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Draft of 6/04/05

INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

ALTERATION TO THE CONSTITUTION

THE Government proposes to alter the Constitution pursuant to Section 14(2) (*Making of alterations to the Constitution and Organic Laws*) of the Constitution, I, Jeffrey Nape, Speaker of the National Parliament, hereby publish the proposed Law.

Draft of 6/04/05

INDEPENDENT STATE OF PAPUA NEW GUINEA

PROPOSED LAW TO ALTER THE CONSTITUTION

Constitutional Amendment (Provincial Governments and Local-level Governments)

ARRANGEMENT OF CLAUSES

1. Compliance with Constitutional requirements.
2. Suspension of Provincial Governments and Local-level Governments (Amendment of Section 187E).
3. Re-establishment of Provincial Governments and Local-level Governments (Amendment of Section 187F).

Draft of 6/04/05

INDEPENDENT STATE OF PAPUA NEW GUINEA

PROPOSED LAW TO ALTER THE CONSTITUTION

entitled

Constitutional Amendment (Provincial Governments and Local-level Governments)

being

A Law to alter the Constitution by making provision relating to the suspension and the withdrawal of powers, functions and finances of Provincial Governments and Local-level Governments,

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.

Constitutional Amendment (Provincial Governments and Local-level Governments)—continued**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

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

- (a) the right to liberty of the person conferred by Section 42; and
- (b) the right to freedom of expression and publication conferred by Section 46; and
- (c) the right peacefully assemble and associate and to form or belong to, or not to belong to, political parties, industrial organizations or other associations conferred by Section 47; and
- (d) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48; and
- (e) the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects conferred by Section 49; and
- (f) the right of reasonable access to official documents conferred by Section 51; and
- (g) the right of freedom of movement conferred by Section 52,

of the constitution is a law that is made (pursuant to Section 38 of the Constitution) taking account of the National Goals and Directive Principles for the purpose of giving effect to the public interest in public order and public welfare.

2. SUSPENSION OF PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS (AMENDMENT OF SECTION 187E).

Section 187E of the Constitution is amended:—

- (a) by repealing the heading and replacing it with the following:—
“Suspension and Withdrawal of Powers, Functions and Finances of Provincial and Local-Level Governments.”; and
- (b) by repealing Subsection (1) and replacing it with the following new subsections:—
“(1) The National Executive Council may provisionally suspend a Provincial Government or a Local-level Government where that Provincial Government or that Local-level Government undermines or attempts to undermine the authority of the National Parliament or the National Unity, subject to confirmation by an absolute majority vote of the Parliament”
“(1A) The National Executive Council may provisionally withdraw all or any of the powers, functions or finances of a Provincial Government or a Local-level Government in such circumstances as may be specified under an Organic Law, subject to confirmation by an absolute majority vote of the Parliament.”; and
- (c) in Subsection (2) by repealing the reference “Subsection (1)” and replacing it with the following:—
“Subsections (1) and (1A).”; and
- (d) in Subsection (3) by repealing the reference “Subsection (1)” and replacing it with the following:—
“Subsections (1) and (1A).”.

3. RE-ESTABLISHMENT OF PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS (AMENDMENT OF SECTION 187F).

Section 187F of the Constitution is amended:—

- (a) by repealing the heading and replacing it with the following:—
“Re-establishment of, and Restoration of Powers, Functions and Finances of Provincial and Local-Level Governments.”; and
- (b) by repealing Subsection (1) and replacing it with the following:—
“(1) Subject to Subsections (2) and (3), if a Provincial Government or a Local-level Government:—
(a) is suspended; or
(b) its powers, functions or finances are withdrawn, under Section 187E, arrangements shall be made to:—
(c) re-establish it in the case of suspension; or
(d) restore its powers, functions or finances in the case of the withdrawal of its powers, functions or finances,
within nine months from the effective date of suspension or withdrawal, as the case may be.”.

Draft of 6/04/05

INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS

THE Government proposes to introduce the *Organic Law on Provincial Governments and Local-level Governments* and pursuant to Section 14(2) of the Constitution, I, Jeffrey Nape, Speaker of the National Parliament, hereby publish the proposed Law.

Draft of 6/04/05

INDEPENDENT STATE OF PAPUA NEW GUINEA

PROPOSED LAW TO ALTER THE ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law

ARRANGEMENT OF CLAUSES

1. Compliance with Constitutional requirements.
2. Repeal of and replacement of Division III.8.
 - “Division 8.—Withdrawal of Powers, Functions or Finances of Provincial Governments and Local-level Governments.”
 - “Subdivision A.—Withdrawal Generally.”
 - “51. Application of Division III.8.”
 - “52. Withdrawal of Powers, Functions or Finances.”
 - “53. Notification of Withdrawal to Parliament.”
 - “53A. Investigation by National Investigation Committee.”
 - “53B. National Investigation Committee.”
 - “53C. Passing of Withdrawal Motion and circumstances in which Provisional withdrawal lapses.”
 - “53D. Commencement of Withdrawal.”
 - “Subdivision B.—Effect, etc., of Withdrawal.”
 - “53E. Application of Subdivision B.”
 - “53F. Effect of Withdrawal.”
 - “53G. Exercise of Withdrawn Powers, etc., of a Provincial Government or a Local-level Government.”
 - “53H. Validity and effect of exercise of withdrawn Powers, etc.”
 - “Subdivision C.—Restoration of powers, etc.”
 - “53I. Restoration of Powers, etc.”
 - “53J. Compliance with certain conditions.”
 - “53K. Section 187F of the Constitution not affected.”

Draft of 6/04/05

INDEPENDENT STATE OF PAPUA NEW GUINEA

PROPOSED LAW TO ALTER THE ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS

entitled

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law

being

A Law to amend the *Organic Law on Provincial Governments and Local-level Governments*,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.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

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

- (a) the right to liberty of the person conferred by Section 42; and
- (b) the right to freedom of expression and publication conferred by Section 46; and
- (c) the right peacefully assemble and associate and to form or belong to, or not to belong to, political parties, industrial organizations or other associations conferred by Section 47; and
- (d) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48; and
- (e) the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects conferred by Section 49; and
- (f) the right of reasonable access to official documents conferred by Section 51; and
- (g) the right of freedom of movement conferred by Section 52,

of the Constitution, is a law that is made pursuant to Section 38 of the Constitution taking account of the National Goals and Directive Principles for the purpose of giving effect to the public interest in public order and public welfare.

2. REPEAL AND REPLACEMENT OF DIVISION III.8.

Part III of the *Organic Law on Provincial and Local-level Governments* is amended by repealing Division 8 and replacing it with the following:—

“Division 8.—*Withdrawal of Powers, Functions and Finances of Provincial Governments and Local-level Governments.*”

“Subdivision A.—*Withdrawal Generally.*”

“51. APPLICATION OF DIVISION III.8.”

This Division applies in relation to the withdrawal of powers, functions or finances of a Provincial Government or a Local-level Government under Section 187E(1A) of the Constitution on a ground set out in Section 52.

“52. WITHDRAWAL OF POWERS, FUNCTIONS OR FINANCES.”

(1) Where there are findings by:—

- (a) the Auditor-General:—
 - (i) of corruption or abuse of power within a Provincial Government or a Local-level Government so as to render the government either ineffective or lacking in public respect and confidence; or
 - (ii) of failure by a Provincial Government or a Local-level Government to keep or cause to be kept proper accounts and records of transactions or dealings; or
 - (iii) that a Provincial Government or a Local-level Government has an ineffective internal control system; or
 - (iv) that a Provincial Government or a Local-level Government has failed to submit reports as required by law; or
- (b) the Minister responsible for provincial and local-level government matters, or a Special Investigating Committee appointed for the purpose by the National Executive Council, that:—
 - (i) there has been a breakdown in the administration of a provincial or local-level government area; or
 - (ii) there has been deliberate and persistent frustration of or failure to comply with lawful directions of the National Government; or
 - (iii) a Provincial Government or a Local-level Government has deliberately and persistently disobeyed applicable laws, including the Constitution, an Organic Law (including this Organic Law) or any National Legislation applicable to the provincial or local-level government area; or
 - (iv) there has been a failure to carry out functions in accordance with the development policies and standards of the National Government,

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

the National Executive Council may, after receiving a report prepared by the Auditor-General, the Minister or the Special Investigating Committee on his or its findings, as the case may be, direct the Provincial Government or the Local-level Government concerned to rectify the matter and such direction shall specify the manner and time in which such rectification is to be carried out.

“(2) Where a Provincial Government or a Local-level Government refuses or fails to comply with a direction issued under Subsection (1), the National Executive Council may, by notice in the *National Gazette*, provisionally:—

- (a) withdraw all or any of the powers and functions of; or
- (b) withdraw and withhold all or any finances to; or
- (c) withdraw all or any of the powers and functions of, and withdraw and withhold all or any finances to,

the Provincial Government or a Local-level Government, as the case may be.

“(3) This section does not prevent the Auditor-General, the Minister responsible for provincial government and local-level government matters or the Special Investigating Committee, as the case may be, from referring any person, including members of a Provincial Government, a Local-level Government or any other person, to the Ombudsman Commission, the Public Prosecutor, the Police or any other relevant authority for further investigation and action.

“53. NOTIFICATION OF WITHDRAWAL TO PARLIAMENT.”

(1) Where the powers, functions or finances of a Provincial Government or a Local-level Government has been provisionally withdrawn under Section 52, the Minister responsible for provincial government and local-level government matters shall:—

(a) forward to the Speaker of the Parliament, for presentation to the Parliament:—

- (i) the findings submitted under Section 52(1); and
- (ii) and a copy of the National Executive Council decision; and

(b) within the first seven sitting days of the Parliament following the withdrawal under Section 52, move a motion confirming the withdrawal.

“(2) A vote on a motion under Subsection (1)(b) shall:—

- (i) be taken within the first seven sitting days following the tabling of a report from the National Investigating Committee as provided in Section 53A; and
- (ii) be supported on a division, in accordance with the Standing Orders of the Parliament, by an absolute majority vote after opportunity for debate on the merits.

“53A. INVESTIGATION BY NATIONAL INVESTIGATION COMMITTEE.”

(1) Where a motion confirming the withdrawal of powers, functions or finances of a Provincial Government or a Local-level Government has been moved under Section 53(1)(b), the motion, together with the documents presented under Section 53(1)(a) shall stand referred to the National Investigation Committee for investigation into and report on the matters giving rise to the provisional withdrawal of the powers, functions or finances of that Provincial Government or Local-level Government.

“(2) A report by the National Investigating Committee under Subsection (1) shall be submitted to the Speaker within 90 days following the date of referral.

“(3) A report received under Subsection (2) shall be tabled by the Speaker, immediately if the Parliament is in session, or if the Parliament is not in session, on the next sitting day following its receipt by him.

“53B. NATIONAL INVESTIGATION COMMITTEE.”

(1) For the purposes of this Division, “National Investigation Committee” means the National Investigation Committee established under Section 61.

“(2) The functions of the Committee, for the purposes of this Division, are, in accordance with Section 53A, to investigate into and report on the matters giving rise to the provisional withdrawal of powers, functions or finances of a Provincial Government or a Local-level Government.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

“(3) For the purposes of the exercise and performance of its functions under this Division, the Committee may:—

- (a) summon witnesses, by instrument under the hand of the Chairman; and
- (b) take evidence on oath or affirmation and administer oaths and affirmations for the purpose; and
- (c) by instrument under the hand of the Chairman, require a person to produce a document, book or paper in his possession or control.

“(4) A person who, when summoned or required under this section to give evidence or to produce a document, book or paper in his possession or control, fails without reasonable excuse (proof of which is on him):—

- (a) to attend before the Committee at the time and place appointed in the summons or requirement; or
 - (b) to be sworn or make an affirmation; or
 - (c) to answer any question put to him by a member of the Committee; or
 - (d) to produce a document, book or paper,
- is guilty of an offence.

Penalty: A fine not exceeding K500.00.

“(5) When performing its functions under this Division, the Committee shall determine its procedures.

“53C. PASSING OF WITHDRAWAL MOTION AND CIRCUMSTANCES IN WHICH PROVISIONAL WITHDRAWAL LAPSES.”

(1) After consideration of a report tabled under Section 53A(3), the Parliament may, by an absolute majority vote, confirm the withdrawal of powers, functions or finances.

“(2) Where a motion under Section 53(1)(b) has not been passed within the first 14 sitting days of the Parliament following the tabling of a report from the National Investigation Committee under Section 53A, the withdrawal lapses.

“53D. COMMENCEMENT OF WITHDRAWAL.”

The withdrawal of powers, functions or finances of a Provincial Government or a Local-level Government takes effect at such time as is specified in the notice under Section 52, or if no such time is so specified at midnight on the day on which the notice is published in the *National Gazette*.

“Subdivision B.—Effect, etc., of Withdrawal.”

“53E. APPLICATION OF SUBDIVISION B.”

(1) This subdivision applies in relation to the withdrawal of powers, functions or finances of a Provincial Government or a Local-level Government:—

- (a) by the National Executive Council, provisionally, under Section 187E(1A) of the Constitution; or
- (b) by the Parliament in accordance with Subdivision A.

“(2) For the purposes of this subdivision, “withdrawal” includes provisional withdrawal.

“53F. EFFECT OF WITHDRAWAL.”

(1) Subject to Subsection (2), where the powers, functions or finances of a Provincial Government or a Local-level Government are withdrawn, as provided for by Section 187E(1A) of the Constitution, the withdrawn power, function or finances are divested from it and vested in the National Executive Council, to be exercised and performed in accordance with Sections 53H.

“(2) The withdrawal of a power, function or finances of a Provincial Government or a Local-level Government does not affect:—

- (a) any right, privilege, obligation or liability acquired, accrued or incurred under or in respect of the withdrawn power, function or finances; or
- (b) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation or liability.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

“53G. EXERCISE OF WITHDRAWN POWERS, ETC., OF A PROVINCIAL GOVERNMENT OR A LOCAL-LEVEL GOVERNMENT.

(1) While the powers, functions or finances of a Provincial Government or a Local-level Government are withdrawn, the National Executive Council has and may exercise and perform all the withdrawn powers or functions, and shall deal with all the finances of, that Provincial Government or Local-level Government.

“(2) The power conferred by Subsection (1) may be exercised, subject to Subsection (3), and any decision or direction of the National Executive Council, by a Minister authorized by the National Executive Council for the purpose, acting on behalf of the Council.

“(3) In performing his functions and responsibilities under Subsection (2), the Minister shall be assisted:—

(a) in the case of a province which is also an open electorate, by a Member of the Parliament from the province concerned appointed by the National Executive Council; and

(b) in any other case, by two Members of the Parliament from the province concerned, selected by the Members of the Parliament from that province and appointed by the National Executive Council.

“53H. VALIDITY AND EFFECT OF EXERCISE OF WITHDRAWN POWERS, ETC.,

(1) The exercise or performance of a power, function, duty or responsibility of a Provincial Government or Local-level Government by the National Executive Council in accordance with this Division is as valid and effectual, and has the same effect, for all purposes as if it had been exercised or performed by the Provincial Government or the Local-level Government.

“(2) All things that might have been done or suffered, or might have continued to be done or suffered, by or in relation to the Provincial Government or Local-level Government may be done or suffered, or may continue to be done or suffered, by or in relation to the State in the name and on behalf of the Provincial Government or Local-level Government.

“(3) The exercise or performance of a power, function, duty or responsibility of a Provincial Government or Local-level Government by the National Executive Council in accordance with this Division does not affect the identity or existence of the Provincial Government or the Local-level Government and of its separate rights and liabilities, and for those purposes the National Executive Council shall be treated as the agent of the Provincial Government or Local-level Government for all purposes.

“Subdivision C.—Restoration of powers, etc.,”

“53I. RESTORATION OF POWERS, ETC.,”

(1) Where the powers, functions or finances of a Provincial Government or Local-level Government have been provisionally withdrawn under this Division, the National Executive Council may, on the recommendation of the Minister responsible for provincial government and local-level government matters, given after receiving a report from the Auditor-General, the Minister responsible for provincial government and local-level government matters or the Special Investigating Committee, recommending the restoration of the powers, functions or finances, direct that, with effect from a specified date, the Provincial Government or the Local-level Government is authorized to exercise all or any of the powers, functions or finances withdrawn in accordance with Section 52.

“(2) The power of the National Executive Council under Subsection (1) may not be exercised if the provisional withdrawal of the powers, functions or finances has been confirmed by the National Parliament under Section 53C(1).

“(3) If the provisional withdrawal of powers, functions or finances of a Provincial Government or Local-level Government lapses under Section 53C(2), the withdrawn powers, functions or finances are restored upon the provisional withdrawal lapsing.

“(4) If:—

(a) the powers, functions or finances of a Provincial Government or Local-level Government have been provisionally suspended under this Division; and

(b) the Parliament has confirmed the provisional withdrawal in accordance with Section 53, the withdrawn powers, functions or finances may be restored only by a resolution of the National Parliament by an absolute majority vote.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

“53J. COMPLIANCE WITH CERTAIN CONDITIONS.”

(1) A Provincial Government or a Local-level Government to which Section 53I(1) applies, for the period specified by the National Executive Council, shall:—

(a) submit all its proposed financial estimates, including any Bill appropriating monies, to the National Executive Council for approval; and

(b) provide such reports, to the National Executive Council, on the financial management and other related matters as the Council may, from time to time, require.

“(2) In addition to the requirements under Subsection (1), except with the prior approval of the National Executive Council, a Provincial Government or a Local-level Government shall not transfer funds from one activity or project item to another during the period specified in that subsection.

“53K. SECTION 187F OF THE CONSTITUTION NOT AFFECTED.”

The provisions of Subdivision C do not affect the operation of Section 186F of the Constitution.”.