) by adding after Subsection (3), the following new Subsection:—

“(4) For the purposes of Subsection (1), the Head of State, acting with, and in accordance with, the advice of the National Executive Council, given after consultation with the Chief Justice, shall appoint a Judge of the National Court to be a Judge of the Supreme Court.”

2. JURISDICTION OF THE SUPREME COURT (AMENDMENT OF SECTION 162).

Section 162 of the Constitution is amended by adding after Subsection (4), the following new Subsection:—

“(5) For the purposes of this Section, the jurisdiction of the Supreme Court shall be exercised by a Judge of that Court appointed in accordance with Section 161(4)(*Composition of the Supreme Court*).”

3. COMPOSITION OF THE NATIONAL COURT (AMENDMENT TO SECTION 164).

Section 164 of the Constitution is amended in Paragraph (c), by repealing the words “four or more than six” and replacing them with the following:—

“twenty or not more than forty”

4. JURISDICTION OF THE NATIONAL COURT (AMENDMENT TO SECTION 166).

Section 166 of the Constitution is amended by adding after Subsection (5), the following new Subsection:—

“(6) For the purposes of this Section, the jurisdiction of the National Court shall be exercised by a Judge of that Court appointed in accordance with Section 170 (*Appointment of other Judges*).”

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 *Organic Law on the Duties and Responsibilities of Leadership* 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: 18/05/2009

INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

PROPOSED LAW TO ALTER THE ORGANIC LAW ON THE DUTIES AND RESPONSIBILITIES OF LEADERSHIP

entitled

The Organic Law on the Duties and Responsibilities of Leadership (Amendment) Law

ARRANGEMENT OF CLAUSES

1. Repeal and replacement of Section 8.
2. New Sections—16A and 16B.
 - “16A. Heads of Department, Etc.”
 - “16B. Committee Proceedings.”
3. Complaints (Amendment of Section 18).
4. Proceedings of the Commission (Amendment of Section 20).
5. Tribunals (Amendment of Section 27).
6. Repeal and Replacement of Section 30.

Draft of: 18/05/2009

INDEPENDENT STATE OF PAPUA NEW GUINEA
THE CONSTITUTION

PROPOSED LAW TO ALTER THE ORGANIC LAW ON THE DUTIES AND RESPONSIBILITIES OF LEADERSHIP

entitled

The Organic Law on the Duties and Responsibilities of Leadership (Amendment) Law

being

A Law to alter the *Organic Law on the Duties and Responsibilities of Leadership*, and for related purposes,

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. REPEAL AND REPLACEMENT OF SECTION 8.

Section 8 of the *Organic Law* is repealed and replaced with the following:—

“8. Shareholdings.

- (1) A person to whom this Law applies—
 - (a) who hold shares or any other investment in any company or unincorporated profit-seeking organization; or
 - (b) whose spouse or any of whose children under voting age hold any such shares or other investment, that could be reasonably be expected to place him in a position in which he could have a conflict of interest or might be compromised when discharging his public or official duties, is guilty of misconduct in office.
- (2) Subsection (1) does not apply to a person who, prior to obtaining the shares or making the investment referred to in Subsection (1), has obtained the approval of the Ombudsman Commission to do so.
- (3) Subsections (1) and (2) do not prevent a person to whom this Law applies, or the spouse or the child of that person, from acquiring, holding and disposing of shares or establishing, maintaining, divesting or disposing of an investment, provided that the Ombudsman Commission is notified in the prescribed manner.”

2. NEW SECTIONS—16A AND 16B.

The Organic Law is amended by adding after Section 16 the following new Sections:—

“16A. Heads of Departments, Etc.”

- (1) Subject Subsection (2), a person to whom this Division applies, particularly, a head of department who has control of the expenditure of public funds—
 - (a) who; or
 - (b) whose officer, authorised to expend public funds, fails to properly expend public funds to implement the Governments, including the Provincial and Local Level Governments, policies and directives, breaches their respective duties in relation to the expenditure of public funds, inappropriately applies or misuses public funds or fails to implement the Governments, including the Provincial and Local Level Governments bud-getary allocation, is guilty of misconduct in office.
- (2) A person referred to in Subsection (1), shall be responsible individually and vicariously for any action or inaction committed by him or by his officers in carrying out their obligations under Subsection (1).

“16B. Committee Proceedings.”

A person to whom this Law applies who is required to appear or appears before a Committee of the Parliament—

- (a) to whom a summons has been served and refuses or fails, without reasonable excuse, to appear or to continue in attendance in abedience to the summons; or

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 natural justice; and
 - (b) a person aggrieved by such an investigation, may seek relief in the National Court.

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 and 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:—

- (a) in Subsection (1) by repealing the word “shall” and replacing it with the following:—
“may”; and

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 for use in or in relation to, or to gain advantage in or in relation to, other proceedings; or
 - (c) Subsection (1), (2), (6) or (7) are not contravened.

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

- (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*.

CERTIFICATION OF ACTS

IT is hereby notified for general information, that the following Acts made by the National Parliament were certified by the Speaker of the National Parliament on 12th May, 2009.

No. 28 of 2006—*Customs (2007 Budget Amendment) Act 2006*

No. 29 of 2006—*Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates (2007 Budget Amendment) Act 2006*

No. 20 of 2008—*Additional Supplementary (Appropriation) Act 2008*

No. 21 of 2008—*Appropriation (National Development Expenditure 2009) Act 2008*

No. 22 of 2008—*Customs (2009 Budget Amendment) Act 2008*

No. 23 of 2008—*Income Tax (2009 Budget Amendment) Act 2008*

No. 24 of 2008—*Konedobu Petroleum Park Authority Act 2008*

No. 25 of 2008—*Stamp Duties (2009 Budget Amendment) Act 2008*

D. PANDAN,
Clerk of the National Parliament.