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INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

ALTERATION TO THE CONSTITUTION

THE Government proposes to alter the Constitution and, pursuant to Section 14(2) (*Making of alterations to the Constitution and Organic Laws*) of the Constitution, I, Rabbie Namaliu, Speaker of the National Parliament, hereby publish the Proposed Law—

Draft of: 5/9/96

INDEPENDENT STATE OF PAPUA NEW GUINEA

PROPOSED LAW TO ALTER THE CONSTITUTION

Constitutional Amendment (Human Rights Commission)

ARRANGEMENT OF CLAUSES.

1. Original interpretative jurisdiction of the Supreme Court (Amendment of Section 18).
2. Special references to the Supreme Court (Amendment of Section 19).
3. Repeal and replacement of Section 22.
"22. ENFORCEMENT OF THE CONSTITUTION."
4. Sanctions (Amendment of Section 23).
5. Protection of the Law (Amendment of Section 37).
6. "Reasonably justifiable in a democratic society", etc., (Amendment of Section 39).
7. Repeal and replacement of Section 57.
"57. ENFORCEMENT OF GUARANTEED RIGHTS AND FREEDOMS."
8. Enforcement of the basic social obligations (Amendment of Section 63).
9. Tribunal, etc., outside the National Judicial System (Amendment of Section 159).

10. New Division VIII.3.

Division 3. - The Human Rights Commission.

- "220A. THE HUMAN RIGHTS COMMISSION.
- "220B. PURPOSES OF THE HUMAN RIGHTS COMMISSION.
- "220C. FUNCTIONS OF THE HUMAN RIGHTS COMMISSION.
- "220D. REPORTS BY THE HUMAN RIGHTS COMMISSION.
- "220E. ROLE OF ADVISORY COMMISSIONERS.

11. Definitions (Amendment of Section 221).
12. Emergency orders (Amendment of Section 232).
13. New Division X.4A.

*Division 4A. - Functions, etc., of Human Rights Commission in relation to
Period of Declared National Emergency.*

- "243A. FUNCTIONS, ETC., OF HUMAN RIGHTS COMMISSION.

14. Amendment of Schedule 1.

Draft of 5/9/96.

INDEPENDENT STATE OF PAPUA NEW GUINEA.***PROPOSED LAW TO ALTER THE CONSTITUTION***

entitled

Constitutional Amendment (Human Rights Commission),

Being a Law to alter the *Constitution* by making provisions for the establishment of a Human Rights Commission 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. ORIGINAL INTERPRETATIVE JURISDICTION OF THE SUPREME COURT (AMENDMENT OF SECTION 18).

Section 18(2) of the *Constitution* is repealed and is replaced with the following:-

"(2) Subject to this Constitution, where any question relating to the interpretation or application of any provision of a Constitutional Law arises in the Human Rights Commission or in any court or tribunal, other than the Supreme Court, the Human Rights Commission, court or tribunal shall, unless the question is trivial, vexatious or irrelevant, refer the matter to the Supreme Court, and take whatever other action (including the adjournment of proceedings) is appropriate."

2. SPECIAL REFERENCES TO THE SUPREME COURT (AMENDMENT OF SECTION 19).

Section 19(3) of the *Constitution* is amended by adding the following new Paragraph:-

"(g) the Human Rights Commission."

3. REPEAL AND REPLACEMENT OF SECTION 22.

Section 22 of the *Constitution* is repealed and is replaced with the following:-

'22. ENFORCEMENT OF THE CONSTITUTION.

The provisions of this Constitution that recognize rights of individuals (including corporations and associations) as well as those that confer powers or impose duties on public authorities, shall not be left without effect because of the lack of supporting machinery or procedural laws, but the lack shall, as far as practicable, be supplied by -

Constitutional Amendment (Human Rights Commission)—continued

- (a) the Human Rights Commission to the extent empowered by a Constitutional Law; and
- (b) the National Court,

in the light of the National Goals and Directive Principles, and by way of analogy from other laws, general principles of justice and generally-accepted doctrine."

4. SANCTIONS (AMENDMENT OF SECTION 23).

Section 23(1) of the *Constitution* is repealed and replaced with the following:-

"(1) Where any provision of a Constitutional Law prohibits or restricts an act, or imposes a duty, then unless a Constitutional Law or an Act of the Parliament provides for the enforcement of that provision -

- (a) the National Court may -
 - (i) impose a sentence of imprisonment for a period not exceeding 10 years or a fine not exceeding K10,000.00; and
 - (ii) in the absence of any other equally effective remedy under the laws of Papua New Guinea, order the making of compensation by a person (including a governmental body) who is in default, or both, for a breach of the prohibition, restriction or duty, and may make such further order in the circumstances as it thinks fit; and
- (b) the Human Rights Commission may, to the extent empowered by a Constitutional Law, order the making of compensation by a person (including a governmental body) who is in default for a breach of the prohibition restriction of duty."

5. PROTECTION OF THE LAW (AMENDMENT OF SECTION 37).

Section 37(14) of the *Constitution* is repealed and is replaced with the following:-

"(14) In the event that the trial of a person is not commenced within four months of the date he was committed for trial, a detailed report concerning the case shall be made by the Chief Justice to -

- (a) the Minister responsible for National Justice Administration; and
- (b) the Human Rights Commission."

Constitutional Amendment (Human Rights Commission)—continued

**6. "REASONABLY JUSTIFIABLE IN A DEMOCRATIC SOCIETY", ETC.,
(AMENDMENT OF SECTION 39).**

Section 39(3) of the *Constitution* is amended by inserting after Paragraph (e) the following:-

"(ea) recommendations and determinations of the Human Rights Commission: and".

REPEAL AND REPLACEMENT OF SECTION 57.

Section 57 of the *Constitution* is repealed and is replaced with the following:-

"57. ENFORCEMENT OF GUARANTEED RIGHTS AND FREEDOMS.

(1) A right or freedom referred to in this Division shall be protected by, and is enforceable in, in accordance with this section:-

- (a) the Supreme Court; or
- (b) the National Court; or
- (c) any other court prescribed for the purpose by an Act of the Parliament; or
- (d) the Human Rights Commission,

either on its own initiative or an application by any person who has an interest in its protection and enforcement, or in the case of a person who is, in the opinion of the court or of the Human Rights Commission unable fully and freely to exercise his rights under this section by a person acting on his behalf whether or not by his authority.

"(2) For the purposes of this section -

- (a) the Human Rights Commission; and
- (b) the Law Officers of Papua New Guinea; and
- (c) any other persons prescribed for the purpose by an Act of the Parliament; and
- (d) any other person with an interest (whether personal or not) in the maintenance of principles commonly known as the Rule of Law such that, in the opinion of the Human Rights Commission or of the Court concerned, they ought to be allowed to appear and be heard on the matter in question,

have an interest in the protection and enforcement of the rights and freedoms referred to in this Division, but this subsection does not limit the persons or classes of persons who have such an interest.

"(3) Subject to Subsection (4), a person entitled to make an application under this section shall make the application to the Human Rights Commission, which shall consider the application and -

- (a) deal with it in accordance with the powers of the Commission: or

Constitutional Amendment (Human Rights Commission)—*continued*

(b) refer it to a court that has jurisdiction under Subsection (1).

"(4) Where a court that has jurisdiction under Subsection (1) decides on its own volition that a right or freedom referred to in this Division should be protected and enforced or considered for protection and enforcement, it may -

(a) consider the matter itself in accordance with its own procedures; or

(b) refer the matter to the Human Rights Commission.

"(5) The Human Rights Commission and a court that has jurisdiction under Subsection (1) may make all such orders and declarations as are necessary or appropriate for the purposes of this section, and may make an order or declaration in relation to a statute at any time after it is made (whether or not it is in force).

"(6) The Human Rights Commission or any court, tribunal or authority may, on its own initiative or at the request of a person referred to in Subsection (1), adjourn, or otherwise delay a decision in, any proceeding before it in order to allow a question concerning the effect or application of this Division to be determined in accordance with this section.

"(7) Relief under this section is not limited to cases of actual or imminent infringement of the guaranteed rights and freedoms, but may if the Human Rights Commission or the court thinks it proper to do so, be given in cases in which there is a reasonable probability of infringement, or in which an action that a person reasonably desires to take is inhibited by the likelihood of, or a reasonable fear of, an infringement.

"(8) The jurisdiction and powers of the courts under this section are in addition to, and not in derogation of, their jurisdiction and powers under any other provision of this Constitution.

"(9) An Organic Law shall make provision for the powers, duties and procedures of the Human Rights Commission under this section and for an appeal procedure to the National Court from orders and declarations made by the Human Rights Commission under this section."

Constitutional Amendment (Human Rights Commission)—continued**8. ENFORCEMENT OF THE BASIC SOCIAL OBLIGATIONS (AMENDMENT OF SECTION 63).**

Section 63(4) of the *Constitution* is repealed and is replaced with the following:-

- "(4) Subsection (1) does not apply in the exercise of the jurisdiction of -
- (a) the Ombudsman Commission or other body prescribed for the purposes of Division III.2 (*leadership code*); or
 - (b) the Human Rights Commission,
- which shall take the Basic Social Obligations fully into account in all cases as appropriate."

9. TRIBUNALS, ETC., OUTSIDE THE NATIONAL JUDICIAL SYSTEM (AMENDMENT OF SECTION 159).

Section 159(3) of the *Constitution* is amended by adding the following new Paragraph:-

- "(d) the award of compensation and the granting of any other remedy by the Human Rights Commission."

10. NEW DIVISION VIII.3.

Part VIII of the *Constitution* is amended by adding the following new Division:-

"Division 3. - The Human Rights Commission.**"220A. THE HUMAN RIGHTS COMMISSION.**

- (1) There shall be a Human Rights Commission consisting of -
- (a) not less than three and not more than seven Commissioners, of whom at least one shall be a man and at least one shall be a woman; and
 - (b) not less than three and not more than five Advisory Commissioners.
- "(2) The Commissioners and Advisory Commissioners shall be appointed by the Head of State, acting with, and in accordance with, the advice of the Human Rights Commission Appointment Committee consisting of -
- (a) the Prime Minister, who shall be Chairman; and
 - (b) the Chief Justice; and
 - (c) the Leader of the Opposition; and

Constitutional Amendment (Human Rights Commission)—continued

- (d) the Chairman of the appropriate Permanent Parliamentary Committee, or if the Chairman is not a member of the Parliament who is recognized by the Parliament as being generally committed to support the Government in the Parliament, the Deputy Chairman of that Committee; and
- (e) the President of the National Council of Women.

"(3) The Head of State, acting with, and in accordance with, the advice of the Human Rights Commission Appointments Committee shall appoint one of the Commissioners to be the President of the Commission.

"(4) The salary and other conditions of employment of the President of the Commission shall not be less than or inferior to the salary and other conditions of employment of a Judge, other than the Chief Justice or the Deputy Chief Justice, without taking into account any conditions of employment personal to that Judge.

"(5) The salary and other conditions of employment of the Commissioners, other than the President, shall not be less than or inferior to the salary and other conditions of employment of the Public Prosecutor, without taking into account any conditions of employment personal to any particular Public Prosecutor.

"(6) In the performance of its functions under Section 220C (*functions of the Human Rights Commission*) the Commission is not subject to direction or control by any person or authority other than by the Supreme Court or the National Court to an extent permitted by a Constitutional Law.

"(7) The proceedings of the Commission are not subject to review in any way except by the Supreme Court or the National Court to an extent permitted by a Constitutional Law.

- "(8) An Organic Law shall -
- (a) make further provision in respect of the qualifications and appointment of Commissioners and of the powers, procedures and immunity of the Commission; and

Constitutional Amendment (Human Rights Commission)—continued

- (b) make provision in respect of the qualifications and appointment of Advisory Commissioners.

'220B. PURPOSES OF THE HUMAN RIGHTS COMMISSION.

The purposes of the establishment of the Human Rights Commission are -

- (a) to protect and enforce the Basic Rights empowered by Division III.3 (*Basic Rights*); and
- (b) to promote awareness of and respect for the Basic Rights conferred by Division III.3 (*Basic Rights*); and
- (c) to monitor compliance with international human rights instruments; and
- (d) such other purposes as are given to it by a Constitutional Law or an Act of the Parliament.

'220C. FUNCTIONS OF THE HUMAN RIGHTS COMMISSION.

(1) Subject to this section and to any Organic Law made for the purposes of Subsection (3), the functions of the Human Rights Commission are -

- (a) to assist in protecting and promoting awareness and respect for human rights by -
 - (i) assisting in educating public opinion and co-ordinating human rights programmes undertaken by any other person or authority on behalf of Government; and
 - (ii) acting as a source of human rights information for the Government and people of Papua New Guinea; and
 - (iii) considering, and making recommendations concerning, any state of affairs relating to human rights that may exist in Papua New Guinea; and

Constitutional Amendment (Human Rights Commission)—continued

- (iv) advising on any matters relating to human rights referred to it by the Government having regard to the available resources and priorities of the Commission; and
 - (v) studying and keeping under review the status of laws, judicial decisions and administrative arrangements for the promotion and protection of human rights and by preparing and submitting reports on these matters to the Government and to other appropriate authorities; and
 - (vi) performing any other functions which the Government assigns to it relating to the duties of Papua New Guinea under any international agreement relating to human rights to which Papua New Guinea is a party; and
- (b) to investigate incidences, complaints or allegations of violations of human rights on its own volition or on complaint by individuals, groups or institutions on their own behalf or on behalf of others; and
 - (c) to monitor compliance with existing international human rights instruments; and
 - (d) to make recommendations as to the desirability of Papua New Guinea becoming bound by any international instrument on human rights; and
 - (e) to advise the Government on its reporting obligations under international instruments on human rights and the content of those reports; and
 - (f) to take part in international meetings on human rights and to co-operate with other national, regional and international human rights bodies; and
 - (g) to publish guidelines for the avoidance of acts or practices that may be inconsistent with or contrary to human rights.

Constitutional Amendment (Human Rights Commission)—continued

"(2) The Human Rights Commission shall not inquire into a decision by a court except insofar as a decision may show an apparent failure to comply with any international agreement relating to human rights to which Papua New Guinea is a party.

"(3) An Organic Law shall make provision in respect of the powers and procedures of the Human Rights Commission, and in particular -

- (a) shall, subject to Paragraph (b), make provision for the Commission to have access to all available relevant information; and
- (b) may impose reasonable restrictions on the availability of information; and
- (c) shall make provision to ensure the secrecy or confidentiality of secret or confidential information made available to the Commission or to a Commissioner or to a member of the Staff of the Commission; and
- (d) may limit or restrict to a reasonable extent and in a reasonable manner the jurisdiction of the Commission in relation to any matters or class of matters and in particular in relation to national security; and
- (e) shall make provision for and in respect of publicity for the proceedings, reports and recommendations of the Commission.

"220D. REPORTS BY THE HUMAN RIGHTS COMMISSION.

(1) The Human Rights Commission shall, at least once in each period of 12 months, at such time as is fixed by or under an Organic Law, give to the Head of State, for presentation to the Parliament, a report on the functions and workings of the Commission, with such recommendation as to improvement as the Commission thinks proper.

"(2) Nothing in Subsection (1) prevents the Human Rights Commission from making, on its own initiative or at the request of the Parliament or of the National Executive Council, other reports on any aspect of the functions and workings of the Commission."

Constitutional Amendment (Human Rights Commission)—continued**'220E. ROLE OF ADVISORY COMMISSIONERS.**

(1) The role of Advisory Commissioners is to advise the Commission in relation to the functions of the Commission as decided by the Advisory Commissioners at meetings of the Advisory Commissioners.

"(2) The Commission shall have due regard to but is not bound to follow, advice proffered by Advisory Commissioners.

"(3) An Organic Law may provide for the holding of meetings by Advisory Commissioners."

11. DEFINITIONS (AMENDMENT OF SECTION 221).

Section 221 of the *Constitution* is amended in the definition of "constitutional office-holder" by inserting after Paragraph (d) the following:-

"(d) a Commissioner of the Human Rights Commission; and".

12. EMERGENCY ORDERS (AMENDMENT OF SECTION 232).

Section 232(4) of the *Constitution* is amended by adding the following:-

"(c) the Human Rights Commission in accordance with Section 243A(1)(a)."

13. NEW DIVISION X.4A.

Part X of the *Constitution* is amended by inserting after Division 4 the following new Division:-

"Division 4A. - Functions, etc., of Human Rights Commission in relation to Period of Declared National Emergency.

'243A. FUNCTIONS, ETC., OF HUMAN RIGHTS COMMISSION.

(1) The Prime Minister shall ensure that -

(a) copies of all emergency laws and, so far as is practicable, of all emergency orders are forwarded to the Human Rights Commission; and

(b) subject to any Emergency Act, the Human Rights Commission is fully provided with information concerning, and is fully consulted concerning, developments in the situation and in particular concerning proposed emergency laws and the operation of emergency laws.

Constitutional Amendment (Human Rights Commission)—*continued*

"(2) At each meeting of the Parliament during a period of declared national emergency the Human Rights Commission shall give to the Speaker for presentation a statement as to -

- (a) the justification for and the operation of the emergency laws; and
- (b) whether or not any emergency law should be altered."

14. AMENDMENT OF SCHEDULE 1.

Schedule 1.2(1) of the *Constitution* is amended by inserting after the definition of "governmental body" the following definitions:-

"'human rights' means the rights embodied in United Nations Covenants and Conventions on Human Rights and includes the basic rights conferred by Division III.3 (*Basic Rights*);

'Human Rights Commission' means the Human Rights Commission established by Section 220A(1)(*The Human Rights Commission*);".

INDEPENDENT STATE OF PAPUA NEW GUINEA.

THE CONSTITUTION.

ORGANIC LAW ON THE HUMAN RIGHTS COMMISSION.

The Government proposes to introduce the *Organic Law on the Human Rights Commission* and, pursuant to Section 14(2) (*Making of alteration to the Constitution and Organic Laws*) of the *Constitution*, I, RABBIE NAMALIU, Speaker of the National Parliament, hereby publish the proposed Law -

Draft of 5/9/96
INDEPENDENT STATE OF PAPUA NEW GUINEA.

A PROPOSED ORGANIC LAW

entitled

The Organic Law on the Human Rights Commission,

ARRANGEMENT OF CLAUSES.

PART I. - PRELIMINARY.

1. Compliance with Constitutional requirements.
2. Interpretation -
 - "Advisory Commissioner"
 - "Commission"
 - "Commissioner"
 - "Committee"
 - "President"
 - "the responsible person"
3. Qualifications for appointment.
4. Term of office.
5. Disqualifications from office.
6. Special conditions of employment.
7. Resignation.
8. Acting President, Acting Commissioner and Acting Advisory Commissioner.
9. Declaration of office.

PART II. - POWERS, ETC., OF THE COMMISSION.

10. Powers of the Commission.
11. Procedures of the Commission.
12. Advisory Committee Meetings.
13. Delegation.

PART III. - COMPLAINTS AND PROCEEDINGS.

14. Complaints.
15. Proceedings of the Commission.
16. Evidence.
17. Disclosure of certain matters not to be required.
18. Commissioners, etc., to maintain secrecy.
19. Preservation of secrecy.
20. Conciliation.
21. Procedure after investigation.
22. Proceeding not to be questioned or to be subject to review.

PART IV. - THE SERVICE OF THE COMMISSION.

23. Appointment of officers.
24. Control of Service.
25. Regulations for the service of the Commission.
26. Temporary and casual employees.

PART V. - FINANCE.

27. Application of *Public Finances (Management) Act 1995*.

PART VI. - OFFENCES.

28. Failure to attend or produce documents.
29. Refusing to be sworn or give evidence.
30. Contempt of the Commission.
31. Victimisation.
32. Giving false evidence.
33. Prosecution for offences.

PART VII. - MISCELLANEOUS.

34. Privileges.
35. Power of entry.
36. Regulations.
37. Savings.

SCHEDULES.

Draft of 5/9/96.

INDEPENDENT STATE OF PAPUA NEW GUINEA.***A PROPOSED ORGANIC LAW***

entitled

The Organic Law on the Human Rights Commission,

Being an Organic Law to implement Division VIII.3 (*Human Rights Commission*) and other provisions of the *Constitution* 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.

PART I - PRELIMINARY.**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

This Organic Law, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution* namely -

- (a) freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of information conferred by Section 51 of the *Constitution*.

is a law that is made for the purpose of giving effect to the public interest in -

- (d) public order; and
- (e) public welfare; and
- (f) the protection of children and persons under disability (whether legal or practical); and
- (g) the development of under-privileged or less advanced groups or areas.

2. INTERPRETATION.

In this Organic Law, unless the contrary intention appears -

"Advisory Commissioner" means an Advisory Commissioner appointed under Section 220A(2) (*The Human Rights Commission*) of the *Constitution*;

"Commission" means the Human Rights Commission established by Section 220A (*The Human Rights Commission*) of the *Constitution*;

"Commissioner" means a Commissioner appointed under Section 220A(2) (*The Human Rights Commission*) of the *Constitution*;

"Committee" means the Human Rights Commission Appointments Committee established by Section 220A(2) (*The Human Rights Commission*) of the *Constitution*;

"President" means the President of the Commission appointed under Section 220A(3) (*The Human Rights Commission*) of the *Constitution*.

Organic Law on the Human Rights Commission—continued

"the responsible person" means -

- (a) in the case of the Correctional Service - the Commissioner of the Correctional Service; and
- (b) in the case of the Defence Force - the Commander of the Defence Force; and
- (c) in the case of Police Force - the Commissioner of Police; and
- (d) in the case of any other State Service - the Permanent Head of that State Service; and
- (e) in the case of a Department of the National Public Service - the Departmental Head; and
- (f) in the case of a statutory body - the statutory head of that body; and
- (g) in the case of a Provincial Government - the Government of the Province; and
- (h) in the case of a Local-level Government - the President or Chairman of that Local-level Government; and
- (i) in the case of any other governmental body - the Permanent Head of that governmental body; and
- (j) in the case of a natural person - that person.

3. QUALIFICATIONS FOR APPOINTMENT.

(1) A person is not qualified for appointment as a Commissioner unless -

- (a) in the opinion of the Committee, he is a person of integrity, independence of mind, resolution and high standing within the community; and
- (b) he has demonstrated experience in human rights matters.

(2) A person is not qualified for appointment as the President of the Commission unless he is -

- (a) qualified for appointment as a Judge of the National Court; or
- (b) a former Judge of the National Court.

(3) A person is not qualified for appointment as an Advisory Commissioner unless -

- (a) in the opinion of the Committee, he is a person of integrity, independence of mind, resolution and high standing within the community; and
- (b) he has demonstrated experience in human rights matters; and
- (c) in the case of one Advisory Commissioner, he is recommended for appointment by the Melanesian Council of Churches; and
- (d) in the case of the other Advisory Commissioners, they are recommended by the Association of Non Governmental Organizations.

(4) At least one of the Commissioners, other than the President, shall have extensive experience in management or administration.

4. TERM OF OFFICE.

(1) The term of appointment of -

- (a) a Commissioner; and

Organic Law on the Human Rights Commission—continued

(b) an Advisory Commissioner,
shall be six years.

(2) A Commissioner and an Advisory Commissioner are eligible for re-appointment.

5. DISQUALIFICATIONS FROM OFFICE.

A person is not qualified to be, or to remain a Commissioner or an Advisory Commissioner if he is -

- (a) a member of the Parliament; or
- (b) a member of a Provincial Government; or
- (c) a member of a Local-level Government; or
- (d) an office-holder in a registered political party; or
- (e) an undischarged bankrupt or insolvent; or
- (f) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (g) under sentence of death or imprisonment.

6. SPECIAL CONDITIONS OF EMPLOYMENT.

(1) A Commissioner or an Advisory Commissioner shall not -

- (a) actively engage in politics; or
- (b) subject to Subsection (2), engage either directly or indirectly in the management or control of a corporation or other body of persons carrying an business for profit; or
- (c) except on leave granted by the Head of State, or because of illness, absent himself from duty for more than 14 consecutive days or more than 28 days in any period of 12 months; or
- (d) subject to Subsection (3), acquire by way of gift or otherwise, or use or hold in any other manner any interest in, any property in Papua New Guinea or solicit, accept or receive any other benefit in addition to his terms and conditions of employment.

(2) Nothing in Subsection (1)(b) prevents a Commissioner or an Advisory Commissioner from holding office in a professional body in relation to which his qualifications are relevant.

(3) Subject to any Organic Law made for the purposes of Division III.2 (*leadership code*) of the *Constitution*, a Commissioner or an Advisory Commissioner may purchase, lease or otherwise acquire land in the same manner and subject to the same conditions as any other citizen.

7. RESIGNATION.

(1) A Commissioner or an Advisory Commissioner may resign by giving three month's notice in writing of his intention to do so to the Head of State.

Organic Law on the Human Rights Commission—continued

(2) The period of three months specified in Subsection (1) shall be deemed to commence on the twenty-second day after the receipt by the Head of State of the notice except where the Head of State, acting with, and in accordance with, the advice of the Committee, by notice in writing to the member, fixes an earlier date for the commencement.

(3) A Commissioner or an Advisory Commissioner may withdraw his resignation at any time before the period of three months referred to in Subsection (1) commences.

8. ACTING PRESIDENT, ACTING COMMISSIONER AND ACTING ADVISORY COMMISSIONER.

A person suitably qualified may be appointed to be an acting President or an acting Commissioner or an Acting Advisory Commissioner -

- (a) to fill temporarily a vacancy; or
- (b) in the case of the absence from duty for any reason of the President or of a Commissioner or of an Advisory Commissioner.

9. DECLARATION OF OFFICE.

Before entering upon the duties of their offices, the President, the Commissioners and the Advisory Commissioners shall make the Declaration of Office before the Head of State or a person appointed by the Head of State for the purpose.

PART II - POWERS, ETC., OF THE COMMISSION.**10. POWERS OF THE COMMISSION.**

The Commission has the following powers -

- (a) to investigate violations or alleged violations of human rights on its own volition or on complaint by a person, group or body;
- (b) to investigate particular cases of violation or of systematic violation of human rights and in relation to such cases to do any one or more of the following as to the Commission seems or seem appropriate :-
 - (i) to conciliate and mediate;
 - (ii) to refer cases to the appropriate court or other administrative body;
 - (iii) to make determinations, both binding and advisory;
 - (iv) to provide or grant remedies including compensation and, in the case of dismissal from employment or other appointment, reinstatement;
 - (v) to have determinations made by the Commission registered as orders by an appropriate court;

Organic Law on the Human Rights Commission—continued

- (c) to review existing and proposed legislation for consistency with human rights and to recommend legislative and other measures to protect human rights; and
- (d) to intervene in court proceedings, by leave of or at the request of the court, where human rights issues arise; and
- (e) to seek advisory opinions of the Supreme Court on issues relating to human rights under Sections 18 and 19 of the *Constitution*; and
- (f) to appoint tribunals and other bodies to conduct investigations or undertake enquiries; and
- (g) to do such other things as it is authorized to do under a Constitutional Law or an Act of the Parliament; and
- (h) generally to do all things as may be necessary for it to achieve its purposes and carry out its functions under the *Constitution*.

11. PROCEDURES OF THE COMMISSION.

- (1) The Commission shall meet at such times and places as are fixed by the President.
- (2) An Advisory Commissioner is not entitled to attend a meeting of the Commission unless invited to do so on a particular occasion for a specified purpose.
- (3) The President shall preside at all meetings of the Commission.
- (4) For the purposes of conducting an inquiry under this Law, the quorum at a meeting of the Commission is two Commissioners.
- (5) All matters before a meeting of the Commission shall be decided in accordance with the majority of votes of those Commissioners present and voting.
- (6) In the event of an equality of votes on a matter, the President has a casting, as well as a deliberative, vote.
- (7) The Commission shall cause minutes of its meetings to be kept.
- (8) Subject to this Law, the procedures of the Commission are as determined by it.

12. ADVISORY COMMISSION MEETINGS.

- (1) The first meeting of Advisory Commissioners after the coming into operation of this Organic Law shall take place at a time and place fixed by the President.
- (2) At the first meeting the Advisory Commissioners shall elect one of their number to be Chairman who shall preside at all meetings of the Advisory Committee and who shall hold office until a new Chairman is elected as circumstances require.

Organic Law on the Human Rights Commission—continued

person in charge of the place where the correspondent is in custody or is confined shall make all facilities available that may be necessary to have the letter properly forwarded.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding 12 months.

(3) The Commission shall investigate the subject of any complaint received by it, other than a complaint that relates to a matter outside its jurisdiction, unless, in its deliberate judgement, it decides not to do so, before commencing or during the investigation, because -

- (a) the complaint is trivial, frivolous, vexatious or not made in good faith; or
- (b) the complaint is not within the jurisdiction of the Commission; or
- (c) the complainant has available to him another remedy or channel of complaint that he could reasonably be expected to use; or
- (d) the complainant has not a sufficient interest in the subject of the complaint; or
- (e) the complaint has been too long delayed to justify an investigation; or
- (f) the Commission has before it other matters more worthy of its attention; or
- (g) the resources of the Commission are insufficient for adequate investigation.

and may defer or discontinue an investigation for any of the same reasons.

(4) No decision by the Commission to decline to investigate or to defer or discontinue an investigation into the subject of a complaint affects the Commission's power to inquire generally into a matter on its own initiative.

15. PROCEEDINGS OF THE COMMISSION.

(1) Before investigating any matter within its jurisdiction, the Commission shall inform -

- (a) the complainant; and
- (b) the person to whom the investigation relates and the responsible person, of its intention to make the investigation.

(2) Every investigation by the Commission under this Law shall be conducted in private.

(3) The Commission may hear or obtain information from any person who the Commission considers can assist and may make whatever inquiries it thinks fit.

(4) Nothing in this Law compels the Commission to hold any hearing and no person is entitled as of right to be heard by the Commission except that -

Organic Law on the Human Rights Commission—continued

- (a) where a report of the Commission may affect a State Service, Provincial Government or statutory body, the Commission shall provide reasonable opportunity for the Permanent Head of that Service or the statutory head of that body, as the case may be, to comment on the subject of the investigation; and
- (b) the Commission shall not make any comment in its report that is adverse to or derogatory of any person without -
 - (i) providing him with reasonable opportunity of being heard; and
 - (ii) fairly setting out his defence in its report.

(5) The Commission shall, in its discretion, at any time, during or after any investigation, consult any Minister who is concerned in the matter of the investigation.

(6) On the request of any Minister in relation to any investigation, or in any case where any investigation relates to any recommendation made to a Minister, the Commission shall consult that Minister after making the investigation and before forming a final opinion on the matter it has investigated.

(7) In conducting an investigation the Commission shall not be bound by strict rules of evidence or procedure but shall at all times conform to natural justice.

16. EVIDENCE.

(1) Subject to the provisions of this section and of Section 17, the Commission may from time to time require any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission to furnish to it that information and to produce any documents, papers or things that, in the opinion of the Commission, relate to any matter being investigated by it and that may be in the possession or control of that person.

(2) The Commission may, by instrument in writing, summon any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission, to attend the Commission at a time and place specified in the summons for examination by it on oath or affirmation.

(3) The Commission may administer an oath or affirmation to a person appearing as a witness before the Commission whether the witness has been summoned or appears without being summoned, and may examine the witness on oath or affirmation.

(4) A witness attending before the Commission has the same privileges and is subject to the same penalties in relation to the giving of information, the answering of questions and the production of documents, papers and things as a witness before the National Court.

Organic Law on the Human Rights Commission—continued

(5) Except on the trial of any person for perjury in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commission is admissible in evidence against any person in any court or at any inquiry or any other proceedings, and no evidence in respect of proceedings before the Commission shall be given against any person.

(6) Where any person is required by the Commission to attend before it for the purposes of this section, the person is entitled to the same fees, allowance and expenses as if he were a witness in the National Court.

17. DISCLOSURE OF CERTAIN MATTERS NOT TO BE REQUIRED.

(1) Where the Prime Minister, after consultation with the President, certifies that the giving of any information or the answering of any question or the production of any documents or papers or things is likely to -

- (a) prejudice the security, defence or international relations of Papua New Guinea (including Papua New Guinea's relations with the Government of any other country or with any international organization) or the investigation or detection of offences; or
- (b) involve the disclosure of proceedings, deliberations or decisions of the National Executive Council, or of any committee of that Council which the Prime Minister certifies relate to matters of a secret or confidential nature, disclosure of which would be injurious to the public interest.

the Commission shall not require the information or answer to be given or, as the case may be, the document, paper or thing to be produced.

(2) Subject to Subsection (1), any law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question, on the ground that the disclosure of the document, paper or thing or the answering of the question would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Commission.

18. COMMISSIONERS, ETC., TO MAINTAIN SECRECY.

(1) Before entering on the exercise of the duties of his office, a Commissioner and an Advisory Commissioner shall take an oath or make an affirmation in the form in Part I of Schedule 1 before a Judge of the National Court.

(2) Every officer and employee of the Commission shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their duties and shall, before entering on the exercise of their duties, take an oath or make an affirmation in the form in Part II of Schedule 1 before a Commissioner.

Organic Law on the Human Rights Commission—continued

(3) Notwithstanding the provisions of Subsection (1), the Commission may disclose for the purposes of any investigation being conducted by it and in any report made by it, such matters as in its opinion ought to be disclosed in order properly to investigate the matter before it or establish grounds for its conclusions and recommendations, as the case may be.

(4) The power conferred by Subsection (3) does not extend to any matter that might prejudice the security, defence or international relations of Papua New Guinea (including Papua New Guinea's relations with the Government of any other country or with any international organization) or the investigation or detection of offences, or that might involve the disclosure of the deliberations of the National Executive Council.

19. PRESERVATION OF SECRECY.

(1) The Commission may direct that any evidence given before it, or any document, paper or thing produced to it, be not published.

(2) A person who publishes or discloses to any person -

(a) any evidence given before the Commission; or

(b) any of the contents of any document, paper or thing,

which the Commission has directed not to be published without the consent in writing of the Commission, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not 3 years or both.

20. CONCILIATION.

(1) The Commission may, before commencing an investigation, or during or after completing an investigation, call a conciliation conference of the parties to the investigation by formally requesting, by post, telephone, facsimile or otherwise, the attendance of each party at a time and place specified, and where a person fails to comply with such a request, the Commission may issue a summons requiring the person to attend a conference at a time and place specified in the summons.

(2) The objectives of a conciliation conference are to identify the matters at issue between the parties and to use the best endeavours of the Commission to secure a settlement between the parties on the matters at issue.

21. PROCEDURE AFTER INVESTIGATION.

(1) After completing an investigation, the Commission shall inform the parties of the result of the investigation and may -

(a) determine that the complaint has not been sustained; or

(b) determine that the complaint has not been investigated further for one of the reasons specified in Section 14(3); or

(c) determine that the complaint has been substantiated and make a binding or an advisory determination which may include any one or more of the following:-

Organic Law on the Human Rights Commission—*continued*

- (i) a determination that a violation of human rights has occurred and should not be repeated or continued;
 - (ii) a determination that the person complained against should perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;
 - (iii) a determination that the person complained against should employ, re-employ or promote the complainant;
 - (iv) a determination that the person complained against should pay to the complainant damages by way of compensation for any loss or damage suffered by reason of the conduct complained of;
 - (v) a determination that the termination of a contract or agreement should be varied to redress any loss or damages suffered by the complainant;
 - (vi) a determination that it would be inappropriate for any further action to be taken in the matter; or
- (d) determine that the complaint has been substantiated and refer it to any service, body, person or other appropriate authority with recommendations for action, and may request the authority to notify the Commission as to the steps (if any) the authority intends to take to give effect to the recommendations of the Commission.

(2) Before making a binding determination under Subsection (1)(c), the Commission shall endeavour to conciliate between the parties.

(3) Any party dissatisfied with a binding determination made by the Commission under Subsection (1)(c) may appeal to the National Court against the whole or any part of the determination.

(4) The Commission shall act according to equity, good conscience and the substantial merits of matters before it without regard to technicalities.

(5) The Commission shall give reasons for its determinations under Subsection (1) and may state any findings of fact on which the determination is based.

(6) The damage referred to in Subsection (1)(c) includes injury to the complainant's feelings or humiliation suffered by the complainant.

(7) A determination by the Commission under Subsection (1)(c)(iv) on a representative complaint -

- (a) may provide for payment of specified amounts worked out in a manner specified by the Commission; and
- (b) where it provides for payment in accordance with Paragraph (a), shall make provision for the payment of the money to the complainants concerned.

Organic Law on the Human Rights Commission—continued

(8) Where the Commission makes a determination under Subsection (1)(c)(iv) on a representative complaint, the Commission may give such directions (if any) as it thinks just in relation to -

- (a) the manner in which a class member is to establish his or her entitlement to the payment of an amount under the determination; and
- (b) the manner for determining any dispute regarding the entitlement of a class member to the payment.

(9) A determination by the Commission under Subsection (1)(c)(iv) may be registered as an order by an appropriate court.

(10) In this section, "complainant", in relation to a representative complaint, means the class members.

22. PROCEEDINGS NOT TO BE QUESTIONED OR TO BE SUBJECT TO REVIEW.

No proceeding of the Commission shall be held bad for want of form, and, except on the ground of lack of jurisdiction or as provided in Section 21(3), no proceeding or decision of the Commission shall be challenged, reviewed, quashed or called into question in any court.

PART IV. - THE SERVICE OF THE COMMISSION.**23. APPOINTMENT OF OFFICERS.**

(1) The Commission -

- (a) shall appoint a Secretary to the Commission; and
- (b) within the limit of funds lawfully available to it, may appoint such other officers and employees as, in its opinion, are necessary for the efficient performance of the functions of the Commission.

(2) The Secretary and other officers and employees of the Commission constitute the Service of the Commission.

(3) Subject to this Part, to the Regulations and to the *Salaries and Conditions Monitoring Committee Act 1988*, officers hold office on such terms and conditions as the Commission, fixes.

(4) If an officer appointed under this section was, immediately before his appointment, an officer of the National Public Service, his service as an officer of the Commission shall be counted as service in the National Public Service for the purposes of determining his rights (if any) in respect of -

- (a) absence or leave on the ground of illness; and
- (b) furlough or pay in lieu of furlough (including pay to dependants or personal representatives on the death of the officer).

Organic Law on the Human Rights Commission—continued**24. CONTROL OF SERVICE.**

The Service of the Commission is subject to the control and direction of the Commission.

25. REGULATIONS FOR THE SERVICE OF THE COMMISSION.

The Regulations may make provision in relation to the Service of the Commission and in particular, may -

- (a) subject to the *Salaries and Conditions Monitoring Committee Act 1988*, prescribe the terms and conditions of employment of officers; and
- (b) make provision for the establishment of a superannuation scheme to provide benefits for officers of the Commission on retirement, resignations, retrenchment or death.

26. TEMPORARY AND CASUAL EMPLOYEES.

(1) The Commission may appoint such temporary and casual employees as it thinks necessary for the purposes of this Law.

(2) Employees appointed under Subsection (1) shall be employed on such terms and conditions as the Commission determines.

PART V. - FINANCE.**27. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.**

(1) Part VIII of the *Public Finances (Management) Act 1995* (other than Sections 50, 51, 53 and 59) applies to and in relation to the Commission.

- (2) The Funds of the Commission shall consist of -
- (a) any money appropriated by Parliament for the purposes of the Commission and paid to the Commission; and
 - (b) all other moneys lawfully received by the Commission for the purposes of the Commission; and
 - (c) all accumulations of income derived from any such money.

PART VI - OFFENCES.**28. FAILURE TO ATTEND OR PRODUCE DOCUMENTS.**

A person who, having been summoned to attend the Commission, fails without reasonable excuse, the burden of proof of which lies on him, to attend the Commission or to produce any documents, books or writings in his custody or control that he is required by the summons to produce, is guilty of an offence.

Penalty: A fine not exceeding K1000.00 or imprisonment for a term not exceeding six months.

Organic Law on the Human Rights Commission—continued**29. REFUSING TO BE SWORN OR GIVE EVIDENCE.**

A person appearing as a witness before the Commission who refuses to be sworn or to make an affirmation or to answer any questions relevant to the inquiry put to him by a member of the Commission, or having attended leaves the Commission without the permission of a Commissioner, is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding three months.

30. CONTEMPT OF THE COMMISSION.

A person who wilfully insults a Commissioner or Advisory Commissioner, or wilfully interrupts the proceedings of the Commission, or is in any manner guilty of wilful contempt of the Commission, is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding three months.

31. VICTIMISATION.

(1) A person who wilfully victimises any person on the ground that that person, or any associate of that person -

- (a) intends to make use of his or her rights under this Law; or
- (b) has made use of his or her rights, or promoted the rights of some other person, under this Law; or
- (c) has given information or evidence in relation to any complaint, investigation or proceeding under this Law; or
- (d) has declined to do any act which would contravene this Law; or
- (e) has otherwise done anything under or by reference to this Law,

is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding three years or both.

(2) It shall be a defence for a person charged with an offence under Subsection (1), the burden of proof of which lies on him, that the person victimised was so treated because he had made a false allegation to the Commission or otherwise acted in bad faith.

32. GIVING FALSE EVIDENCE.

A person appearing as a witness before the Commission, who wilfully gives false evidence, is guilty of perjury and is liable to prosecution and punishment accordingly.

33. PROSECUTION FOR OFFENCES.

Proceedings for an offence under this Law -

- (a) shall be brought in the National Court; and
- (b) may not be brought against any person except with the consent in writing of the Commission.

Organic Law on the Human Rights Commission—continued**PART VII. - MISCELLANEOUS.****34. PRIVILEGES.**

(1) A Commissioner or an Advisory Commissioner or an officer or employee of the Commission is not liable for any act or omission done or made *bona fide* and without negligence under or for the purposes of this Law.

(2) A Commissioner or an Advisory Commissioner or an officer or employee of the Commission shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Commission under this Law are privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

35. POWER OF ENTRY.

(1) For the purposes of this Law, but subject to this section, a Commissioner may, at any reasonable time, enter upon any and inspect the premises and, subject to Section 13 carry out in the premises any investigation that is within its jurisdiction.

(2) Before entering upon any premises the Commissioner shall notify the Permanent Head or statutory head or other person in charge of the premises.

(3) The Prime Minister, may after consultation with the President, from time to time, exclude the operation of Subsection (1) to any premises if he is satisfied that the exercise of the powers conferred by this section is likely to prejudice the security, defence or international relations of Papua New Guinea (including Papua New Guinea's relations with the Government of any other country or with any international organization).

36. REGULATIONS.

The Head of State, acting with, and in accordance with, the advice of the National Executive Council, may make regulations, not inconsistent with this law, prescribing all matters that by this Law are required or permitted to be prescribed for carrying out or giving effect to this Law, and generally for achieving the purposes of this Law, and in particular for prescribing penalties not exceeding K1000.00 and default penalties not exceeding K100.00 for offences against or contraventions of any regulations so made.

37. SAVINGS.

The provisions of this Law are in addition to the provisions of any other enactment, subordinate enactment or any rule of law under which any remedy or right of appeal or objection is provided for any person or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Law limits or affects any such remedy or right of appeal or objection or procedure.

Organic Law on the Human Rights Commission—continued

SCHEDULES.

SCHEDULE 1.

Sec. 18.

PART I.

Oath and Affirmation of Secrecy to be taken or made by Commissioner or Advisory Commissioner.

OATH,

I, _____, a Commissioner/an Advisory Commissioner of the Human Rights Commission, do swear that I will at all times maintain secrecy in relation to the affairs of the Commission and, in particular, that I will not directly or indirectly communicate or divulge any information that comes to my knowledge in the performance of my functions as a member of the Commission, except under compulsion or obligation of law or as provided by law.

So help me God!

AFFIRMATION.

I, _____, a Commissioner/an Advisory Commissioner of the Human Rights Commission, do solemnly and sincerely promise and declare that I will at all times maintain secrecy in relation to the affairs of the Commission and, in particular, that I will not directly or indirectly communicate or divulge any information that comes to my knowledge in the performance of my functions as an officer/employee of the Commission, except under compulsion or obligation of law or as provided by law.

So help me God!

Organic Law on the Human Rights Commission—*continued*

PART II.

Oaths and Affirmation of Secrecy to be taken or made by officers and employees of the Commission.

OATH.

I, _____, an officer or employee of the Human Rights Commission, as the case requires, do swear that I will at all times maintain secrecy in relation to the affairs of the Commission and, in particular, that I will not directly or indirectly communicate or divulge any information that comes to my knowledge in the performance of my functions as an officer/employee of the Commission, except under compulsion or obligation of law or as provided by law.

So help me God!

AFFIRMATION.

I, _____, an officer or employee of the Human Rights Commission, as the case requires, do solemnly and sincerely promise and declare that I will at all times maintain secrecy in relation to the affairs of the Commission and, in particular, that I will not directly or indirectly communicate or divulge any information that comes to my knowledge in the performance of my functions as an officer/employee of the Commission, except under compulsion or obligation of law or as provided by law.