

**THE CONSTITUTION**  
**OF**  
**THE AUTONOMOUS REGION OF BOUGAINVILLE.**

**ARRANGEMENT OF SECTIONS.**

**PREAMBLE**

**PART 1. – BOUGAINVILLE.**

1. Autonomous Region of Bougainville.
2. Autonomous Bougainville Government.
3. Jurisdiction of Autonomous Bougainville Government.
4. Symbols of the Autonomous Region of Bougainville.
5. Autonomous Region of Bougainville Capital.
6. Declaration of Loyalty to Bougainville.
7. Bougainvillean.
8. Owners of customary land and elections.
9. Obligations of a Bougainvillean.

**PART II. – SCHEDULES REPEATING CERTAIN PROVISIONS OF  
NATIONAL CONSTITUTIONAL LAWS.**

10. Schedules repeating certain provisions of National Constitutional Laws.

***PART III. – BOUGAINVILLE OBJECTIVES AND DIRECTIVE  
PRINCIPLES.***

11. Provisions of this Part non-justiciable.
12. Implementation of objectives.
13. Strengthening of customary authority.
14. Democratic principles.
15. Pursuit of peace, rehabilitation, reconciliation and harmony.
16. Unity and stability of Bougainville.
17. Autonomy and territorial integrity of Bougainville.
18. Assistance to Institutions protecting and supporting human rights, etc.,
19. Fair representation of women and marginalized groups.
20. Welfare of widows, children, orphans, the aged and the disabled.
21. Provision of adequate resources for government.
22. General social and economic objectives.
23. The land and natural resources.
24. Development.
25. Human resource development.

26. Transport infrastructure.
27. The environment and conservation.
28. Recognition of the role of Women in Bougainville Society.
29. Children and Youth as the future of Bougainville.
30. Recognition of the dignity of persons with disabilities.
31. Music, the arts and sports.
32. Education objectives.
33. Medical services and health care.
34. HIV/AIDS.
35. Partnership with Churches, non-government organizations and other Organizations.
36. Natural disasters.
37. Cultural objectives.
38. Accountability.
39. Rights of workers and employees.

#### **PART IV. – STRUCTURE OF GOVERNMENT.**

##### **Division – General.**

40. Structure and levels of Government.

##### **Division 2. – Autonomous Bougainville Government.**

41. Autonomous Bougainville Government.
42. Functions and powers of the Autonomous Bougainville Government.
43. Factors to be considered by Autonomous Bougainville before requesting a transfer of a function or power, etc.,
44. Land Matters.
45. Criminal Law.
46. Foreign Affairs.
47. Fisheries.
48. Underlying Law.

##### *Division 3. – Other Levels of formal Government.*

49. Other Levels of formal government.
50. Regional Government.

##### *Division 4. – Traditional Systems of Government.*

51. Traditional Systems of Government.
52. Advisory Body.

#### **PART V. – BOUGAINVILLE LEGISLATURE.**

##### *Division 1 – General.*

53. Bougainville Legislature.
54. Exercise of legislative power.

##### **Division 2. – House of Representative.**

55. Establishment and composition of the House of Representatives.
56. Qualifications for and disqualifications from election.
57. Normal term of office.
58. Recall of Member of the House of Representatives.

***Division 3. –The Speaker and the Deputy Speaker.***

59. Offices of Speaker and Deputy Speaker.
60. Speaker.
61. Removal from Office of Speaker.
62. Deputy Speaker.
63. Functions of the Speaker and the Deputy Speaker.
64. Voting by the Speaker.

***Division 4. – General Law-making powers of the House of Representatives.***

65. General Law-making powers.
66. Certification as to making of Laws, etc.,
67. Right to introduce new Laws.

***Division 5. – Procedures, Privileges, etc., of the House of Representatives.***

68. Meetings of the House of Representatives.
69. Quorum at meetings.
70. Voting in the House of Representatives.
71. Committees.
72. Standing Orders of the House of Representatives.
73. Privileges, etc., of the House of Representatives.
74. International Agreements.
75. Proceedings non-Justiciable.
76. Questions as to Membership.
77. Validation of acts of the House of Representatives.
78. Clerks and Officers of the House of Representatives.

**PART VI. – THE BOUGAINVILLE EXECUTIVE.**

***Division 1 – The Executive Power.***

79. Exercise of the Executive Power.

***Division 2. – Bougainville Executive Council.***

80. Membership of the Bougainville Executive Council.
81. Representation of Regions.
82. Caretaker Bougainville Executive Council.
83. Appointment of other Members.
84. Assumption of Office by Members of the Bougainville Executive Council.
85. Responsibilities.
86. Procedures.
87. Delegation by the Bougainville Executive Council, etc.,.

***Division 3. – The President.***

- 88. Office of President.
- 89. Election of President.
- 90. Special Election of President.
- 91. Qualifications for and disqualifications from election as President.
- 92. Assumption of Office.
- 93. Functions of the President.
- 94. Vacation of Office of President.

***Division 4. – Vice President.***

- 95. Office of Vice-President.
- 96. Appointment of Vice-President.
- 97. Assumption of Office.
- 98. Functions of the Vice-President.

***Division 5. – Members of the Bougainville Executive Council Generally.***

- 99. Interpretation of Division 5.
- 100. Vacation of Office of Members of the Bougainville Executive Council.
- 101. Dismissal of Members of the Bougainville Executive Council.

**PART VII. – BOUGAINVILLE SENIOR APPOINTMENTS  
COMMITTEE AND APPOINTMENTS GENERALLY.**

- 102. Bougainville Senior Appointments Committee.
- 103. Part-time Appointments.

**PART VIII. – CONSTITUENCIES AND ELECTIONS.**

- 104. Bougainville Boundaries Commissioner.
- 105. Constituencies.
- 106. Bougainville Electoral Commissioner and elections generally.
- 107. Bougainville General Elections.
- 108. By-elections.
- 109. Form of Elections.
- 110. Right to Vote.
- 111. Political Parties.

**PART IX. –ADMINISTRATION OF JUSTICE.**

***Division 1. – General.***

- 112. Bougainville Courts.
- 113. The Law Officers of Bougainville.
- 114. Exercise of the judicial power.
- 115. Alternative dispute resolution.

***Division 2. – Bougainville High Court.***

116. Establishment of the Bougainville High Court.
117. Composition of the Bougainville High Court.
118. Acting Judges.
119. Jurisdiction of the Bougainville High Court.
120. Right to appeal from Bougainville High Court to Supreme Court.

***Division 3. – Appointment etc., of Judges of the Bougainville High Court.***

121. Bougainville Judicial Appointments Committee.
122. Qualifications.
123. Appointment of Chief Justice of Bougainville.
124. Appointment of Other Judges.
125. Seniority of Judges.

***Division 4. – Other Courts.***

126. Establishment of other Courts.
127. Head of other Bougainville Courts.

**Division 5. – The Bougainville Public Prosecutor and the Bougainville Public Solicitor.**

128. Bougainville Public Prosecutor and Bougainville Public Solicitor.
129. Functions of the Bougainville Public Prosecutor and the Bougainville Public Solicitor.

**Division 6. – Removal from Office of Senior Judicial and Legal Office-holders.**

130. Removal from Office of Chief Justice of Bougainville, etc.,
131. Procedures for removal.
132. Constitution of Tribunals, etc.,
133. Suspension.

**Division 7. – Miscellaneous.**

134. Rules of Court.
135. Lack of procedural provision.
136. Juries and Assessors.
137. Reports of Bougainville Judges.

**PART X. – BOUGAINVILLE GOVERNMENT SERVICES.**

**Division 1. – Introductory.**

138. Establishment of Bougainville Government Services.
139. Civilian control.
  
140. Responsibility of heads of Bougainville Government Services to Bougainville Executive Council.
141. Declarations of Loyalty, etc.,

**Division 2. – Bougainville Public Services Commission.**

142. Establishment of the Bougainville Public Services Commission.
143. Functions of the Commission.
144. Independence of the Commission.
145. Personnel matters.

**Division 3. – Bougainville Public Service.**

146. Bougainville Public Service.
147. Head of Bougainville Public Service.

**Division 4. – Bougainville Police Service.**

148. Bougainville Police Service.
149. Chief of Bougainville Police.
150. Further provisions relating to Bougainville Police Service.

**Division 5. – Bougainville Correctional Services.**

151. Bougainville Correctional Service.
152. Chief of the Bougainville Correctional Service.

**PART XI. – FINANCES AND FINANCIAL MANAGEMENT AND CONTROL.**

**Division 1. – General.**

153. General Principles relating to finances and financial management.

**Division 2. – Outline of Finances of Autonomous Bougainville Government and Finance Administration**

154. Outline of finances of Autonomous Bougainville Government and finance administration.

***Division 3. – House of Representatives and Finance.***

155. Financial responsibility of the House of Representatives.
156. Executive initiative.
157. Revenue and expenditure without prior approval.

**Division 4. – Bougainville Auditor-General.**

158. Establishment of office of Bougainville Auditor-General.
159. Functions of the Bougainville Auditor-General.

**Division 5. – Public Accounts Committee.**

160. Establishment of the Public Accounts Committee.
161. Functions of the Committee.

**Division 6. – Bougainville Salaries and Remuneration Commission.**

162. The Bougainville Salaries and Remuneration Commission.
163. Functions, etc., of the Commission.
164. Functions of National Salaries and Remuneration Commission.

#### **PART XII. – THE BOUGAINVILLE OMBUDSMAN.**

165. The Bougainville Ombudsman.
166. Purposes of the Bougainville Ombudsman.
167. Functions and powers of the Bougainville Ombudsman.
168. Reports by the Bougainville Ombudsman.

#### **PART XIII. – LEADERSHIP CODE.**

169. Application of Leadership Code.
170. Customary standards of leadership.
171. Other responsibilities of Office.
172. Particular responsibilities of office.
173. Further provisions concerning the Leadership Code.
174. Prosecution for misconduct in office.
175. Investigation and prosecution may be carried out where person no longer holds office.
176. Disqualifications on dismissal.
177. Powers of Bougainville Ombudsman in relation to criminal misconduct.

#### **PART XIV. – HUMAN RIGHTS.**

##### **Division 1. – Rights.**

178. Basic Rights.
179. Additional Rights.

##### **Division 2. – Qualification on Rights.**

180. Qualifications on the Qualified Rights.
181. Reasonably Justifiable in a Democratic Society.
182. Validity of Emergency Legislation.

##### **Division 3. – Enforcement of Guaranteed Rights and Freedoms.**

183. Enforcement of guaranteed rights and freedoms.
184. Damages for breach of rights.
185. Human rights enforcement body.
186. Customary methods of dealing with human rights abuses.

#### ***PART XV. – ISSUES ARISING FROM THE BOUGAINVILLE CONFLICT.***

187. *Issues arising from the Bougainville Conflict.*

#### **PART XVI. – BOUGAINVILLE CONSTITUTIONAL OFFICE HOLDERS AND BOUGAINVILLE CONSTITUTIONAL INSTITUTIONS.**

**Division 1. – General.**

188. Other Provisions relating to Bougainville Constitutional Office-holders and Bougainville Constitutional Institutions.

**Division 2. – Bougainville Constitutional Office-Holders.**

189. Bougainville Constitutional Office-Holders.  
190. Removal from office of certain Bougainville Constitutional Office-Holders.

**Division 3. – Bougainville Constitutional Institutions.**

191. Bougainville Constitutional Institutions.

*Division 4. – Provisions of Facilities, etc.,*

192. Provisions of facilities, etc.,

**PART XVII. – BOUGAINVILLE REFERENDUM.**

193. Bougainville Referendum.  
194. Procedure in relation to the Bougainville Referendum.

**PART XVIII. – CONSULTATION AND PARTICIPATION.**

195. Consultation through Plebiscite.  
196. Participation in, and poll for law-making.

**PART XIX. – EMERGENCY PROCEDURES AND POWERS.**

197. Definitions.  
198. General approach to certain emergencies.  
199. Declarations of emergency generally.  
200. Declaration, etc., of Bougainville Emergency.  
201. Declaration, etc., of National Emergency at request of Autonomous Bougainville Government.  
202. Request for revocation of declaration, etc., where National Emergency declared other than at the request of the Autonomous Bougainville Government.  
203. House of Representatives Control.  
204. Management and control of emergencies.

***PART XX. – INTERGOVERNMENTAL RELATIONS AND REVIEW.***

205. Principles of intergovernmental relations, etc.,

**PART XXI. – THIS CONSTITUTION.**

206. Supremacy of the Constitution.  
207. Alteration of this Constitution.  
208. Evolution of this Constitution and of the Autonomous Bougainville Government.

- 209. Interpretative Jurisdiction.
- 210. Special References to Bougainville High Court.
- 211. Special status of the Preamble.
- 212. Construction of the Constitution generally.
- 213. Construction of Bougainville Laws.
- 214. Use of certain materials as aids to interpretation.
- 215. Enforcement of this Constitution.
- 216. Accessibility of the Constitution.

***PART XXII. – ALTERATION OF THIS CONSTITUTION AND OF PART XIV (BOUGAINVILLE GOVERNMENT AND BOUGAINVILLE REFERENDUM) OF THE NATIONAL CONSTITUTION, ETC.,***

**Division 1. – Amendment of Part XIV (Bougainville Government and Bougainville Referendum) of the National Constitution, etc.**

- 217. Requirements for amendment of Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution, etc.,
- 218. National Constitutional Regulations.

**Division 2. – Alterations to this Constitution.**

- 219. Making of alterations to this Constitution.

***PART XXIII. – REVIEW OF THIS CONSTITUTION, ETC.,***

- 220. Review of this Constitution, etc.,

***PART XXIV. – MISCELLANEOUS.***

- 221. Legal Capacity of Autonomous Bougainville Government.
- 222. Bougainville Constitutional Regulations.
- 223. Public Purposes.
- 224. Transitional Provisions contained in Organic Law.
- 225. Application of other Laws.
- 226. Bougainville Gazette.

***PART XXV. – FIRST BOUGAINVILLE GENERAL ELECTION AND FIRST MEETING OF HOUSE OF REPRESENTATIVES.***

***Division 1. – General.***

- 227. Effect of this Part.
- 228. Purposes of this Part.
- 229. Interpretation.

**Division 2. – Powers and Duties of Bougainville Interim Provincial Government in consultation with Bougainville People’s Congress.**

- 230. Existing facilities to be used where practicable.
- 231. Bougainville Interim Provincial Government, in consultation with Bougainville People’s Congress may issue orders in certain circumstances.

**Division 3. – Arrangements for First Bougainville General Election.**

- 232. Interim Bougainville Gazette.
- 233. First Bougainville General Election Boundaries Director.
- 234. Constituencies for first Bougainville General Election.
- 235. First Bougainville General Election Manager.
- 236. First Bougainville General Election.
- 237. Interim Registration of Political Parties.
- 238. Disputed elections and returns arising from first Bougainville General Election.

**Division 4. – Arrangements for the First Meeting of the House of Representatives.**

- 239. Calling of First Meeting of House of Representatives.
- 240. Executive Officer of the House of Representatives.

***PART XXVI. – OTHER INTERIM ARRANGEMENTS.***

- 241. Interim arrangements in relation to Institutions, Offices, etc.,

**SCHEDULES.**

**SCHEDULE 1.**

**DECLARATION OF LOYALTY TO BOUGAINVILLE, ITS PEOPLES AND CONSTITUTION.**

**SCHEDULE 2**

**RULES FOR SHORTENING AND INTERPRETATION OF THIS CONSTITUTION.  
PART 1. – INTRODUCTORY.**

- Sch.2.1. Application of Schedule 2.

**PART 2. – GENERAL.**

- Sch.2.2. Meaning of Certain Expressions.
- Sch.2.3. This Constitution speaks from time to time.
- Sch.2.4. Fair Meaning to be given to language used.
- Sch.2.5. Statements of general principle.
- Sch.2.6. “Non-Justiciable”.
- Sch.2.7. Gender and Number.
- Sch.2.8. Provisions where no time prescribed.
- Sch.2.9. Exercise and performance of powers and duties.
- Sch.2.10. Power of majority of more than two persons and quorums.
- Sch.2.11. Attainment of Age.
- Sch.2.12. References to Series.
- Sch.2.13. Residence.

- Sch.2.14. Effect of time limits.
- Sch.2.15. Repeal, etc.,
- Sch.2.16. Disallowance, etc.,
- Sch.2.17. Independence.
- Sch.2.18. Regulation of Acts. etc.,
- Sch.2.19. Consultation.
- Sch.2.20. Conferring of powers to include delegation, etc.,
- Sch.2.21. Principles of natural justice.

### **SCHEDULE 3.**

#### **BOUNDARIES OF BOUGAINVILLE PROVINCE SPECIFIED IN THE SCHEDULE TO THE ORGANIC LAW ON PROVINCIAL BOUNDARIES.**

### **SCHEDULE 4.**

#### **NATIONAL CONSTITUTION PROVISIONS RELATING TO FUNCTIONS AND POWERS OF THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.**

- “290. Functions and Powers available to the Bougainville Government.
- “291. Functions and Powers of the National Government and of the Bougainville Government in relation to Criminal law.
- “292. Subjects not specified in Section 289, 290 and 291.
- “293. International Obligations, etc. of the State in respect of the Powers and Functions of the Bougainville Government.
- “294. Functions and powers of the Bougainville Government on establishment and within 12 months thereafter.
- “295. Process of Transfer of functions and powers.
- “296. Relationship of National and Bougainville Laws.
- “297. Manner of implementation of transfer of functions and powers.
- “298. National Government Assets and Land.
- “299. Transfer of delegation of functions and powers.

### **SCHEDULE 5.**

#### **MATTERS RELATING TO BOUGAINVILLE CONSTITUTIONAL OFFICE-HOLDERS.**

- 5.1 Qualifications for appointment as Chief Justice of Bougainville or as a Bougainville Judge.
- 5.2 Qualifications for appointment as Bougainville Public Prosecutor and Bougainville Public Solicitor.
- 5.3 Qualifications for appointment as Bougainville Ombudsman.
- 5.4 Qualifications for Appointment as Bougainville Electoral Commissioner.
- 5.5 Qualifications for appointment and disqualifications from office as Bougainville Auditor-General.
- 5.6 Qualifications for appointment as head of other Bougainville Courts.
- 5.7 Disqualification from office of certain Bougainville Constitutional office-holders.
- 5.8 Special conditions of employment of Bougainville Constitutional Office-holders.

- 5.9 Resignation.
- 5.10 Annual Reports, etc.,
- 5.11 Acting Bougainville Constitutional Office-holder.
- 5.12 Rights on Termination of employment.

## **SCHEDULE 6.**

### **IMMUNITY FROM PROSECUTION.**

#### **6.1 NATIONAL CONSTITUTION PROVISIONS RELATING TO IMMUNITY FROM PROSECUTION.**

“344. Immunity from Prosecution.

#### **6.2 DECLARATION IN RESPECT OF IMMUNITY.**

## **SCHEDULE 7.**

### **NATIONAL CONSTITUTION PROVISIONS RELATING TO BOUGAINVILLE REFERENDUM.**

*“Bougainville 7. – Bougainville Referendum.*

- “338. Referendum to be held.
- “339. The Question or questions to be put.
- “340. Manner of Conducting Referendum.
- “341. Referendum to be free and fair.
- “342. Referendum results and implementation.
- “343. Resolution of differences on referendum.

## **SCHEDULE 8.**

### **NATIONAL CONSTITUTION PROVISIONS RELATING TO INTERGOVERNMENTAL RELATIONS AND REVIEW.**

#### **“Division 6. – Intergovernmental Relations and Review.**

- “330. Interpretation.
- “331. Principles of intergovernmental relations.
- “332. Joint Supervisory Body.
- “333. Dispute Resolution Procedure.
- “334. Mediation and Arbitration.
- “335. Dispute resolution in the courts.
- “336. Panel of persons with appropriate expertise.
- “337. Reviews.

## **SCHEDULE 9.**

**TRANSITIONAL PROVISIONS – PART VI OF THE ORGANIC LAW ON PEACE-BUILDING IN BOUGAINVILLE – AUTONOMOUS BOUGAINVILLE GOVERNMENT AND BOUGAINVILLE REFERENDUM.**

**“PART VI. – ADDITIONAL TRANSITIONAL PROVISIONS.**

- “67. Transfer of assets.
- “68. Former Provincial Laws.
- “69. Saving of contracts, etc.,
- “70. Registration of title of land.
- “71. Pending legal proceedings.

**SCHEDULE 10.**

**ELECTORAL PROVISIONS RELATING TO THE FIRST GENERAL ELECTION OF PRESIDENT OF THE AUTONOMOUS REGION OF BOUGAINVILLE AND OF MEMBERS OF THE FIRST HOUSE OF REPRESENTATIVES.**

**THE CONSTITUTION  
OF THE  
AUTONOMOUS REGION OF BOUGAINVILLE**

**THE PREAMBLE**

WE, THE PEOPLE OF BOUGAINVILLE, under the sovereignty of God

Conscious of the noble heritage and customs of our Ancestors and of the freedom and autonomy which they enjoyed in time immemorial;

Mindful of the restrictions wrought on our freedom, autonomy and customs by colonial aggression, foreign influences and the devastation of foreign wars;

Proud of our long struggle to free ourselves from adverse colonial and foreign influences and to renew our freedom, autonomy and customs;

Chastened by internal conflict that arose during our struggle for freedom;

Recognizing the sacrifice of Bougainvilleans for the causes of autonomy and self-determination;

Heartened by the process of healing, reconciliation and unity pursued during the years of conflict and thereafter;

WE, THE PEOPLE OF BOUGAINVILLE under the sovereignty of God our Father believing and trusting in HIM do now, with His guidance and blessing, hail the dawn of a new era of government for Bougainville to enable us with His help –

- (a) to uphold Christian and similar moral and spiritual principles; and
- (b) to honour our heritage and ancestral spirits and our worthy customs and traditions; and
- (c) to provide for the self-determination of the People through both autonomy arrangements and the referendum on independence; and
- (d) to recognize the sovereignty of the People; and
- (e) to recognize the autonomy of family and clan lineages and other customary communities; and
- (f) to govern through democracy, accountability, equality and social justice; and
- (g) to protect the land, the sea, our environment and our cultural identity for present and future generations; and
- (h) to strive to eliminate universal problems in Bougainville of poverty, illiteracy, corruption, pollution, unemployment, overpopulation and other ills; and
- (i) to meet the obligations of Bougainvilleans under this Constitution and in particular to uphold this Constitution with dignity and integrity; and
- (j) to provide for the legislative, executive and judicial powers of the People of Bougainville to be vested in the respective arms of an Autonomous Bougainville Government;

WE, THE PEOPLE OF BOUGAINVILLE ACTING UNDER THE AUTHORITY OF OUR TRADITIONAL CLAN SYSTEM AND LEADERSHIP DO NOW THEREFORE DECLARE

that we, having resolved to enact a Constitution for the Autonomous Region of Bougainville,

AND ACTING with the guidance of God through decision of our representatives in the Bougainville Constituent Assembly on the Twelfth day of November 2004, following consultation with the People through our Bougainville Constitutional Commission HEREBY, under the authority of the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National

Constitution, ESTABLISH, ADOPT AND GIVE TO OURSELVES this Constitution

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to come into effect in the following manner:—

- (a) on the day following the date of publication of this Constitution in the National Gazette following its endorsement by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, Part XXV (*First Bougainville General Election and First Meeting of House of Representatives*) shall come into operation, together with such other provisions as are necessary to enable the first general election of the President and members of the House of Representatives to take place; and
- (b) on the day fixed for the return of the writs in the first general election of the President and members of the House of Representatives, the remainder of this Constitution shall come into operation.

## **PART I. - BOUGAINVILLE.**

### **1. AUTONOMOUS REGION OF BOUGAINVILLE.**

- (1) Bougainville is made up of –
  - (a) the areas of land within the boundaries specified in Schedule 3 (*the boundaries of Bougainville Province specified in the Schedule to the National Organic Law on Provincial Boundaries*) to this Constitution; and
  - (b) the areas of sea extending to three nautical miles from the low water mark of the areas of land referred to in Paragraph (a).
- (2) Bougainville shall be known –
  - (a) formally, as "The Autonomous Region of Bougainville"; and
  - (b) otherwise, as "Bougainville".
- (3) The Autonomous Bougainville Government will keep under review the question of the name of Bougainville and whether any change should be made to it.
- (4) The Autonomous Bougainville Government may consult with the National Government in accordance with the Bougainville Peace Agreement concerning an extension of Bougainville's maritime boundaries.

### **2. AUTONOMOUS BOUGAINVILLE GOVERNMENT.**

The government established for the Autonomous Region of Bougainville by this Constitution shall be known as the "Autonomous Bougainville Government".

### **3. JURISDICTION OF AUTONOMOUS BOUGAINVILLE GOVERNMENT.**

The Autonomous Bougainville Government has jurisdiction only over the Autonomous Region of Bougainville in accordance with this Constitution and the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution.

#### **4. SYMBOLS OF THE AUTONOMOUS REGION OF BOUGAINVILLE.**

(1) A Bougainville law may make provision for and in respect of all or any of the following: –

- (a) a Bougainville Flag;
- (b) a Bougainville Emblem;
- (c) a Bougainville Motto;
- (d) a Bougainville Seal;
- (e) a Bougainville Pledge;
- (f) a Bougainville Anthem;
- (g) a Bougainville style of dress;
- (h) symbols, awards, holidays or days of celebration, fitting to symbolize the Autonomous Region of Bougainville or to honour persons, places or events relating to the Autonomous Region of Bougainville or to the Autonomous Bougainville Government.

(2) Wherever possible, the symbols of Bougainville provided for in Subsection (1) shall be of a character and kind unique to Bougainville.

#### **5. AUTONOMOUS REGION OF BOUGAINVILLE CAPITAL.**

(1) Subject to Subsection (2), a Bougainville law made by an absolute majority vote shall determine the location of the capital of the Autonomous Region of Bougainville.

(2) The choice of the location of the capital and the planning of its development should take full account of the need to ensure that the capital does not contribute to the development of the universal problems and ills referred to in Paragraph (h) of the Preamble and is as accessible as possible to the People.

#### **6. DECLARATION OF LOYALTY TO BOUGAINVILLE.**

(1) When a Bougainville law requires a Declaration of Loyalty to Bougainville to be made, it shall be in the form in Schedule 1 (*Declaration of Loyalty to Bougainville*) to this Constitution.

(2) A person appointed to an office established by this Constitution or as otherwise required by a Bougainville law, shall, before entering upon the duties or exercising any of the powers of his office, make the Declaration of Loyalty to Bougainville.

(3) A Declaration of Loyalty to Bougainville shall be made before a Judge of the Bougainville High Court, a Judge of the National Court or a Magistrate.

#### **7. BOUGAINVILLEAN.**

(1) A person –

- (a) who is a member (whether by birth or by adoption according to custom by the clan lineage) of a Bougainvillean clan lineage (matrilineal or patrilineal) owning customary land in Bougainville; or
- (b) who is married (whether by law or custom) to a person to whom Paragraph (a) applies; or
- (c) who is a child one of whose parents is a Bougainvillean by virtue of Paragraph (a),

is a Bougainvillean.

(2) A Bougainville law, made by an absolute majority vote, may make provision for the alleviation of special cases of injustice or hardship or disadvantage arising as a result of the application of Subsection (1)(c).

(3) For the purposes of Subsection (1)(a), a person who was not born in Bougainville, or who is not of Bougainvillean descent or who is a non-citizen may be adopted as a member of a Bougainville clan according to custom.

(4) A Bougainville law, made by an absolute majority vote, shall make provision for all or any matters relating to this section including –

- (a) the nature of providing evidence of customary practices; and
- (b) the nature of providing evidence of birth outside Papua New Guinea; and
- (c) all matters relevant to the consequences of dissolution of a marriage involving a person to whom Subsection (1) refers; and
- (d) all other matters arising from the provisions of this section.

## **8. OWNERSHIP OF CUSTOMARY LAND AND ELECTIONS.**

(1) A Bougainvillean (and no other person) in accordance with this Constitution and Bougainville laws –

- (a) in accordance with custom, may own customary land in Bougainville; and
- (b) who is a citizen, may be a candidate in any election to the House of Representatives and any other elected body established by or under this Constitution; and
- (c) who is a citizen, may vote in any election referred to in Paragraph (b).

(2) A Bougainville law, made by an absolute majority vote, may make provision for a citizen, who is not eligible under Subsection (1)(b) to be a candidate for election or who is not eligible under Subsection (1)(c) to vote, but who has such residential or other qualifications as are set out in the law, to be a candidate for election or to vote.

## **9. OBLIGATIONS OF A BOUGAINVILLEAN.**

(1) A Bougainvillean has an obligation –

- (a) to be loyal to Bougainville and to protect its well-being; and
- (b) to uphold all Christian and similar moral and spiritual principles; and
- (c) to promote reconciliation and healing throughout Bougainville; and
- (d) to respect, to act in the spirit of, to uphold and to defend this Constitution; and
- (e) to engage in gainful work for the good of himself, his family and the common good; and
- (f) to contribute to the well-being of the community where that Bougainvillean lives; and
- (g) to promote responsible parenthood; and
- (h) to live in harmony with others; and
- (i) to promote democracy and the rule of law; and
- (j) to protect and manage the land and to protect the environment and his culture; and
- (k) as a child, to obey his parents.

- (2) The provisions of Subsection (1) are non-justiciable.

**PART II. – SCHEDULES REPEATING CERTAIN PROVISIONS OF NATIONAL CONSTITUTIONAL LAWS.**

**10. SCHEDULES REPEATING CERTAIN PROVISIONS OF NATIONAL CONSTITUTIONAL LAWS.**

- (1) The Schedules to this Constitution listed in Subsection (2) –
- (a) set out certain provisions of National Constitutional Laws which implement parts of the Bougainville Peace Agreement; and
  - (b) are included in this Constitution for ease of reference only; and
  - (c) shall, where any amendment to the National Constitutional Laws in respect of those provisions is made by the National Parliament in accordance with Division XIV.9 (*Miscellaneous*) of the National Constitution, be deemed to be amended accordingly; and
  - (d) shall not otherwise be amended.

(2) The Schedules to this Constitution which set out certain provisions of National Constitutional Laws which implement parts of the Bougainville Peace Agreement are as follows:–

- (a) Schedule 3 (*the boundaries of Bougainville Province specified in the Schedule to the Organic Law on Provincial Boundaries*);
- (b) Schedule 4 (*National Constitution provisions relating to functions and powers of the Autonomous Bougainville Government*);
- (c) Schedule 6.1 (*National Constitution provisions relating to immunity from prosecution*);
- (d) Schedule 7 (*National Constitution provisions relating to the Bougainville Referendum*);
- (e) Schedule 8 (*National Constitution provisions relating to intergovernment relations and review*);
- (f) Schedule 9 (*Transitional provisions in the Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*).

**PART III. – BOUGAINVILLE OBJECTIVES AND DIRECTIVE PRINCIPLES.**

**11. PROVISIONS OF THIS PART NON-JUSTICIABLE.**

The provisions of this Part are non-justiciable.

**12. IMPLEMENTATION OF OBJECTIVES.**

(1) The Bougainville Objectives and Directive Principles set out in this Part shall guide the Autonomous Bougainville Government, all other levels of government formal and informal, Bougainville governmental bodies, all officers and employees of the foregoing, all people, organizations and other bodies and persons in Bougainville–

- (a) in applying or interpreting this Constitution; and
- (b) in making and in implementing policy decisions; and
- (c) in making laws,

but always so as to be in compliance with the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution.

(2) The President shall, at least once in each year, report to the House of Representatives on all steps taken to ensure the realization of the Bougainville Objectives and Directive Principles, and the House of Representatives shall thereafter debate on the report and in so doing should seek to identify ways in which implementation by the Autonomous Bougainville Government might be made more effective.

### **13. STRENGTHENING OF CUSTOMARY AUTHORITY.**

(1) The clan structure and customary leadership of Bougainvillean communities shall be recognized and strengthened.

(2) The roles, responsibilities and authority of traditional chiefs and other traditional leaders shall be recognized at all levels of government.

(3) The family and the clan shall be recognized as the natural and basic units of Bougainville society.

(4) The customary system of justice in Bougainville based on the restoration of peace through the restoration of harmony in relationships between people shall be recognised and reinforced to the extent not contrary to Christian principles.

### **14. DEMOCRATIC PRINCIPLES.**

(1) Government in Bougainville shall be based and structured on democratic principles which empower and encourage the active participation of all Bougainvilleans at all levels in their own governance both formal and customary.

(2) All Bougainvilleans shall have the opportunity to attain leadership positions at all levels subject to this Constitution and customary practices.

(3) The Autonomous Bougainville Government shall devolve governmental functions and powers to the People at appropriate levels and particularly to customary communities.

(4) The composition of the Autonomous Bougainville Government shall be broadly representative of the Bougainville community.

(5) The Autonomous Bougainville Government shall develop procedures to enable consultation with all people in Bougainville, as far as is practicable, in relation to proposed major new Bougainville laws.

### **15. PURSUIT OF PEACE, REHABILITATION, RECONCILIATION AND HARMONY.**

(1) In order to achieve and maintain peace at all times, mediation, reconciliation and harmony shall at all times be pursued as means of resolving disputes, and the use of violence shall be avoided.

(2) There shall be established and encouraged institutions and procedures for the promotion of mediation, reconciliation and harmony and the avoidance and resolution of conflicts.

(3) All people in Bougainville –

- (a) shall not be involved in any para-military activities; and
- (b) shall work towards ensuring that Bougainville is free of all firearms and of crime.

(4) The Autonomous Bougainville Government shall strive to ensure that Bougainville is not used in any way to support terrorism or money-laundering or other trans-national crimes and no people in Bougainville should support or assist terrorism or money-laundering or other trans-national crimes.

(5) Rehabilitation for persons who suffered from injuries and trauma and dislocation during the Bougainville conflict shall be encouraged.

(6) When planning their activities in Bougainville, Bougainville governmental bodies and non-governmental bodies and investors shall be encouraged to take account of the need for rehabilitation of persons who suffered from injuries and trauma and dislocation during the Bougainville conflict.

#### **16. UNITY AND STABILITY OF BOUGAINVILLE.**

(1) The Autonomous Bougainville Government, all other levels of government, formal and informal, Bougainville governmental bodies, all officers and employees of the foregoing, all people in Bougainville, organizations and other bodies and persons shall work towards the promotion of unity, peace and stability in Bougainville.

(2) Every effort will be made to integrate all the communities in Bougainville while recognising and respecting cultural diversity.

(3) Everything shall be done to promote among all people in Bougainville a culture of co-operation, understanding, appreciation, tolerance and respect for different customs, traditions and beliefs.

(4) The Autonomous Bougainville Government shall provide a peaceful, secure and stable political environment for economic and social development.

#### **17. AUTONOMY AND TERRITORIAL INTEGRITY OF BOUGAINVILLE.**

(1) The Autonomous Bougainville Government and all people in Bougainville shall display and promote respect for the autonomy and territorial integrity of Bougainville.

(2) The Autonomous Bougainville Government and all people in Bougainville shall endeavour to strengthen political, economic and social spheres to avoid undue dependence on places and institutions outside Bougainville.

(3) The Autonomous Bougainville Government shall encourage self-sufficiency and to this end shall encourage the creation of economic opportunities for Bougainvilleans.

(4) The Autonomous Bougainville Government shall endeavour to mobilise, organize and empower all people in Bougainville to build self-reliant foundations for the development of Bougainville.

#### **18. ASSISTANCE TO INSTITUTIONS PROTECTING AND SUPPORTING HUMAN RIGHTS, ETC.,**

(1) The Autonomous Bougainville Government shall guarantee and respect institutions which are charged by this Constitution with the responsibility for protecting and promoting human rights by providing them with adequate resources to function effectively.

(2) The Autonomous Bougainville Government shall guarantee and respect the independence of non-governmental organizations which protect, promote and advance human rights.

**19. FAIR REPRESENTATION OF WOMEN AND MARGINALIZED GROUPS.**

There shall be fair representation of women and marginalized groups on all constitutional and other bodies.

**20. WELFARE OF WIDOWS, CHILDREN, ORPHANS, THE AGED AND THE DISABLED.**

The customary practices of provision of care for widows, children, orphans, the aged and the disabled shall be encouraged.

**21. PROVISION OF ADEQUATE RESOURCES FOR GOVERNMENT.**

The distribution of powers as well as checks and balances provided for in this Constitution among various institutions of Government shall be supported through the provision of adequate resources for their effective functioning at all levels.

**22. GENERAL SOCIAL AND ECONOMIC OBJECTIVES.**

The Autonomous Bougainville Government shall endeavour to fulfil the fundamental rights of all people in Bougainville to social justice and economic development and shall, in particular, ensure that –

- (a) all governmental efforts are directed at ensuring the maximum social, cultural and spiritual well-being of all people in Bougainville; and
- (b) all people in Bougainville enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing and food security.

**23. THE LAND AND NATURAL RESOURCES.**

(1) The laws and policies of Bougainville shall be directed towards the recognition of customary rights of the People of Bougainville in relation to the land and the sea and natural, mineral and oil resources of Bougainville and any law relating to the development of such resources shall take that into account.

(2) The utilization of the land and the sea and natural resources of Bougainville shall be managed in such a way as to meet the development and environmental needs of present and future generations of the People of Bougainville and the Autonomous Bougainville Government shall take all possible measures to prevent or minimize damage and destruction to land, seas, air and water resources from pollution or other causes.

**24. DEVELOPMENT.**

(1) In order to facilitate development, private initiative and self-reliance shall be encouraged.

(2) The Autonomous Bougainville Government and all other levels of government, formal and informal, shall take all necessary steps to involve all people in Bougainville in the identification of their real development needs and the formulation and implementation of

development plans and programmes which affect them, and all people in Bougainville shall support such plans and programmes and shall, where necessary, make land available for the provision of services and other development purposes.

- (3) The Autonomous Bougainville Government shall –
  - (a) adopt an integrated and co-ordinated planning approach to development; and
  - (b) take necessary measures to bring about appropriate balanced development of the different areas of Bougainville; and
  - (c) take special measures in favour of the development of the least developed areas.

- (4) The Autonomous Bougainville Government shall –
  - (a) give priority to the enactment of legislation to establish measures to protect and enhance the quality of opportunity for all people in Bougainville to equal opportunities in development; and
  - (b) adopt policies to stimulate appropriate development.

(5) The Autonomous Bougainville Government shall develop procedures to enable Bougainvilleans likely to be affected by a proposed major development project to be consulted by the Autonomous Bougainville Government and by the developer before a decision on the establishment of the project is made.

## **25. HUMAN RESOURCE DEVELOPMENT.**

In recognition of the shortage of the trained personnel who will be needed to develop Bougainville and implement autonomy, the Autonomous Bougainville Government shall encourage human resource development.

## **26. TRANSPORT INFRASTRUCTURE.**

In respect that Bougainville is made up of diverse terrain and many island communities, the Autonomous Bougainville Government shall, as a priority, facilitate the development of the transport infrastructure of Bougainville so as to give all Bougainvilleans, wherever they may live, ready access to transport for themselves, their produce and other goods.

## **27. THE ENVIRONMENT AND CONSERVATION.**

(1) The Autonomous Bougainville Government and all other levels of government, formal and informal, shall promote sustainable development and public awareness of the need to conserve and manage land, air, sea and water resources in a balanced and sustainable manner for the present and future generations.

(2) The Autonomous Bougainville Government shall promote and implement energy policies that will ensure that the basic needs of all people in Bougainville and those of environmental preservation are met.

(3) The Autonomous Bougainville Government shall pursue protection of the environment and the restoration of damage caused by mining operations and other major resource projects.

(4) The Autonomous Bougainville Government shall ensure protection of the flora and fauna of Bougainville.

**28. RECOGNITION OF THE ROLE OF WOMEN IN BOUGAINVILLE SOCIETY.**

The role and welfare of women in traditional and modern Bougainville society shall be recognized and encouraged and shall be developed to take account of changing circumstances.

**29. CHILDREN AND YOUTH AS THE FUTURE OF BOUGAINVILLE.**

The Autonomous Bougainville Government shall recognize children and youth as the future of Bougainville, and shall develop policies to ensure the integration of children and youth more fully into their communities and to groom them for their future role in Bougainville society.

**30. RECOGNITION OF THE DIGNITY OF PERSONS WITH DISABILITIES.**

The right of persons with disabilities to respect and human dignity shall be recognized and protected.

**31. MUSIC, THE ARTS AND SPORTS.**

The Autonomous Bougainville Government shall promote music, the arts and sports (including traditional sports and games) for all people in Bougainville.

**32. EDUCATION OBJECTIVES.**

- (1) The Autonomous Bougainville Government shall strive to achieve –
- (a) universal primary, secondary, and adult education; and
  - (b) the provision, from elementary and primary level, of the widest possible range of technical education (relevant to the needs of Bougainville from time to time); and
  - (c) appropriate levels of tertiary education,

of the highest possible standard, and directed to enable all students to participate fully in the lives of the Bougainville communities to which they belong, and in pursuing those objectives, the Autonomous Bougainville Government should work in partnership with other bodies involved in the provision of education services in Bougainville.

(2) One of the aims of the education system should be to ensure that all children, throughout the primary and secondary levels of education, are taught to read and write in their vernacular and are taught about their own culture.

(3) The Autonomous Bougainville Government shall consult on an ongoing basis with traditional chiefs, other traditional leaders and other community leaders about the development and effectiveness of the curriculum in all levels and kinds of education.

**33. MEDICAL SERVICES AND HEALTH CARE.**

- The Autonomous Bougainville Government shall take all practical measures –
- (a) to promote primary health care; and
  - (b) to pursue universal health care of the highest standard; and
  - (c) to ensure the provision of basic medical services to the population; and
  - (d) to promote water and sanitation management systems at all levels; and
  - (e) to encourage people to grow and store adequate food; and
  - (f) to encourage and promote proper nutrition, particularly for the young and the people of the Atolls, through mass education and other means; and

(g) to recognize herbal medicines, and in pursuing those objectives, the Autonomous Bougainville Government should work in partnership with other bodies involved in the pursuit of those objectives in Bougainville.

**34. HIV/AIDS.**

The Autonomous Bougainville Government shall make the fight against HIV/AIDS and its threat to the clans and to the future of Bougainville a major priority.

**35. PARTNERSHIP WITH CHURCHES, LOCAL NON-GOVERNMENT ORGANIZATIONS AND OTHER ORGANIZATIONS.**

(1) The Autonomous Bougainville Government should acknowledge the harmonious partnership developed in the past with the three main churches in Bougainville in the development and provision of services and should strive to ensure partnership with both them and other churches and local non-government organizations and other organizations in the future development and provision of services to all people in Bougainville.

(2) The Autonomous Bougainville Government should maintain and develop a close relationship with the business sector in the development of the economy and of employment opportunities in Bougainville.

**36. NATURAL DISASTERS.**

The Autonomous Bougainville Government shall institute an effective machinery for dealing with any emergency or hazard or disaster arising out of natural calamities or any situation resulting in general displacement of people or serious disruption of normal life.

**37. CULTURAL OBJECTIVES.**

(1) Customary values and practices which enhance the dignity and well-being of Bougainvilleans shall be recognized, promoted and preserved.

(2) The development, preservation and enrichment of all Bougainville languages shall be encouraged.

(3) Historical and ancestral sites, significant artefacts and Bougainville's heritage shall be preserved and protected.

**38. ACCOUNTABILITY.**

(1) All public offices shall be held in trust for the People.

(2) All persons in positions of leadership and responsibility are, in their work, answerable to the People in accordance with law.

(3) The Autonomous Bougainville Government shall take all lawful measures to ensure accountability in Government and to expose and eradicate corruption and abuse or misuse of power.

**39. RIGHTS OF WORKERS AND EMPLOYEES.**

The Autonomous Bougainville Government shall recognize and promote the protection of the rights of workers and employees.

**PART IV. – STRUCTURE OF GOVERNMENT.**

*Division 1. – General.*

**40. STRUCTURE AND LEVELS OF GOVERNMENT.**

Government in Bougainville shall consist of –

- (a) the Autonomous Bougainville Government in accordance with Division 2 (*Autonomous Bougainville Government*); and
- (b) a level or levels of formal government below the level of the Autonomous Bougainville Government in accordance with Division 3 (*other levels of formal government*); and
- (c) the traditional system of government in accordance with Division 4 (*traditional system of government*).

***Division 2. – Autonomous Bougainville Government.***

**41. AUTONOMOUS BOUGAINVILLE GOVERNMENT.**

(1) Until any change in the status of Bougainville that may occur following the Bougainville Referendum, in accordance with and subject to –

- (a) the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution; and
- (b) this Constitution,

the power, authority and jurisdiction of the People of Bougainville shall be exercised, on behalf of the People, by the Autonomous Bougainville Government.

(2) The Autonomous Bougainville Government consists of three principal arms, namely –

- (a) the Bougainville Legislature consisting of the House of Representatives as established under Section 55 (*establishment and composition of the House of Representatives*); and
- (b) the Bougainville Executive Council, for which provision is made in Part VI (*the Bougainville Executive*); and
- (c) the Bougainville Courts, for which provision is made in Part IX (*Administration of Justice*),

and such other institutions as are established by or under this Constitution.

(3) In principle, the respective powers and functions of the three principal arms shall be kept separate from each other.

(4) Subsection (3) is descriptive only and is non-justiciable.

**42. FUNCTIONS AND POWERS OF THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.**

(1) The functions and powers of the Autonomous Bougainville Government are as contained in the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution and the main functions and powers are set out in full in Schedule 4 (*National Constitution provisions relating to functions and powers of the Autonomous Bougainville Government*) to this Constitution.

(2) The Autonomous Bougainville Government may establish such institutions as are necessary to enable it to fulfil its functions and exercise its powers.

**43. FACTORS TO BE CONSIDERED BY AUTONOMOUS BOUGAINVILLE GOVERNMENT BEFORE REQUESTING A TRANSFER OF A FUNCTION OR POWER, ETC.,**

- (1) Before –
- (a) initiating the procedure for the transfer of a function or power under Section 295(b) (*process of transfer of functions and powers*) of the National Constitution; or
  - (b) making legislative provision for plebiscites under Section 195 (*consultation through plebiscite*); or
  - (c) conducting a plebiscite under Section 195 (*consultation through plebiscite*); or
  - (d) making legislative provision for participation in, and poll for, law-making under Section 196 (*participation in, and poll for, law-making*); or
  - (e) engaging in the consultation to be carried out under Section 196 (2)(c) (*participation in, and poll for, law-making*) following the making of a proposal to make a law; or
  - (f) establishing an institution or office (including a Bougainville Government Service) left by this Constitution to the discretion of the House of Representatives (including the duty imposed on the Autonomous Bougainville Government by Section 192 (*provision of facilities, etc.*)) to ensure that staff and facilities are provided to Bougainville Constitutional Institutions and Bougainville Constitutional Office-holders); or
  - (g) the appointment, under Section 83 (*appointment of other members*), of members of the Bougainville Executive Council referred to in Section 80(1)(f) (*membership of the Bougainville Executive Council*); or
  - (h) the establishment of a system of assessors under Section 136(1)(a) (*juries and assessors*); or
  - (i) the establishment of a system of juries under Section 136(1)(b) (*juries and assessors*),

the Autonomous Bougainville Government shall –

- (j) consider the relative importance to the People of Bougainville of the issue in question; and
- (k) consider the need for the Autonomous Bougainville Government to achieve fiscal self-reliance as soon as possible; and
- (l) consider the need to promote economic development so as to accelerate the achievement of fiscal self-reliance and promote the well-being of the People of Bougainville; and
- (m) consider the desire of the People of Bougainville for a peaceful and harmonious society; and
- (n) consider the need to develop the capacity of the administration of the Autonomous Bougainville Government to the point at which it can manage effectively the widest possible range of powers, functions, plebiscites and polls for the betterment of the lives of the People of Bougainville; and
- (o) consider the need to promote reconciliation and healing following the Bougainville conflict; and
- (p) consider the possible role of traditional chiefs and other traditional leaders in relation to the issue in question; and

(q) consider whether offices in an institution or office referred to in Paragraph (f) should be filled on a part-time or full-time basis.

(2) The question as to whether the matters referred to in Subsection (1)(j) to (q) have been considered or taken account of fully, as the case may be, is non-justiciable.

(3) Where a proposal to effect the matters referred to in Subsection (1)(b), (d), (f),(g),(h) or (i) is initiated –

- (a) by the Bougainville Executive Council – the proposal shall be accompanied by a statement of the estimated needs, costs, capacity and other resource requirements as specified in Subsection (1)(j) to (q); or
- (b) by a member of the House of Representatives – the proposal shall not be considered until the presentation of a statement (which shall be provided, on the request of the member, by the Autonomous Bougainville Government, within a time specified in a Bougainville law) of the estimated needs, cost, capacity and other resource requirements as specified in Subsection (1)(j) to (q).

(4) The provisions of this section are in addition to, and do not derogate from, the provisions of Division XIV.3 (*division of functions and powers between National Government and Bougainville Government and transfer of functions and powers to Bougainville Government*) of the National Constitution.

#### **44. LAND MATTERS.**

(1) The Autonomous Bougainville Government shall, as soon as is practicable, develop a land policy for Bougainville and in this regard shall –

- (a) as far as is practicable, recognise the roles of traditional chiefs, other traditional leaders and owners of customary land in relation to customary land matters; and
- (b) as far as is practicable, incorporate customary practices and norms into the development and implementation of land law in Bougainville; and
- (c) formulate strategies in relation to alienated land; and
- (d) provide for records of land ownership; and
- (e) provide for the protection of the customary powers of heads of matrilineal and patrilineal societies and of customary owners in relation to customary land.

(2) In developing a land policy under Subsection (1), the Autonomous Bougainville Government shall ensure that its proposals comply with Section 53 (*protection from unjust deprivation of property*) of the National Constitution.

#### **45. CRIMINAL LAW.**

(1) The Autonomous Bougainville Government may develop a criminal law policy for Bougainville and in this regard shall, as far as is practicable –

- (a) take full account of and encourage continued reliance on the roles of traditional chiefs and other traditional leaders in resolving disputes and criminal matters at the village or local level; and
- (b) incorporate customary practices and norms into the development and implementation of criminal law in Bougainville.

(2) In accordance with Paragraphs 128 to 130 of the Bougainville Peace Agreement, the Autonomous Bougainville Government and the National Government shall establish a joint commission to examine and report on the issues involved in giving the Autonomous Bougainville Government power to make laws permitting courts or Councils of Elders to require clan-groups, to which persons convicted of criminal offences belong, to meet customary non-custodial obligations, and such commission shall have full regard for –

- (a) the aspiration of Bougainvilleans for the integration of custom and introduced law; and
- (b) the national human rights regime; and
- (c) the justice system in Bougainville and in Papua New Guinea as a whole; and
- (d) the international human rights system and other relevant aspects of international law.

#### **46. FOREIGN AFFAIRS.**

Where the Autonomous Bougainville Government decides to arrange for: –

- (a) the attendance of a representative of Bougainville as an observer to meetings of regional organizations; or
- (b) the inclusion of a representative nominated by the Autonomous Bougainville Government in National Government delegations to regional meetings and organizations of clear special interest to Bougainville; or
- (c) the participation or direct engagement of the Autonomous Bougainville Government in the negotiation of international agreements of particular relevance to Bougainville; or
- (d) the participation or engagement by Bougainville in international cultural exchanges and in trade, investment, tourism promotion and sport at international level; or
- (e) the obtaining, by or on behalf of the Autonomous Bougainville Government, of foreign aid to support restoration and development in Bougainville,

it shall consult with the National Government in accordance with the Bougainville Peace Agreement.

#### **47. FISHERIES.**

The Autonomous Bougainville Government may exercise its powers in relation to fisheries under Paragraphs 85, 86, 87 and 88 of the Bougainville Peace Agreement and accordingly may –

- (a) develop a policy or policies for developing and managing fisheries in Bougainville; and
- (b) agree with the National Government on the quota of domestic fishing licences for highly migratory and straddling fish stocks; and
- (c) decide on the allocation of the agreed quota of domestic fishing licences for highly migratory and straddling fish stocks; and
- (d) be responsible for the sustainable management of other fisheries in the Autonomous Region of Bougainville; and
- (e) consult with the National Government in accordance with the Bougainville Peace Agreement to be represented on –
  - (i) delegations negotiating access and other fisheries agreements regarding; and

- (ii) bodies responsible for determining total allowable catches, licence numbers and reservation of licences for domestic fisheries in, Bougainville waters and within the Exclusive Economic Zone and the continental shelf associated with Bougainville.

**48. UNDERLYING LAW.**

(1) Subject to Subsection (2), the underlying law of Papua New Guinea as at the date of the coming into operation of this Constitution shall be the underlying law of the Autonomous Region of Bougainville.

- (2) A Bougainville law may –
  - (a) declare what constitutes the underlying law of the Autonomous Region of Bougainville; and
  - (b) provide for the development of the underlying law of the Autonomous Region of Bougainville,

and the underlying law referred to in Subsection (1) shall be modified or re-affirmed or developed accordingly.

*Division 3. – Other levels of formal Government.*

**49. OTHER LEVELS OF FORMAL GOVERNMENT.**

(1) The Autonomous Bougainville Government shall develop a level or levels of formal government, below the level of the Autonomous Bougainville Government, and this Constitution or further amendment of this Constitution or Bougainville laws shall make provision for all aspects of such level or levels of formal government.

(2) The Councils of Elders in existence immediately before the coming into operation of this Constitution are recognized by this Constitution as a level of formal government below the level of the Autonomous Bougainville Government.

(3) In developing a level or levels of formal government under Subsection (1), the Bougainville Executive Council shall take into account the methods of government which will best serve the People of Bougainville and the variations in circumstances and needs in various parts of Bougainville.

(4) In principle, the following factors shall apply to and in respect of a level or levels of formal government below the level of the Autonomous Bougainville Government: –

- (a) formal governments shall be mainly elective, but shall recognize the traditional role in governance of traditional chiefs and other traditional leaders;
- (b) the principles of fiscal self-reliance shall apply to all levels of formal government;
- (c) revenue-raising powers shall be given to all levels of formal government;
- (d) judicial powers shall be vested in all levels of formal government;
- (e) where appropriate and practicable, traditional systems of governance shall be incorporated into levels of formal government.

(5) The Autonomous Bougainville Government shall strive to ensure and encourage communication and co-operation between –

- (a) itself and all levels of formal government below the level of the Autonomous Bougainville Government; and
- (b) all levels of formal government below the level of the Autonomous Bougainville Government,

and to this end shall hold an annual conference of the Heads of all levels of formal Governments.

## **50. REGIONAL GOVERNMENT.**

(1) The Autonomous Bougainville Government shall, when it considers it to be financially practicable and possible, develop, in accordance with this Division, a level of Regional Government for each of the following Regions of Bougainville: –

- (a) North Region;
- (b) Central Region;
- (c) South Region,

and may thereafter divide the level of Regional Government into further Regions.

(2) The questions whether, under Subsection (1), it is financially practicable and possible to develop a level of Regional Government, are non-justiciable.

(3) The level of Regional Government shall be provided for by amendment of this Constitution or by a Bougainville law (or partly by amendment of this Constitution and partly by a Bougainville law).

(4) Amendment of this Constitution or a Bougainville law shall provide –

- (a) that the procedures to establish a Regional Government for a Region shall be initiated by a request made to the Bougainville Executive Council by a majority of the members of the House of Representatives representing constituencies in that Region; and
- (b) that on the receipt of a request under Paragraph (a), the Bougainville Executive Council and the members of the House of Representatives representing constituencies in that Region shall –
  - (i) jointly consider –
    - (A) the financial capacity of the Region; and
    - (B) the powers and functions drawn down from the National Government; and
    - (C) the impact which the establishment of the Regional Government would have on Bougainville as a whole; and
  - (ii) jointly decide whether there should be a Regional Government for the Region; and
- (c) make provision for the establishment, powers and functions of a Regional Government.

### ***Division 4. – Traditional Systems of Government.***

## **51. TRADITIONAL SYSTEMS OF GOVERNMENT.**

(1) Traditional systems of government and the roles and responsibilities of traditional chiefs and other traditional leaders and of the clan system, as custodians of custom

and tradition and in matters relating to the governance of their communities generally, shall be recognized, wherever practicable and possible, by all levels of government in Bougainville.

(2) The roles and responsibilities of traditional chiefs and other traditional leaders referred to in Subsection (1) include matters relating to customary land, preservation of the environment, family matters, dispute resolution and the maintenance of peace and good order.

(3) The Autonomous Bougainville Government shall support and assist traditional chiefs and other traditional leaders in developing understanding of their roles, responsibilities and powers and the skills necessary for effective and responsible exercise of those roles, responsibilities and powers in the interest of their communities.

(4) The Autonomous Bougainville Government, in consultation with representatives of traditional chiefs and other traditional leaders, shall assist traditional chiefs and other traditional leaders in identifying their powers and obligations and by making laws in that regard to the extent that such matters need to be dealt with by law.

(5) In particular, the roles of traditional chiefs, other traditional leaders and traditional practices shall be recognized in relation to the following provisions of this Constitution: –

- (a) Section 13 (*strengthening of customary authority*);
- (b) Section 20 (*welfare of widows, children, orphans, the aged and the disabled*);
- (c) Section 37 (*cultural objectives*);
- (d) Section 43(p) (*factors to be considered by Autonomous Bougainville Government before requesting a transfer of a power or function*);
- (e) Section 44 (*land matters*);
- (f) Section 45 (*criminal law*);
- (g) Section 49(2) and (4)(a) and (e) (*other levels of formal government*);
- (h) Section 52 (*Advisory Body*);
- (i) Section 115(2) (*alternative dispute resolution*);
- (j) Section 121(1)(c) and (6) (*Bougainville Judicial Appointments Committee*);
- (k) Section 126(2) (*establishment of other courts*);
- (l) Section 136(a)(i) (*juries and assessors*);
- (m) Section 148(2)(d) (*Bougainville Police Service*);
- (n) Section 153(1)(e)(i) (*general principles relating to finances and financial management*);
- (o) Section 165(4)(b) (*the Bougainville Ombudsman*);
- (p) Section 170 (*customary standards of leadership*);
- (q) Section 186 (*customary methods of dealing with human rights abuses*);
- (r) Section 187(2) (*issues arising from the Bougainville conflict*);
- (s) Section 198 (*general approach to certain emergencies*);
- (t) Section 217(4)(b) and (5)(b) (ii) (*requirements for amendment of Part XIV (Bougainville Government and Bougainville Referendum) of National Constitution, etc.*);
- (u) Section 218(1)(a)(iii) (*National Constitutional Regulations*);
- (v) Section 219(4)(b) (*making of alterations to this Constitution*).

(6) It is the duty of all levels of government in Bougainville and of all

Bougainville governmental bodies and of officers of such levels of government and governmental bodies and of Bougainville Constitutional Office-holders to ensure, as far as is within their respective powers, compliance with this section.

**52. ADVISORY BODY.**

(1) An Advisory Body, consisting of representatives of traditional chiefs and other traditional leaders may be established by a Bougainville law at a date after the coming into operation of this Constitution.

(2) The date referred to in Subsection (1) shall be a date after –

- (a) the efforts by the Autonomous Bougainville Government to achieve fiscal self-reliance have progressed to the point where the establishment of an Advisory Body by the Autonomous Bougainville Government is sustainable; and
- (b) arrangements for the organization of selection of representatives of traditional chiefs and other traditional leaders have been made that will facilitate the establishment of the Advisory Body.

(3) The principal functions of the Advisory Body shall be to advise the Bougainville Executive Council and the House of Representatives on –

- (a) matters of importance referred to it by the House of Representatives or by the Bougainville Executive Council or considered by the Advisory Body on its own initiative; and
- (b) matters concerning proposed or desirable change to this Constitution; and
- (c) the roles of Bougainville custom and customary leadership.

(4) The Bougainville law referred to in Subsection (1) shall provide for the name, composition, manner of election or appointment, qualifications for and disqualifications from membership of and powers and other functions of the Advisory Body.

(5) A Bougainville law may make provision for matters relating to the Advisory Body other than those specified in Subsection (4).

(6) The Advisory Body shall not comprise part of the Bougainville legislature.

**PART V. – THE BOUGAINVILLE LEGISLATURE.**

***Division 1. – General.***

**53. BOUGAINVILLE LEGISLATURE.**

The Bougainville Legislature shall comprise and be known as the House of Representatives as established under Section 55 (*establishment and composition of the House of Representatives*).

**54. EXERCISE OF LEGISLATIVE POWER.**

(1) The legislative power of the Autonomous Bougainville Government is vested in the House of Representatives.

(2) A Bougainville law may confer on an authority, other than the House of Representatives, legislative powers or functions.

(3) Nothing in this Constitution enables the House of Representatives to transfer permanently, or divest itself of, legislative power.

***Division 2. – House of Representatives.***

**55. ESTABLISHMENT AND COMPOSITION OF THE HOUSE OF REPRESENTATIVES.**

- (1) The House of Representatives is established.
- (2) The House of Representatives consists of –
  - (a) the President of the Autonomous Region of Bougainville; and
  - (b) other members being: –
    - (i) for the first general election of members of the House of Representatives, 33 directly elected members, and thereafter not more than 38 nor less than 28 members, each representing a single member constituency in accordance with Section 105 (*constituencies*); and
    - (ii) three women members, each representing a constituency for a separate Region (North, Central and South), elected to represent the interests of the women of the Region; and
    - (iii) subject to Subsection (5), three former combatant members, each representing a constituency for a separate Region (North, Central and South), qualified for nomination as such –
      - (A) in respect of the first election to the House of Representatives, in accordance with Section 58(1)(d) (*mode of nomination*) of Schedule 10 (*electoral provisions relating to the first general election of President of the Autonomous Region of Bougainville and of members of the House of Representatives*) to this Constitution; and
      - (B) for subsequent elections to the House of Representatives, in accordance with the Bougainville law referred to in Section 106(4) (*Bougainville Electoral Commissioner and elections generally*), elected to represent the interests of former combatants in the Region; and
    - (iv) the Speaker in accordance with Section 60(4) (*Speaker*).
- (3) Elected members of the National Parliament representing electorates in Bougainville are entitled to attend meetings of the House of Representatives and to take part in debate and proceedings in the same way as members of the House of Representatives but –
  - (a) may not introduce motions; and
  - (b) may not vote on any matter; and
  - (c) shall not be counted towards a quorum.
- (4) No member of the House of Representatives shall represent two or more constituencies at the same time.
- (5) Membership of the former combatants' representatives of the House of Representatives under Subsection (2)(b)(iii) shall apply only until –

- (a) the passing of a motion in accordance with Subsection (6) or (7); or
- (b) the holding of the Bougainville Referendum in accordance with Division XIV.7 (*Bougainville Referendum*) of the National Constitution; or
- (c) a decision in accordance with Part XVII (*Bougainville Referendum*) of this Constitution that the Bougainville Referendum shall not be held.

(6) The Autonomous Bougainville Government shall, before the end of the first term of the House of Representatives, in consultation with the former combatants' Association, review the membership of former combatants' representatives in the House of Representatives under Subsection (2)(b)(iii) and such membership shall not continue beyond that term where a motion, by the House of Representatives following such review, to the effect that such membership shall not continue beyond the end of that first term, has been passed by the House of Representatives by a two-thirds absolute majority vote.

(7) Where a motion has not been passed in accordance with Subsection (6), the Autonomous Bougainville Government shall, before the end of the second term of the House of Representatives (and before the end of any subsequent term of the House of Representatives during which former combatants' representatives retain membership in the House of Representatives under Subsection (2)(b)(iii)), in consultation with the former combatants' Association, review the membership of former combatants in the House of Representatives under Subsection (2)(b)(iii) and such membership shall not continue beyond that term where a motion, by the House of Representatives following such review, to the effect that such membership shall not continue beyond the end of that term, has been passed by the House of Representatives by a two-thirds absolute majority vote.

(8) In Subsections (6) and (7), "former combatants' Association" means the registered Association (by whatever name known) of former combatants of the Bougainville Revolutionary Army and of the Bougainville Resistance Force and of the Me'ekamui Defence Force, recognized by a Bougainville law as the official former combatants' Association.

(9) A person who is, in accordance with Section 110 (*right to vote*) entitled to vote in an election of the President or of a member or members of the House of Representatives, is, subject to the provisions of the Bougainville law referred to in Section 106(4) (*Bougainville Electoral Commissioner and elections generally*) and Section 109 (*form of elections*) or of Schedule 10 (*electoral provisions relating to the first general election of President of the Autonomous Region of Bougainville and of members of the House of Representatives*) entitled to vote in an election for –

- (a) the President; and
- (b) a member referred to in Subsection (2)(b)(i); and
- (c) a woman member referred to in Subsection (2)(b)(ii); and
- (d) subject to Subsection (5), a former combatant member referred to in Subsection (2)(b)(iii).

## **56. QUALIFICATIONS FOR AND DISQUALIFICATIONS FROM ELECTION.**

(1) A member of the House of Representatives must be not less than 25 years of age.

(2) A candidate for election to the House of Representatives must be qualified to vote in elections to the House of Representatives.

(3) A candidate for election to the House of Representatives as a member referred to in Section 55(2)(b)(i) (*establishment and composition of the House of Representatives*) must be a Bougainvillean and –

- (a) be a member of a clan lineage that holds land in the constituency for which he wishes to nominate; or
- (b) have resided continuously in that constituency for at least five years immediately prior to nomination; or
- (c) have been born in that constituency.

(4) A candidate for election to the House of Representatives under Section 55(2)(b)(ii) (*establishment and composition of the House of Representatives*) must be a woman and be a Bougainvillean and –

- (a) be a member of a clan lineage that holds land in the Region (North, Central or South) of Bougainville for which she intends to nominate; or
- (b) have resided continuously in that Region for at least five years immediately prior to nomination.

(5) A candidate for election to the House of Representatives under Section 55(2)(b)(iii) (*establishment and composition of the House of Representatives*) must be a Bougainvillean and a former combatant (as that term is defined in Schedule 2 (*meaning of certain expressions*)) to this Constitution and –

- (a) be a member of a clan lineage that holds land in the Region (North, Central or South) of Bougainville for which he intends to nominate; or
- (b) have resided continuously in that Region for at least five years immediately prior to nomination,

and have his nomination supported in accordance with Section 58(1)(d) (*mode of nomination*) of Schedule 10 (*electoral provisions relating to the first general election of President of the Autonomous Bougainville Government and members of the House of Representatives*) or with the Bougainville law referred to in Section 106 (*Bougainville Electoral Commissioner and elections generally*).

(6) A person is not qualified to be a candidate for election, or to continue to be a candidate for election, referred to in Subsection (3), (4) or (5) if he has nominated in an election to be held at the same time, as a candidate –

- (a) referred to in any other of these Subsections; or
- (b) for the office of President.

(7) A person is not qualified to be, or to remain a member of the House of Representatives if –

- (a) he or she is not entitled to vote in elections to the House of Representatives; or
- (b) he or she is of unsound mind within the meaning of any law relating to the person and property of persons of unsound mind; or
- (c) subject to Subsections (8) to (11) (inclusive), he or she is under sentence of death or imprisonment for a period exceeding three months; or

(d) he or she has been declared bankrupt by a court of competent jurisdiction and remains bankrupt.

(8) Where a person is under sentence of death or imprisonment for a period exceeding three months, the operation of Subsection (7)(c) is suspended until –

(a) the end of any statutory period allowed for appeals against the conviction or sentence; or

(b) if an appeal is lodged within the period referred to in Paragraph (a), the appeal is determined.

(9) The references in Subsection (8) to appeals and to the statutory period allowed for appeals shall, where there is provision for a series of appeals, be read as references to each appeal and to the statutory period allowed for each appeal.

(10) If a free pardon is granted, a conviction is quashed or a sentence is changed to a sentence of imprisonment for three months or less, or some other form of penalty (other than death) is substituted, the disqualification ceases, and if at the time of the pardon, quashing, change of sentence or substitution of penalty –

(a) the writ for the by-election has been issued - the member is not restored as a member of the House of Representatives and the by-election proceeds according to law; or

(b) the writ for the by-election has not been issued-the member is restored as a member of the House of Representatives.

(11) In this section –

"appeal" includes any form of judicial appeal or judicial review;

“free pardon” means a free pardon granted under Section 151 (*grant of pardon, etc.*) of the National Constitution;

"statutory period allowed for appeals" means a definite period allowed by law for appeals, whether or not it is capable of extension, but does not include an extension of such a definite period granted or that may be granted unless it was granted within that definite period.

(12) Nothing in this section is intended to reduce any right conferred by Section 50 (*right to vote and stand for public office*) of the National Constitution, but it is the considered opinion of the People of Bougainville, expressed through the Bougainville Constitutional Commission and the Bougainville Constituent Assembly, that any restrictions imposed by this section are reasonable and are reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind.

## **57. NORMAL TERM OF OFFICE.**

(1) A member of the House of Representatives takes office on the day immediately following the day fixed for the return of the writ for the election in his constituency.

(2) The seat of a member of the House of Representatives becomes vacant –

(a) upon the expiry of the day fixed for the return of the writs for the general elections after he last became a member of the House of Representatives; or

(b) if he resigns his seat by notice in writing to the Speaker; or

(c) if he is absent, without leave of the House of Representatives, during the whole of three meetings of the House of Representatives, unless the

House of Representatives decides to waive this rule upon satisfactory reasons being given; or

- (d) if, except as authorized by this Constitution or a Bougainville law, he directly or indirectly agrees to take any payment in respect of his services in the House of Representatives; or
- (e) if he becomes a member of or a candidate for election or appointment to, the National Parliament; or
- (f) if he becomes a person who is disqualified under Section 56 (*qualifications for and disqualifications from election*) from election to the House of Representatives; or
- (g) if he is dismissed from office under Part XIII (*Leadership Code*); or
- (h) if he is recalled in accordance with Section 58 (*recall of member of the House of Representatives*); or
- (i) on his death.

(3) For the purposes of Subsection (2)(c), a meeting of the House of Representatives –

- (a) commences when the House of Representatives first meets following:–
  - (i) a general election; or
  - (ii) adjournment of the House of Representatives for a period exceeding 12 days; and
- (b) ends when the House of Representatives –
  - (i) is adjourned for a period exceeding 12 days; or
  - (ii) adjourns for the last time before a Bougainville general election.

#### **58. RECALL OF MEMBER OF THE HOUSE OF REPRESENTATIVES.**

(1) A member of the House of Representatives, other than the Speaker, may be recalled in accordance with this section.

(2) Recall of a member shall be initiated by the presentation to the Bougainville Electoral Commissioner of a petition for recall signed by at least one third of the enrolled voters for the constituency which the member represents, stating the reasons for the recall of the member.

- (3) A petition under Subsection (2) for recall of a member shall not be presented –
- (a) within 15 months following the day fixed for the return of the writs in the election at which that member was last elected; or
  - (b) within one year preceding the fifth anniversary of the day referred to in Paragraph (a); or
  - (c) during the term of office of the House of Representatives during which a petition for recall of that member has already been presented.

(4) On receipt of a petition under Subsection (2), the Bougainville Electoral Commissioner shall ascertain that –

- (a) the petition is not banned under Subsection (3); and
- (b) it has been signed by at least one third of the enrolled voters for the constituency.

(5) Where the Bougainville Electoral Commissioner is satisfied that the petition –

- (a) is not banned under Subsection (3); and
- (b) has been signed by at least one third of the enrolled voters for the constituency,

he shall conduct simultaneously two polls in the constituency –

- (c) one as to whether or not the member should be recalled; and
- (d) one being a by-election for that constituency.

(6) The Bougainville Electoral Commissioner shall first determine the result of the poll under Subsection (5)(c) and –

- (a) where more than one half of the enrolled voters in the constituency vote in favour of the recall of the member – determine that the member is recalled; or
- (b) where not more than one half of the enrolled voters in the constituency vote in favour of the recall of the member – determine that the member is not recalled.

(7) Where –

- (a) the member is determined under Subsection (6)(a) to have been recalled, the Bougainville Electoral Commissioner shall determine the result of the by-election under Subsection (5)(d) and shall declare the candidate who has received the largest number of votes as the member for the constituency; or
- (b) the member is determined under Subsection (6)(b) not to have been recalled, the result of the by election under Subsection (5) (d) shall not be determined.

(8) The member whose recall is the subject of a poll under Subsection (5)(c) is not qualified to stand for election in the by-election under Subsection (5)(d).

(9) A Bougainville law may make provision for matters relating to the recall of a member of the House of Representatives.

### ***Division 3. – The Speaker and the Deputy Speaker.***

#### **59. OFFICES OF SPEAKER AND DEPUTY SPEAKER.**

There shall be offices of Speaker and Deputy Speaker of the House of Representatives.

#### **60. SPEAKER.**

(1) The Speaker shall be a person who –

- (a) until a Bougainville law made by an absolute majority vote provides otherwise, has attained the age of 40 years; and
- (b) is not a member of the House of Representatives; and
- (c) is qualified to nominate for election to the House of Representatives.

(2) The Speaker shall be appointed by a vote of the House of Representatives in accordance with the Standing Orders from among persons nominated by the Regional Committees of the House of Representatives, established by Section 71(1)(b) (*Committees*).

(3) A Bougainville law or the Standing Orders may make provision relating to the nomination of a person for appointment as Speaker.

(4) Subject to any restrictions imposed by this Constitution, the Speaker is a member of the House of Representatives during his tenure of office as Speaker.

(5) Nothing in Subsection (1) is intended to reduce any right conferred by Section 50 (*right to vote and stand for public office*) of the National Constitution, but it is the considered opinion of the People of Bougainville expressed through the Bougainville Constitutional Commission and the Bougainville Constituent Assembly, that any restrictions imposed by this section are reasonable and are reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind.

#### **61. REMOVAL FROM OFFICE OF SPEAKER.**

The office of Speaker becomes vacant –

- (a) if he ceases to be qualified as Speaker under Section 60(1) (*Speaker*); or
- (b) if he resigns from the office of Speaker by notice in writing to the President; or
- (c) upon the day fixed for the return of the writs for the general election after he was appointed Speaker; or
- (d) if the House of Representatives votes, by a three quarters absolute majority vote, that he be removed from office; or
- (e) if he is dismissed from office under Part XIII (*Leadership Code*); or
- (f) if he is of unsound mind within the meaning of any law relating to the person and property of persons of unsound mind; or
- (g) if he has been declared bankrupt by a court of competent jurisdiction and remains bankrupt; or
- (h) on his death.

#### **62. DEPUTY SPEAKER.**

The Deputy Speaker shall be a member of the House of Representatives and shall be elected and may be removed from the Office of Deputy Speaker by vote of the House of Representatives in accordance with the Standing Orders.

#### **63. FUNCTIONS OF THE SPEAKER AND DEPUTY SPEAKER.**

(1) The Speaker is responsible, subject to and in accordance with this Constitution, the Bougainville laws and the Standing Orders, for –

- (a) upholding the dignity of; and
- (b) maintaining order in; and
- (c) regulating the proceedings and administering the affairs of; and
- (d) controlling the precincts of,

the House of Representatives.

(2) The Speaker shall, in accordance with Section 68 (*meetings of the House of Representatives*), a Bougainville law or the Standing Orders, call meetings of the House of Representatives.

(3) In the event of a vacancy in the office of Speaker or his absence from the House of Representatives, and otherwise as determined by a Bougainville law or the Standing Orders, the Deputy Speaker has all the rights, privileges, powers, functions, duties and responsibilities of the Speaker.

(4) A Bougainville law or the Standing Orders may provide for other powers, functions, duties and responsibilities of the Speaker and the Deputy Speaker.

**64. VOTING BY THE SPEAKER.**

The Speaker shall not vote in the House of Representatives except, in his discretion –

- (a) to break a tie, where there is an equality of votes on any matter; or
- (b) where one vote is needed to constitute a majority vote greater than a simple majority vote required by this Constitution, a Bougainville law or the Standing Orders.

***Division 4. – General Law-making powers of the House of Representatives.***

**65. GENERAL LAW-MAKING POWERS.**

(1) Subject to this Constitution and the Bougainville laws, the House of Representatives may make laws for the peace, order and good government of the Autonomous Region of Bougainville.

(2) In particular, Bougainville laws, consistent with this Constitution, may provide for all matters that are necessary or convenient to be prescribed for carrying out and giving effect to this Constitution.

(3) Each law made by the House of Representatives shall receive such fair, large and liberal interpretation as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit.

**66. CERTIFICATION AS TO MAKING OF LAWS, ETC.,**

(1) The Speaker shall certify under the Bougainville Seal any law that has been made by the House of Representatives.

(2) The Speaker shall give notification of laws certified under Subsection (1) in the Bougainville Gazette.

(3) Subject to Subsection (4), a law made by the House of Representatives comes into operation on the date of the certificate under Subsection (1).

- (4) Nothing in Subsection (3) prevents a law –
  - (a) being expressed to come, or to be deemed to have come, into operation at a time specified by, or fixed in accordance with, a Bougainville law; or
  - (b) being retrospective or retroactive.

(5) The Speaker may certify such other matters relating to the procedures of the House of Representatives or its committees as are required by this Constitution.

**67. RIGHT TO INTRODUCE NEW LAWS.**

(1) Subject to Section 155 (*financial responsibility of the House of Representatives*), any member of the House of Representatives is entitled to introduce into the House of Representatives, in accordance with, and subject to any reasonable restrictions contained in the Standing Orders, a petition, question, bill, resolution, motion or other matter.

(2) The petition, question, bill, resolution, motion or matter shall be dealt with as provided by the Standing Orders.

(3) The Standing Orders may make provision for priority to be given to Bougainville Executive Council business at certain times or in certain circumstances.

***Division 5. – Procedures, Privileges, etc., of the House of Representatives.***

**68. MEETINGS OF THE HOUSE OF REPRESENTATIVES.**

(1) The House of Representatives shall be called to meet not more than seven days after the day fixed for the return of writs for a Bougainville general election.

(2) The House of Representatives shall meet at least once in every period of three months.

(3) Subject to Subsection (2) of this section, Section 5 (*Autonomous Region of Bougainville capital*), Section 63 (*functions of the Speaker and Deputy Speaker*), and the requirements of Part XIX (*emergency procedures and powers*) the time, place and date of meetings of the House of Representatives will be fixed by the House of Representatives on the motion of a Minister.

(4) A Bougainville law may make further provision in respect of the calling of meetings of the House of Representatives and may provide for meetings to be called on the request of members.

**69. QUORUM AT MEETINGS.**

(1) The quorum at a meeting of the House of Representatives shall be one half of the number of the seats in the House of Representatives at the time.

(2) The Standing Orders shall make provision for the action to be taken in the event of a lack or a loss of quorum at any time.

**70. VOTING IN THE HOUSE OF REPRESENTATIVES.**

Except as is otherwise provided by this Constitution, a Bougainville law or the Standing Orders and subject to Section 64 (*voting by the Speaker*), all questions before a meeting of the House of Representatives shall be determined by a majority of the votes of the members of the House of Representatives present and voting.

**71. COMMITTEES.**

(1) There shall be in the House of Representatives –

- (a) a Public Accounts Committee established by Section 160 (*establishment of Public Accounts Committee*); and
- (b) a Regional Committee for each of the following Regions of Bougainville: –
  - (i) North;
  - (ii) Central;
  - (iii) South,

- consisting of the elected members of the House of Representatives within the Region (or in the case of women members and former combatant members, for the Region); and
- (c) such other committees as are determined by the House of Representatives from time to time.

(2) Subject to this Constitution, the House of Representatives shall make provision by a Bougainville law or the Standing Orders or otherwise, for the establishment, membership, jurisdiction, functions, powers and procedures of committees established under Subsection (1) and in particular for empowering such a committee to call for persons, papers and records.

(3) No member of the Bougainville Executive Council may be a member of a committee other than a Regional Committee under Subsection (1)(b).

(4) In principle, membership of committees under Subsection (1)(a) and (c) should be spread as widely as possible among members of the House of Representatives from the various Regions, other than members of the Bougainville Executive Council.

(5) For the purposes of Subsection (1)(b), a Bougainville law made by an absolute majority vote –

- (a) shall, subject to Section 105 (3) (*constituencies*), give details of the composition of the Regions; and
- (b) shall make provision for altering the Regions or the number of Regions or the composition of the Regions and for such other matters relating to the Regions as may be necessary; and
- (c) may provide for additional powers to be given to the Regional Committees.

## **72. STANDING ORDERS OF THE HOUSE OF REPRESENTATIVES.**

The House of Representatives may make Standing Orders and other rules and orders in respect of the order and conduct of its business and proceedings of its committees, and such matters as by law are required or permitted to be prescribed or provided for by Standing Orders.

## **73. PRIVILEGES, ETC., OF THE HOUSE OF REPRESENTATIVES.**

(1) The powers (other than legislative powers), privileges and immunities of the House of Representatives and of its members and committees are as prescribed by or under this section and by or under any other provision of this Constitution.

(2) There shall be freedom of speech, debate and proceedings in the House of Representatives, and the exercise of those freedoms shall not be questioned in any court or in any proceedings whatever (otherwise than in proceedings in the House of Representatives).

(3) No member of the House of Representatives is subject to the jurisdiction of any court in respect of the exercise of his powers or the performance of his functions, duties or responsibilities as such, but this subsection does not affect the operation of Part XIII (*Leadership Code*).

(4) No member of the House of Representatives is liable to civil or criminal proceedings, arrest, imprisonment, fine, damages or compensation by reason of any matter or thing that he has brought by petition, question, bill, resolution, motion or otherwise, or has said before or submitted to the House of Representatives or a committee of the House of Representatives.

(5) No member of the House of Representatives or other person is liable to civil or criminal proceedings, arrest, imprisonment, fine, damages or compensation by reason of –

- (a) an act done under the authority of the House of Representatives or under an order of the House of Representatives or of a committee of the House of Representatives; or
- (b) words spoken or used, or a document or writing made or produced, under an order or summons made or issued under the authority of the House of Representatives or of a committee of the House of Representatives.

(6) The members of the House of Representatives are free from arrest for civil debt during meetings of the House of Representatives and during the period commencing two days before and ending two days after a meeting when they are travelling from their respective constituencies (or in the case of the Speaker the constituency in which he normally resides) to attend the meeting or are returning there from the meeting.

(7) No process issued by any court in the exercise of its civil jurisdiction shall be served or exercised through the Speaker or an officer of the House of Representatives, or within the precincts of the House of Representatives (as defined by or under a Bougainville law) while it is in session.

(8) The powers conferred by Section 65 (*general law-making powers*) extend to the making of laws –

- (a) declaring further powers (other than legislative powers), privileges and immunities of the House of Representatives, and of its members and committees; and
- (b) providing for the manner in which powers, privileges and immunities provided for by or under this section may be exercised or upheld.

(9) The powers and privileges conferred by or under this section do not and shall not include the power to impose or provide for the imposition of a fine, imprisonment, forfeiture of property or other penalty of a criminal nature, but this subsection does not prevent the creation of offences for the purpose of this section that are triable within the Bougainville Courts.

(10) For the purposes of this section, "member of the House of Representatives" includes the Speaker.

#### **74. INTERNATIONAL AGREEMENTS.**

(1) Until any change in the status of Bougainville that may occur following the Bougainville Referendum, the provisions of this section apply where, in accordance with Section 293 (*international obligation etc., of the State in respect of the powers and functions of the Bougainville Government*) of the National Constitution, the National Government –

- (a) requests the agreement of the Autonomous Bougainville Government to the entering by the Independent State of Papua New Guinea into a proposed international border agreement which affects the jurisdiction of the Autonomous Bougainville Government; or
- (b) is required to obtain the agreement of the Autonomous Bougainville Government to the entering by the Independent State of Papua New Guinea into a proposed treaty which has a purpose of altering the autonomy arrangements of the Autonomous Bougainville Government or which affects the jurisdiction of the Autonomous Bougainville Government.

(2) The President shall, within five sitting days of the House of Representatives after receipt by the Autonomous Bougainville Government of a request referred to in Subsection (1)(a) or for agreement referred to in Subsection (1)(b) –

- (a) table particulars of the proposed international border agreement or treaty in the House of Representatives; and
- (b) move a motion in the House of Representatives that the agreement of the Autonomous Bougainville Government to the entering by the State into the international border agreement or treaty be given to the National Government.

(3) The agreement to the entering by the State into the international border agreement or treaty shall only be given by the Autonomous Bougainville Government to the National Government where the relevant motion under Subsection (2)(b) has been passed by the House of Representatives by an absolute majority vote.

#### **75. PROCEEDINGS NON-JUSTICIABLE.**

The question whether the procedures prescribed by the House of Representatives or its committees have been complied with, is non-justiciable, and a certificate by the Speaker under Section 66 (*certification as to making of laws*) is conclusive as to the matter required to be set out in it.

#### **76. QUESTIONS AS TO MEMBERSHIP.**

(1) Subject to Subsection (2), the Bougainville High Court has jurisdiction to determine any question as to –

- (a) the qualification of a person to be or to remain a member of the House of Representatives; or
- (b) the validity of an election to the House of Representatives.

(2) Until the establishment of the Bougainville High Court, the National Court has jurisdiction to determine any question as to –

- (a) the qualification of a person to be or to remain a member of the House of Representatives; or
- (b) the validity of an election to the House of Representatives.

#### **77. VALIDATION OF ACTS OF THE HOUSE OF REPRESENTATIVES.**

Where a person who has purported to sit or vote as a member of the House of Representatives at a meeting of the House of Representatives or of a committee of the House of Representatives –

- (a) was not duly qualified to be elected or appointed, or to continue, as a member of the House of Representatives; or

(b) had vacated his office as a member of the House of Representatives, all things done or purported to have been done by the House of Representatives or by the committee, as the case may be, shall be deemed to have been as validly done as if that person had, when so sitting or voting, been duly qualified to be elected or appointed, or to continue as a member of the House of Representatives or had not vacated his office, as the case may be.

**78. CLERK AND OFFICERS OF THE HOUSE OF REPRESENTATIVES.**

(1) There shall be an office of Clerk of the House of Representatives who shall be appointed by the Bougainville Senior Appointments Committee, which for the purpose shall include two persons appointed by the National Executive Council.

(2) The Autonomous Bougainville Government shall make available officers and employees of the Bougainville Public Service to assist the Speaker in the administration of the House of Representatives.

**PART VI. – THE BOUGAINVILLE EXECUTIVE.**

***Division 1. – The Executive Power.***

**79. EXERCISE OF THE EXECUTIVE POWER.**

(1) Subject to this Constitution, the executive power of the Autonomous Bougainville Government is vested in the Bougainville Executive Council.

(2) Subject to this Constitution and to a Bougainville law, the Bougainville Executive Council has, in addition to the other powers conferred on it, power to do all things that are necessary or convenient to be done for or in connection with the operations and activities of the Autonomous Bougainville Government.

(3) Notwithstanding Subsections (1) and (2), a Bougainville law may confer on an authority other than the Bougainville Executive Council executive powers or functions.

***Division 2. – Bougainville Executive Council.***

**80. MEMBERSHIP OF THE BOUGAINVILLE EXECUTIVE COUNCIL.**

(1) Subject to Section 82 (*caretaker Bougainville Executive Council*), the Bougainville Executive Council shall consist of –

- (a) the President; and
- (b) the Vice-President; and
- (c) subject to Section 101 (*dismissal of members of the Bougainville Executive Council*), a woman member of the House of Representatives appointed by the President, being the woman member nominated by the women members (both those elected to represent the interests of women and any women members for single member constituencies); and
- (d) six members appointed in accordance with Section 81 (*representation of regions*); and
- (e) one member appointed by the President; and
- (f) four members appointed by the President under Section 83 (*appointment of other members*).

(2) All members of the Bougainville Executive Council must be members of the House of Representatives.

## **81. REPRESENTATION OF REGIONS.**

(1) This section applies in relation to the appointment of the members of the Bougainville Executive Council referred to in Section 80(1)(d) (*membership of the Bougainville Executive Council*).

(2) Each Committee established under Section 71(1)(b) (*Committees*) for the purposes of this section shall recommend to the President the names of five members of the House of Representatives representing constituencies in the Region for which the Committee is established for appointment by the President of two of the members named as members of the Bougainville Executive Council.

(3) On receipt of a recommendation under Subsection (2), the President shall, within five sitting days of the House of Representatives, and in any event, no more than 14 days after the day fixed for the return of the writs for a general election, appoint to the Bougainville Executive Council two of the members so recommended, and notify the Speaker in accordance with Section 84 (*assumption of office by members of the Bougainville Executive Council*).

(4) If the office of a member of the Bougainville Executive Council appointed under this section becomes vacant under Section 100 (*vacation of office of members of the Bougainville Executive Council*), the preceding provisions of this section apply in respect of the filling of the vacancy.

(5) If a member of the Bougainville Executive Council appointed under this section is suspended from office under Part XIII (*Leadership Code*), or otherwise –

- (a) the President may appoint a member of the House of Representatives to act in the office of the suspended member pending a recommendation of the relevant Committee referred to in Subsection (2); and
- (b) when the President receives a recommendation referred to in Paragraph (a) for the temporary filling of the office, Subsection (3), with the necessary modifications, applies.

(6) A member of the Bougainville Executive Council appointed under Subsection (5) ceases to hold office when the suspension is lifted or the original member is dismissed.

## **82. CARETAKER BOUGAINVILLE EXECUTIVE COUNCIL.**

During any period following a Bougainville general election, before appointments to the Bougainville Executive Council are made, the powers and functions of the Bougainville Executive Council vest in a caretaker Bougainville Executive Council consisting of –

- (a) the President; and
- (b) the Vice President; and
- (c) a woman member of the House of Representatives (whether elected as a representative of the interests of women or being the member for a single member constituency) selected by the President,

but in any case a caretaker Bougainville Executive Council shall not hold office for more than 14 days after the day fixed for the return of the writs for a general election.

## **83. APPOINTMENT OF OTHER MEMBERS.**

(1) Members of the Bougainville Executive Council referred to in Section 80(1)(f) (*membership of the Bougainville Executive Council*) shall be appointed by the President.

(2) The members referred to in Subsection (1) shall not be appointed until such time as the House of Representatives considers that the financial resources of the Autonomous Bougainville Government permit the appointment and a Bougainville law makes provision for the appointment.

#### **84. ASSUMPTION OF OFFICE BY MEMBERS OF THE BOUGAINVILLE EXECUTIVE COUNCIL.**

Subject to Section 6 (*Declaration of Loyalty to Bougainville*), a member of the Bougainville Executive Council, (other than the Vice President for whom special provision is made by this Constitution) appointed by the President under Section 80(1)(c)(*membership of the Bougainville Executive Council*) or 81(3) or (5)(a) or (b) (*representation of regions*) or 83 (*appointment of other members*) takes office on the day on which the President notifies the Speaker, in writing, of the appointment.

#### **85. RESPONSIBILITIES.**

(1) The Bougainville Executive Council, and the members of the Council, have such powers, functions, duties and responsibilities in relation to the executive functions of the Autonomous Bougainville Government as are conferred or imposed by or under this Constitution or a Bougainville law, or as are delegated to the Council.

- (2) In the performance of its functions, the Bougainville Executive Council –
- (a) is collectively responsible to the House of Representatives, and through the House of Representatives to the People of the Autonomous Region of Bougainville, for the carrying out of executive functions of the Autonomous Bougainville Government in accordance with Subsection (1), and for all things done by or under the authority of the Bougainville Executive Council; and
  - (b) must comply with the Leadership Code.

(3) A decision of the Bougainville Executive Council is non-justiciable on the grounds that it does not comply with Subsection (2)(b).

- (4) Members of the Bougainville Executive Council (other than the President and the Vice-President) shall –
- (a) be called Ministers; and
  - (b) have such titles, portfolios and responsibilities as are determined by the President.

#### **86. PROCEDURES.**

(1) Subject to this Constitution, the Bougainville Executive Council may determine its own procedures (including, subject to any Bougainville law, its quorum).

(2) Subject to any Bougainville law, a question whether procedures prescribed or determined for the Bougainville Executive Council have been complied with, is non-justiciable.

#### **87. DELEGATION BY THE BOUGAINVILLE EXECUTIVE COUNCIL, ETC.,**

A Bougainville law may make provision for the delegation –

- (a) by the Bougainville Executive Council – to a member of the Council; or
- (b) by a member of the Bougainville Executive Council – to a public officer or member of a Bougainville Government Service, of all or any of its or his powers, functions, duties and responsibilities –
- (c) including, if the Bougainville law so provides, the powers of delegation; and
- (d) not including any legislative power or any power in or in relation to the House of Representatives.

***Division 3. – The President.***

**88. OFFICE OF PRESIDENT.**

An office of President of the Autonomous Region of Bougainville is hereby established.

**89. ELECTION OF PRESIDENT.**

(1) The President shall be elected by the electors of the Autonomous Region of Bougainville.

(2) A person shall not be elected as President on more than two occasions.

(3) Except as provided by Section 90 (*special election of President*), the election of a President shall be held as part of, and at the same time as, a Bougainville general election under Section 107 (*Bougainville general elections*) and for that purpose –

- (a) the provisions of this Constitution relating to Bougainville general elections, with the necessary modifications, apply; and
- (b) the whole of the Autonomous Region of Bougainville is a single constituency.

**90. SPECIAL ELECTION OF PRESIDENT.**

(1) Where the office of President becomes vacant under Section 94(2) (*vacation of office of President*) –

- (a) other than in circumstances described in Paragraph (b) of this section – an election shall be held to fill the office of President; or
- (b) after the fourth anniversary of the day fixed for the return of the writs in the previous general election – the Vice-President shall, subject to Section 107(1)(b)(iii) (*Bougainville general elections*) assume the office of President and shall, from among the members of the House of Representatives, from one of the Regions (North, Central and South) other than the Region from which he himself comes, appoint a new Vice-President.

(2) The provisions of this Constitution relating to the election of a President under Section 89 (*election of President*), with the necessary modifications, apply to and in relation to an election under Subsection (1)(a).

**91. QUALIFICATIONS FOR AND DISQUALIFICATIONS FROM ELECTION AS PRESIDENT.**

- (1) Until a Bougainville law made by an absolute majority vote provides otherwise, a President must be not less than 40 years of age.
- (2) A candidate for election as President must be qualified to vote in elections to the House of Representatives.
- (3) A candidate for election as President must be a Bougainvillean.
- (4) A person is not qualified to stand, or to continue to stand for election as President if –
- (a) he is not qualified or becomes disqualified, in accordance with Section 110 (*right to vote*) to vote in an election to the House of Representatives; or
  - (b) he is of unsound mind within the meaning of any law relating to the person and property of persons of unsound mind; or
  - (c) he is under, or becomes subject to, a sentence of death or imprisonment for a period of more than three months; or
  - (d) he is, or becomes disqualified from standing for election under this Constitution; or
  - (e) he is, or becomes, a member of, or a candidate for election or appointment to, the National Parliament, or to the House of Representatives; or
  - (f) he has already been elected as President on two occasions; or
  - (g) he has been declared bankrupt by a court of competent jurisdiction, and remains bankrupt; or
  - (h) he has nominated in an election to be held at the same time as a candidate for election as –
    - (i) a member representing a single member constituency under Section 55(b)(i) (*establishment and composition of the House of Representatives*); or
    - (ii) a woman member to represent the interests of women under Section 55(2)(b)(ii) (*establishment and composition of the House of Representatives*); or
    - (iii) a former combatant member to represent the interests of former combatant members under Section 55(2)(b)(iii) (*establishment and composition of the House of Representatives*); or
  - (i) if the election is an election for President under Section 58(5)(d) (*recall of member of the House of Representatives*) and the person is the person whose recall is the subject of the poll under Section 58(5)(c) (*recall of member of the House of Representatives*).

(5) Nothing in Subsection (1) is intended to reduce any right conferred by Section 50 (*right to vote and stand for public office*) of the National Constitution, but it is the considered opinion of the People of Bougainville expressed through the Bougainville Constitutional Commission and the Bougainville Constituent Assembly, that any restrictions imposed by this section are reasonable and are reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind.

## **92. ASSUMPTION OF OFFICE.**

Subject to Section 6 (*Declaration of Loyalty to Bougainville*), a President who is elected at the time of a Bougainville general election takes office on the day after the day fixed for the return of the writ in his election.

**93. FUNCTIONS OF THE PRESIDENT.**

The President –

- (a) is the Head and Chairman of the Bougainville Executive Council; and
- (b) shall preside at all meetings of the Bougainville Executive Council at which he is present; and
- (c) shall represent the Autonomous Bougainville Government and the People of the Autonomous Region of Bougainville on ceremonial occasions,

and has such other rights, powers, functions, duties and responsibilities as are provided for in this Constitution or in a Bougainville law, or by law.

**94. VACATION OF OFFICE OF PRESIDENT.**

(1) Subject to Subsection (2), the President ceases to hold office on the assumption of office by a new President following an election of President under Section 89 (*election of President*) or Section 90 (*special election of President*).

(2) The office of President becomes vacant if the President –

- (a) dies; or
- (b) resigns by written notice to the Speaker; or
- (c) ceases in accordance with Section 91(2) (*qualifications for and disqualifications from election as President*) to be qualified to stand for election as President; or
- (d) is dismissed from office as President under the provisions of Part XIII (*Leadership Code*); or
- (e) is recalled in accordance with Section 58 (*recall of members of the House of Representatives*); or
- (f) is or becomes of unsound mind within the meaning of any law relating to the person and property of persons of unsound mind; or
- (g) has been declared bankrupt by a court of competent jurisdiction and remains bankrupt.

***Division 4. – Vice-President.***

**95. OFFICE OF VICE-PRESIDENT.**

An office of Vice-President of the Autonomous Region of Bougainville is hereby established.

**96. APPOINTMENT OF VICE-PRESIDENT.**

(1) The President shall appoint a Vice-President from among the members of the House of Representatives from one of the Regions (North, Central and South) other than the Region from which the President himself comes.

(2) The President may dismiss the Vice-President from office at any time and on dismissal the person dismissed ceases to be a member of the Bougainville Executive Council.

**97. ASSUMPTION OF OFFICE.**

Subject to Section 6 (*Declaration of Loyalty to Bougainville*), a Vice-President takes office on the day after the day on which he is appointed under Section 96 (*appointment of Vice-President*).

**98. FUNCTIONS OF THE VICE-PRESIDENT.**

(1) In addition to his powers, functions, duties and responsibilities under any Bougainville law, the Vice-President has and shall exercise all the rights, privileges, powers, functions, duties and responsibilities of the President –

- (a) during any vacancy in the office of President; and
- (b) during any absence or inability to act of the President; and
- (c) in the circumstances referred to in Section 90(1)(b) (*special election of President*) when he shall assume the office of President,

and accordingly any reference in this Constitution (other than references to the election of the President), or any Bougainville law, or the Standing Orders, to the President shall be read as including a reference to the Vice-President acting under this subsection.

(2) A question, whether the occasion for the exercise or performance of a right, privilege, power, function, duty or responsibility by the Vice-President under Subsection (1) has arisen or has ceased, is non-justiciable.

***Division 5. – Members of the Bougainville Executive Council  
Generally.***

**99. INTERPRETATION OF DIVISION 5.**

In this Division, "member of the Bougainville Executive Council to whom this Division applies" means a member of the Bougainville Executive Council other than the President.

**100. VACATION OF OFFICE OF MEMBERS OF THE BOUGAINVILLE EXECUTIVE COUNCIL.**

(1) The Office of a member of the Bougainville Executive Council to whom this Division applies becomes vacant –

- (a) on the assumption of office by the President following an election to office of a new President under Section 89 (*election of President*) or Section 90(1)(a) (*special election of President*); or
- (b) if, other than following a general election of members (when Paragraph (a) applies) he ceases to be a member of the House of Representatives; or
- (c) if he resigns by written notice to the President; or
- (d) if he is dismissed from office under Section 101 (*dismissal of members of the Bougainville Executive Council*); or
- (e) if he is dismissed from office under Part XIII (*Leadership Code*); or
- (f) if he is recalled under Section 58 (*recall of member of the House of Representatives*); or
- (g) on his death.

(2) On receipt of a notice of resignation under Subsection (1)(c) the President shall give written notice of the resignation to –

- (a) the Speaker; and
- (b) the other members of the Bougainville Executive Council.

**101. DISMISSAL OF MEMBERS OF THE BOUGAINVILLE EXECUTIVE COUNCIL.**

(1) A member of the Bougainville Executive Council referred to in Section 80(1)(c), (d), (e) or (f) (*membership of the Bougainville Executive Council*) may be dismissed from the office of member of the Bougainville Executive Council by the President.

(2) Where the President dismisses a member of the Bougainville Executive Council under Subsection (1), the President shall, as soon as is practicable, notify in writing –

- (a) the member of the Bougainville Executive Council concerned; and
- (b) the Speaker; and
- (c) the other members of the Bougainville Executive Council; and
- (d) where the member is a member referred to in Section 80(1)(d) (*membership of the Bougainville Executive Council*), the Regional Committee and request that the Regional Committee recommends to him the names of five members of the House of Representatives, representing constituencies in the Region for which the Committee is established, for appointment by the President of one of the members named as a member of the Bougainville Executive Council to replace the member dismissed.

(3) The dismissal of a member of the Bougainville Executive Council under this section takes effect immediately or at such other time as is fixed by the President for the purpose.

(4) Where the member of the Bougainville Executive Council referred to in Section 80(1)(c) (*membership of Bougainville Executive Council*) is dismissed under Subsection (1), the President shall appoint to the Bougainville Executive Council, one of the other women members of the House of Representatives being another women member nominated by the women members (both those elected to represent the interests of women and any women members for single member constituencies).

**PART VII. – BOUGAINVILLE SENIOR APPOINTMENTS COMMITTEE AND APPOINTMENTS GENERALLY.**

**102. BOUGAINVILLE SENIOR APPOINTMENTS COMMITTEE.**

(1) There is established a Bougainville Senior Appointments Committee consisting of –

- (a) the President; and
- (b) the Speaker; and
- (c) a person appointed to represent the Churches in Bougainville; and
- (d) a person appointed to represent the women of Bougainville; and
- (e) a practising lawyer who is a Bougainvillean appointed by the Papua New Guinea Law Society or any Bougainville equivalent; and
- (f) in respect of the appointment, suspension or removal from office of each Bougainville Constitutional Office-holder, in accordance with

Section 312(3)(a) (*Bougainville Constitutional Office-holders*) of the National Constitution, two persons appointed by the body responsible for the appointment of the equivalent Constitutional Office-holder under Section 221 (*definitions*) of the National Constitution, or where there is no such equivalent, by the National Executive Council.

(2) A Bougainville law shall make provision for the method of selection and appointment of the persons referred to in Subsection (1)(c) and (d), and for the method of recognition of any Bougainville equivalent to the Papua New Guinea Law Society referred to in Subsection (1)(e).

(3) The Bougainville Senior Appointments Committee shall be responsible for the appointment, suspension or removal from office of –

- (a) Bougainville Constitutional Office-holders specified in Section 189 (*Bougainville Constitutional Office-holders*) (other than the Chief Justice of Bougainville and other Bougainville Judges, the Bougainville Public Prosecutor, the Bougainville Public Solicitor and the Head of other Bougainville Courts for whom specific provision is made by Section 121 (*Bougainville Judicial Appointments Committee*)); and

(b) the holders of other senior offices,  
in accordance with this Constitution and Bougainville laws.

(4) The Bougainville Senior Appointments Committee is not subject to direction or control by any person or authority and shall exercise its powers and functions in a non-partisan manner.

### **103. PART TIME APPOINTMENTS.**

(1) The House of Representatives may, through legislation at the time of establishing an office (including a Constitutional Office) under this Constitution, or at any time thereafter, determine that the holder of the office shall or may be appointed on a part-time basis.

(2) A person may hold simultaneously more than one office determined under Subsection (1) to be an office which can be held on a part-time basis, but only where the performance of his duties in the offices does not place him in a conflict of interest situation.

## **PART VIII. – CONSTITUENCIES AND ELECTIONS.**

### **104. BOUGAINVILLE BOUNDARIES COMMISSIONER.**

(1) There shall be a Bougainville Boundaries Commissioner, who shall be responsible, in accordance with a Bougainville law made by an absolute majority vote, for recommending to the House of Representatives from time to time for elections after the first general election of President and of members of the House of Representatives –

- (a) the number of single member constituencies for the House of Representatives, being not more than 38 nor less than 28; and
- (b) the boundaries of the constituencies of the members of the House of Representatives representing single member constituencies in accordance with Section 105 (*constituencies*); and
- (c) the boundaries of the Regional constituencies of members of the House of Representatives representing the interests of women and of former combatants in accordance with Section 105 (*constituencies*).

(2) The Bougainville Boundaries Commissioner is not subject to direction or control by any person or authority in the exercise of his powers and functions under this Constitution.

(3) A Bougainville law made by an absolute majority vote shall make further provisions for and in respect of the appointment and procedures of the Bougainville Boundaries Commissioner.

#### **105. CONSTITUENCIES.**

(1) The 33 single member constituencies, being the number of constituencies for the first general election of members of the House of Representatives provided for by Section 55(2)(b) (i) (*establishment and composition of the House of Representatives*) and thereafter until altered by a determination under Subsection (7), shall be allocated as follows: –

- (a) Buka – six constituencies;
- (b) Torokina – one constituency;
- (c) Kieta – six constituencies;
- (d) Nissan/Atolls – two constituencies;
- (e) Kunua/Keriaka – two constituencies;
- (f) Tinputz – two constituencies;
- (g) Selau/Suir – two constituencies;
- (h) Buin – four constituencies;
- (i) Siwai – three constituencies;
- (j) Bana – three constituencies;
- (k) Wakunai – two constituencies.

(2) The boundaries of each constituency referred to in Subsection (1) shall

–

- (a) be within a district; and
- (b) as far as is practicable, be within the boundaries of one open electorate referred to in Subsection (3); and
- (c) for the first Bougainville general election be as determined under Section 233 (*First Bougainville General Election Boundaries Director*); and
- (d) thereafter, where applicable, be as determined under this section.

(3) The boundaries for the constituencies for the three Regions (North, Central and South) referred to in Section 55(2)(b)(ii) and (iii) (*establishment and composition of the House of Representatives*) shall, for the first Bougainville general election, and thereafter until altered by a determination under this section, be the boundaries of the open electorates for the 2002 general elections to the National Parliament.

(4) In recommending constituency boundaries under Subsection (3) for elections other than the first Bougainville General Election, the Bougainville Boundaries Commissioner shall take into account matters broadly consistent with the matters referred to in Subsection (5)(a), (b), (c), (d), (e), (g), (h) and (i), the principle of regional representation and other electoral and administrative boundaries.

(5) In recommending constituencies and constituency boundaries under Section 104(1)(b) (*Bougainville Boundaries Commissioner*), the Bougainville Boundaries Commissioner shall take into account –

- (a) population; and
- (b) language groupings; and
- (c) cultural similarity and diversity; and
- (d) physical features and geographical characteristics; and
- (e) geographic organization of trade and communications; and
- (f) the Regions referred to in Section 55(2)(b)(ii) and (iii) (*establishment and composition of the House of Representatives*) in relation to the election of three women members and three former combatant members of the House of Representatives; and
- (g) identifiable minority groups with special interests; and
- (h) the financial resources of the Autonomous Bougainville Government; and
- (i) any other considerations laid down by a Bougainville law made by an absolute majority vote.

(6) In respect of elections to the House of Representatives after the first general election, the Bougainville Boundaries Commissioner may –

- (a) continue with the allocation of constituencies and constituency boundaries within districts for the first general election; or
- (b) change to population based boundaries, based on a quota, with a tolerance of 20% over or under the quota except that the population can be up to 30% under the quota in cases of areas with a special need.

(7) The number of constituencies and their boundaries shall be determined by the House of Representatives as provided by this section.

(8) The House of Representatives may accept or reject, but may not amend, any recommendation from the Bougainville Boundaries Commissioner under Section 104(1) (*Bougainville Boundaries Commissioner*), but may not reject a set of recommendations which, following previous rejection, has been modified by the Bougainville Boundaries Commissioner.

(9) A Bougainville law made by an absolute majority vote shall make further provision for and in respect of –

- (a) the procedures for formulating the recommendations of the Bougainville Boundaries Commissioner; and
- (b) the procedures to be followed by the House of Representatives when considering the recommendations of the Bougainville Boundaries Commissioner; and
- (c) the procedures to be followed by the Bougainville Boundaries Commissioner and the House of Representatives where recommendations by the Bougainville Boundaries Commissioner are rejected.

## **106. BOUGAINVILLE ELECTORAL COMMISSIONER AND ELECTIONS GENERALLY.**

(1) There shall be a Bougainville Electoral Commissioner who shall be appointed for a period of five years by the Bougainville Senior Appointments Committee, which for the

purpose shall include two persons appointed by the Electoral Commission Appointments Committee established under the *Organic Law on National and Local-level Government Elections*.

(2) The Bougainville Electoral Commissioner shall be responsible, in accordance with a Bougainville law made by an absolute majority vote, for the conduct of elections to the House of Representatives.

(3) In the performance of his functions, duties and responsibilities under this Constitution, the Bougainville Electoral Commissioner is not subject to direction or control by any person or authority.

(4) A Bougainville law made by an absolute majority vote shall make provision for and in respect of –

- (a) the procedures to be followed by the Bougainville Electoral Commissioner and for safeguarding his independence; and
- (b) the electoral system; and
- (c) safeguarding the integrity of elections; and
- (d) appeals to the Bougainville High Court on election matters.

#### **107. BOUGAINVILLE GENERAL ELECTIONS.**

(1) A Bougainville general election of the President and of members of the House of Representatives, shall be held –

- (a) in the first instance, in accordance with the provisions of Section 236 (*first Bougainville general election*); and
- (b) thereafter, subject to Subsection (4) –
  - (i) within a period of three months before the fifth anniversary of the day fixed for the return of the writs for the previous general election; or
  - (ii) if, after the fourth anniversary of the day fixed for the return of the writs in the previous general election, the office of President becomes vacant under Section 94(2) (*vacation of office of President*); or
  - (iii) if the House of Representatives, by a three-quarters absolute majority vote, so decides.

(2) Subject to Subsection (4), the Speaker, acting with, and in accordance with the advice of the Bougainville Electoral Commissioner, shall fix the first and the last days of the period during which polling shall take place at a Bougainville general election and the day by which the writs for the election shall be returned.

(3) Subject to Subsection (4), in advising the Speaker under Subsection (2) and in conducting the election, the Bougainville Electoral Commissioner shall endeavour to ensure –

- (a) in a case to which Subsection (1)(b)(i) applies – the day for the return of the writs is fixed as nearly as may reasonably be to the fifth anniversary of the day fixed for the return of the writs in the previous Bougainville general election; and
- (b) in a case to which Subsection (1)(b)(ii) applies – the day fixed for the return of the writs is as soon as may reasonably be after the office of President becomes vacant; and

- (c) in a case to which Subsection (1)(b)(iii) applies – the day fixed for the return of the writs is as soon as may reasonably be after the date of the decision of the House of Representatives.

(4) A Bougainville general election shall not be arranged to be held during the holding of a general election to the National Parliament (being the period commencing on the day of issue of writs for a general election to the National Parliament and ending on the day fixed for the return of the writs in such election) and where, in accordance with Subsection (1)(b) a Bougainville general election falls to be held during that period it shall be deferred until after the completion of that period and the Bougainville Electoral Commissioner shall advise the Speaker accordingly.

(5) General elections to other levels of formal government under Section 49 (*other levels of formal government*) including Regional Government under Section 50 (*Regional Government*) shall be held at the same time as a Bougainville general election.

#### **108. BY-ELECTIONS.**

(1) If the seat of a member of the House of Representatives becomes vacant otherwise than by Section 57(2)(a) (*normal term of office*) a by-election shall be held to fill the vacancy unless the vacancy occurs –

- (a) within the period of 12 months before the fifth anniversary of the date fixed for the return of the writs for the previous general election; or
- (b) after the writ has been issued for an election under Section 107(1)(b) (ii) or (iii) (*Bougainville general elections*).

(2) Where the seat of a member becomes vacant in the circumstances referred to in Subsection (1)(a) or (b), it shall remain vacant until the next general election.

#### **109. FORM OF ELECTIONS.**

Elections of the President and of the members of the House of Representatives shall be

–

- (a) in the case of the first election of the President or of a member or members of the House of Representatives – by a non-preferential single vote system; and
- (b) in the case of subsequent elections of the President and of members of the House of Representatives – by a preferential voting system,

under universal adult suffrage as provided for by this Constitution or by a Bougainville law made by an absolute majority vote.

#### **110. RIGHT TO VOTE.**

(1) Subject to Subsection (2), a person who –

- (a) is at least 18 years of age; and
- (b) is a Bougainvillean; and
- (c) is a citizen; and
- (d) is not of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind,

is entitled to vote in an election of the President or of a member or members of the House of Representatives, subject to the provisions of Schedule 10 (*electoral provisions relating to the first general election of President of the Autonomous Region of Bougainville and of members of the House of Representatives*) or of the Bougainville law referred to in Section 106

(*Bougainville Electoral Commissioner and elections generally*) or of Section 109 (*form of elections*).

- (2) A person referred to in Subsection (1) is entitled to vote in an election for –
  - (a) President; and
  - (b) a member referred to in Section 55(2)(b)(i) (*establishment and composition of the House of Representatives*); and
  - (c) a woman member referred to in Section 55(2)(b)(ii) (*establishment and composition of the House of Representatives*); and
  - (d) subject to Subsection 55(5) (*establishment and composition of the House of Representatives*), a former combatant member referred to in Section 55(2)(b)(iii) (*establishment and composition of the House of Representatives*).

(3) Nothing in Subsection (1) is intended to reduce any right conferred by Section 50 (*right to vote and stand for public office*) of the National Constitution, but it is the considered opinion of the People of Bougainville, expressed through the Bougainville Constitutional Commission and the Bougainville Constituent Assembly, that any restrictions imposed by Subsection (1) are reasonable and are reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind.

#### **111. POLITICAL PARTIES.**

- (1) A Bougainville law made by an absolute majority vote shall –
  - (a) make provision for a system of registration of political parties in Bougainville; and
  - (b) provide that to qualify for registration a political party must –
    - (i) provide evidence that it has such number of members in all Regions of Bougainville as is required by that Bougainville law; and
    - (ii) provide evidence that it has policies on broad subject matters relevant to Bougainville; and
    - (iii) have organizational structures that meet basic standards of democracy; and
    - (iv) disclose the sources of its funding to the Registrar who shall furnish them to the Bougainville Ombudsman; and
  - (c) make provision for all other matters relating to the system of registration (including provision for deregistration in certain circumstances) of political parties.

(2) A political party cannot take part in an election of the President or of a member or members of the House of Representatives or to any other level of formal government under this Constitution unless the political party is registered in accordance with the Bougainville law referred to in Subsection (1).

(3) For the purposes of Subsections (2) and (5), "take part in an election" means, without limiting the generality of the expression –

- (a) advertise or proclaim in any way that a candidate for election at an election –
  - (i) supports its policies; or
  - (ii) is nominated or supported or funded by it; or

- (b) take any action likely to indicate to voters that it supports any candidate.

(4) A candidate for election to the House of Representatives or as President or to any other level of formal government under this Constitution shall not –

- (a) accept funds from any political party; or
- (b) hold himself out as supporting or supported by a political party; or
- (c) hold himself out as a candidate supported by a political party,

unless the political party is registered in accordance with the Bougainville law referred to in Subsection (1).

(5) For the purposes of this section, “political party” means any party or organization having political aims and desiring to take part in an election.

(6) Nothing in this section is intended to reduce any right conferred by Section 50 (*right to vote and stand for public office*) of the National Constitution, but it is the considered opinion of the People of Bougainville, expressed through the Bougainville Constitutional Commission and the Bougainville Constituent Assembly, that any restrictions imposed by this section are reasonable and are reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind.

## **PART IX. – ADMINISTRATION OF JUSTICE.**

### ***Division 1. – General.***

#### **112. BOUGAINVILLE COURTS.**

- (1) The Bougainville Courts consist of –
  - (a) the Bougainville High Court established under Section 116 (*establishment of the Bougainville High Court*) which has the powers and functions specified in Section 119 (*jurisdiction of the Bougainville High Court*); and
  - (b) Bougainville courts (other than the Bougainville High Court and a court with a jurisdiction similar to that of a National Village Court) established under Section 126 (*establishment of other courts*) which have the powers specified in Bougainville laws; and
  - (c) the Supreme Court established under the National Constitution, which is the final court of appeal for the Autonomous Region of Bougainville, including appeals in relation to determinations made by the Bougainville High Court under Section 119 (*jurisdiction of the Bougainville High Court*); and
  - (d) the National Court established under the National Constitution, which has the power –
    - (i) to review the exercise of judicial authority by a Bougainville court (other than the Bougainville High Court) and by tribunals established under Section 132 (*constitution of tribunals*); and
    - (ii) equal to the power of the Bougainville High Court, to hear appeals from Bougainville Courts, but such power shall be exercised only as an alternative appeal and not as an appeal additional to that to the Bougainville High Court under Section 119 (*jurisdiction of the Bougainville High Court*); and

- (e) such other courts established under Section 172 (*establishment of other courts*) of the National Constitution (to the extent that they are not replaced by courts of similar jurisdiction established under Section 126 (*establishment of other courts*) which have the powers specified in the National laws establishing them).

(2) Subject to any right of appeal or power of review of a decision, it is the duty of all persons (including the Law Officers of the Autonomous Region of Bougainville and other officers of the Bougainville Government Services) and of all bodies and institutions, to comply with, and so far as is within their respective lawful powers, to put into effect, insofar as relating to the Autonomous Region of Bougainville, all decisions of the Bougainville Courts.

(3) Except to the extent that this Constitution specifically provides otherwise, no person or authority, other than –

- (a) the House of Representatives through legislation in respect of the Bougainville High Court and other Bougainville courts; and
- (b) as provided in the National Constitution, the National Parliament through legislation in respect of the Supreme Court, the National Court and other courts of the National Judicial System, (including in respect of National laws applying in Bougainville the Bougainville High Court and other Bougainville Courts),

has power to give directions to any court, or to a member of any court of the Bougainville Courts or to a member of any such Courts in respect of the exercise of judicial powers and functions.

(4) The Bougainville High Court and other Bougainville Courts are part of the National Judicial System.

### **113. THE LAW OFFICERS OF BOUGAINVILLE.**

(1) At such time as is considered suitable by the House of Representatives, any one or more of the following may be appointed to be the Law Officer or the Law Officers of the Autonomous Region of Bougainville:-

- (a) the principal legal adviser to the Bougainville Executive Council;
- (b) the Bougainville Public Prosecutor under Section 128 (*Bougainville Public Prosecutor and Bougainville Public Solicitor*);
- (c) the Bougainville Public Solicitor under Section 128 (*Bougainville Public Prosecutor and Bougainville Public Solicitor*).

(2) A Bougainville law shall make provision for and in respect of the office referred to in Subsection (1)(a).

### **114. EXERCISE OF THE JUDICIAL POWER.**

The judicial powers of the Autonomous Bougainville Government are vested in the Bougainville Courts and in interpreting the law all judges shall give paramount consideration to the dispensation of justice.

### **115. ALTERNATIVE DISPUTE RESOLUTION.**

- (1) Subject to Subsection (3), a Bougainville law may make provision for –
  - (a) the establishment of arbitral or reconciliation tribunals, by law or

by consent of the parties, whether *ad hoc* or otherwise, outside the Bougainville Courts; and

(b) methods of dispute resolution outside the Bougainville Courts.

(2) A Bougainville law referred to in Subsection (1) shall utilize and encourage the utilization of –

(a) customary dispute resolution and reconciliation practices; and

(b) the role of traditional chiefs and other traditional leaders in such dispute resolution and reconciliation practices.

(3) No person or body outside the Bougainville Courts has, or may be given, power to impose a sentence of death or imprisonment, or to impose any other penalty as for a criminal offence, but nothing in this subsection prevents –

(a) the imposition, in accordance with law, of disciplinary punishments (other than death or detention) on members of Bougainville Government Services; or

(b) the imposition of reasonable penalties (other than death or detention) by an association on its members for breaches of its rules.

### ***Division 2. - Bougainville High Court.***

#### **116. ESTABLISHMENT OF THE BOUGAINVILLE HIGH COURT.**

(1) At such time as is considered by the House of Representatives to be suitable, a Bougainville High Court shall be established.

(2) The Bougainville High Court is a superior court of record and accordingly, subject to a Bougainville law, has the power to punish the offence against itself commonly known as contempt of court.

#### **117. COMPOSITION OF THE BOUGAINVILLE HIGH COURT.**

(1) The Bougainville High Court shall consist of –

(a) the Chief Justice of Bougainville; and

(b) such number of Judges as may be determined by or under a Bougainville law.

(2) A –

(a) Judge of the National Court may hold an appointment as a Judge of the Bougainville High Court concurrently with his appointment as a Judge of the National Court; and

(b) Judge of the Bougainville High Court may hold an appointment as a Judge of the National Court concurrently with his appointment as a Judge of the Bougainville High Court.

(3) The appointment of a Judge to –

(a) the National Court – shall be as a Judge of the National Court; and

(b) the Bougainville High Court – shall be as a Judge of the Bougainville High Court.

#### **118. ACTING JUDGES.**

(1) A person qualified under Section 122 (*qualifications*) for appointment may, subject to Subsection (2), be appointed to be an acting Judge of the Bougainville High Court –

- (a) to fill temporarily a vacancy; or
- (b) in the absence from duty for any reason of a Judge of that Court; or
- (c) to meet a temporary workload or other exigency of the business of the Court.

(2) Where no person qualified for appointment under Section 122 (*qualifications*) to the Bougainville High Court as a Judge is available, a person so qualified may be appointed as an acting Judge on a temporary basis.

- (3) An appointment under Subsection (1) –
- (a) shall be made by the Bougainville Judicial Appointments Committee; and
  - (b) may be made without reference to the numerical limit imposed by Section 117(1) (*composition of the Bougainville High Court*); and
  - (c) may be of a non-citizen; and
  - (d) shall be for a period not exceeding one year, but one extension for a period not exceeding one year may be granted.

- (4) An appointment under Subsection (2) –
- (a) shall be made by the Bougainville Judicial Appointments Committee; and
  - (b) may be of a non-citizen; and
  - (c) shall be for a period not exceeding two years, but may be extended for a period or periods each not exceeding two years.

## **119. JURISDICTION OF THE BOUGAINVILLE HIGH COURT.**

(1) Subject to this Constitution and to the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution, the Bougainville High Court is a court of unlimited jurisdiction.

- (2) In particular, the Bougainville High Court may –
- (a) make orders in the nature of prerogative writs and such other orders as are necessary to do justice in the circumstances of a particular case; and
  - (b) exercise jurisdiction under the *Criminal Code*; and
  - (c) subject to Subsection (3), review the exercise of judicial power by Bougainville courts established under Section 126 (*establishment of other courts*); and
  - (d) determine questions of interpretation of this Constitution; and
  - (e) protect and enforce human rights.

(3) Where, under a Bougainville law, a person has a right to appeal to the Bougainville High Court from a court established under Section 126 (*establishment of other courts*), he has an alternative (but not an additional) right of appeal to the National Court.

(4) Subject to a Bougainville law and to the Rules of Court of the Bougainville High Court, the jurisdiction of the Bougainville High Court may be exercised by a single Judge of that Court or by a number of Judges sitting together.

(5) The jurisdiction of the Bougainville High Court may be exercised by a Judge or Judges of that Court notwithstanding that it is being exercised at the same time by another Judge or Judges.

(6) The jurisdiction of the Bougainville High Court may be exercised either in court or in chambers, as provided for under a Bougainville law or the Rules of Court of the Bougainville High Court.

## **120. RIGHT OF APPEAL FROM BOUGAINVILLE HIGH COURT TO SUPREME COURT.**

A person has a right to appeal from the Bougainville High Court to the Supreme Court as the final court of appeal.

### ***Division 3. – Appointment etc., of Judges of the Bougainville High Court.***

## **121. BOUGAINVILLE JUDICIAL APPOINTMENTS COMMITTEE.**

(1) There is established a Bougainville Judicial Appointments Committee which, subject to Subsections (2) and (3), shall consist of –

- (a) the Chief Justice of Bougainville, who shall be Chairman; and
- (b) a practising lawyer who is a Bougainvillean, appointed by the Papua New Guinea Law Society or any Bougainville equivalent; and
- (c) a traditional chief or other traditional leader selected in accordance with a Bougainville law; and
- (d) two members of the National Judicial and Legal Services Commission appointed by that Commission.

(2) Where the appointment of the first Chief Justice of Bougainville is under consideration there will be included in the Bougainville Judicial Appointments Committee –

- (a) the –
  - (i) most senior Bougainville Constitutional Office-holder; and
  - (ii) if there is no such office occupied at the time when the appointment is under consideration – the Speaker, who shall be Chairman; and
- (b) a –
  - (i) Judge from a Pacific Islands country with a legal system similar to that of Bougainville or Papua New Guinea as a whole; or
  - (ii) a representative from an international body with a commitment to development of the rule of law and enhancing the operation of legal and judicial systems, or of similar international experience, appointed by the Bougainville Executive Council.

(3) Where the appointment (other than the first appointment for which provision is made under Subsection (2)), suspension or removal from office of a Chief Justice is under consideration by the Bougainville Judicial Appointments Committee –

- (a) the Chief Justice shall not be a member and Chairman of the Committee; and
- (b) there will be included as a member and Chairman of the Committee –
  - (i) the most senior Bougainville Constitutional Office-holder; or
  - (ii) if there is no such office occupied at the time when the appointment, suspension or revocation of appointment is under consideration – the Speaker.

(4) The Bougainville Judicial Appointments Committee shall be responsible for the appointment, suspension or removal from office of –

- (a) the Chief Justice of Bougainville; and
- (b) Bougainville Judges; and
- (c) Acting Judges; and
- (d) the Bougainville Public Prosecutor; and
- (e) the Bougainville Public Solicitor; and
- (f) the Head of other Bougainville Courts,

in accordance with this Constitution and the Bougainville laws.

(5) Subject to Subsection (6), the Bougainville Judicial Appointments Committee is not subject to direction or control by any person or authority and shall exercise its powers and functions in a non-partisan manner.

(6) In considering persons for appointment under Subsection (4), the Bougainville Judicial Appointments Committee shall take into consideration the extent of a person's knowledge of the Bougainville situation and of Bougainville Kastom.

## **122. QUALIFICATIONS.**

The qualifications for appointment as the Chief Justice of Bougainville or as a Judge of the Bougainville High Court are as specified in Schedule 5 (*matters relating to Bougainville Constitutional Office-holders*) to this Constitution.

## **123. APPOINTMENT OF CHIEF JUSTICE OF BOUGAINVILLE.**

(1) Subject to Subsection (2), at the time of establishment of the Bougainville High Court, an office of the Chief Justice of Bougainville shall be established.

(2) The appointment of the Chief Justice of Bougainville may be deferred for a period of not more than two years from the date of establishment of the Bougainville High Court, or such longer period as the House of Representatives, by motion passed by an absolute majority vote, determines.

(3) The Chief Justice of Bougainville shall be appointed by the Bougainville Judicial Appointments Committee in accordance with Section 121 (*Bougainville Judicial Appointments Committee*).

(4) Subject to Subsection (5), the Chief Justice of Bougainville shall be appointed until the expiry of a term of 10 years or until he attains the age of 60 years, whichever shall first happen.

(5) When the Bougainville Judicial Appointments Committee is of the opinion that special circumstances exist, it may extend the retiring age specified in Subsection (4) to, but not beyond, 65 years.

(6) In addition to his other powers, functions, duties and responsibilities, the Chief Justice of Bougainville, after consultation with the other Judges (if any) of the Bougainville High Court, is responsible for the organization of the affairs and administration of the business of the Bougainville High Court (other than, except to an extent allowed by a Bougainville law, matters relating to the Bougainville Public Service).

- (7) Where –
- (a) there is a vacancy in the Office of Chief Justice of Bougainville; or
  - (b) the Chief Justice of Bougainville is absent from Bougainville or duty; or
  - (c) the Chief Justice of Bougainville is unable or unavailable to act; or
  - (d) the Chief Justice of Bougainville so directs,

the powers, functions, duties and responsibilities of the Chief Justice of Bougainville may be exercised and performed by the next most senior Bougainville Judge who is available.

(8) The question, whether the occasion for the exercise or performance of the powers, functions, duties and responsibilities of the Chief Justice by another Bougainville Judge under this section has arisen or has ceased, is non-justiciable.

(9) Where the appointment of a Chief Justice of Bougainville has been deferred under Subsection (2), the most senior Bougainville Judge shall exercise the powers and perform the functions, duties and responsibilities of the Chief Justice of Bougainville.

#### **124. APPOINTMENT OF OTHER JUDGES.**

(1) The other Bougainville Judges (other than the Chief Justice) shall be appointed by the Bougainville Judicial Appointments Committee.

(2) Subject to Subsection (3), a Bougainville Judge shall be appointed until the expiry of a term of 10 years or until he attains the age of 60 years, whichever first happens.

(3) Where the Bougainville Judicial Appointments Committee is of the opinion that special circumstances exist, it may extend the retiring age specified in Subsection (2) to, but not beyond, 65 years.

(4) The question, whether the occasion for the appointment of an Acting Judge has arisen or has ceased, is non-justiciable.

#### **125. SENIORITY OF JUDGES.**

A Bougainville law shall make provision for the determination of the seniority of Bougainville Judges.

#### ***Division 4. – Other Courts.***

#### **126. ESTABLISHMENT OF OTHER COURTS.**

(1) Subject to this Constitution, Bougainville laws may establish, or provide for the establishment of –

- (a) Bougainville courts other than the Bougainville High Court; and
- (b) courts, which are not within the Bougainville Courts, with a jurisdiction similar to, but not limited to, that of the National Village Courts,

and for their jurisdiction, functions, powers and procedures.

(2) Courts shall be established under Subsection (1) so as to meet the needs of the People of Bougainville and may include courts, comprising of or including traditional chiefs and other traditional leaders, intended to deal with matters primarily with reference to custom, or in accordance with customary procedures, or both.

(3) In making any law establishing courts referred to in Subsection (1)(b), the Autonomous Bougainville Government shall take account of Sections 13 (*strengthening of customary authority*), 51 (*traditional systems of government*) and 115 (*alternative dispute resolution*).

- (4) Bougainville laws may make provision for –
- (a) the Head of other Bougainville Courts and all members and staff of courts established under Subsection (1); and
  - (b) the method of appointment (other than the appointment of the Head of other Bougainville Courts) and terms and conditions of appointment of the members and staff of such courts; and
  - (c) the grounds of removal from office of members (other than the Head of other Bougainville Courts) of such courts within the Bougainville Courts; and
- (d) the removal of staff of such courts and of members of such courts not within the Bougainville Courts.

#### **127. HEAD OF OTHER BOUGAINVILLE COURTS.**

(1) At such time as is considered suitable by the House of Representatives, an office of Head of other Bougainville Courts shall be established.

(2) The title of the holder of the office of Head of other Bougainville Courts shall be determined by a Bougainville law.

(3) The Head of other Bougainville Courts shall be appointed by the Bougainville Judicial Appointments Committee.

(4) Unless and except to the extent that a Bougainville law provides otherwise, the Head of other Bougainville Courts is *ex officio* a member of all courts established under Section 126 (*establishment of other courts*) within the Bougainville Courts and, if provision is made for grades of powers, functions or jurisdiction within such courts, has all the powers, functions and jurisdiction of the highest grades.

#### ***Division 5. – The Bougainville Public Prosecutor and the Bougainville Public Solicitor.***

#### **128. BOUGAINVILLE PUBLIC PROSECUTOR AND BOUGAINVILLE PUBLIC SOLICITOR.**

- (1) The House of Representatives may –
- (a) at such time as it considers suitable – establish an office of Bougainville Public Prosecutor; and
  - (b) at such time as it considers suitable – establish an office of Bougainville Public Solicitor.

(2) The Bougainville Public Prosecutor and the Bougainville Public Solicitor shall be appointed by the Bougainville Judicial Appointments Committee.

(3) Subject to this Constitution, in the performance of his functions under this Constitution the Bougainville Public Prosecutor is not subject to direction or control by any person or authority.

(4) The powers and protections of the Bougainville Public Prosecutor and the Bougainville Public Solicitor may be further provided for by future amendment of this Constitution.

**129. FUNCTIONS OF THE BOUGAINVILLE PUBLIC PROSECUTOR AND THE BOUGAINVILLE PUBLIC SOLICITOR.**

(1) The functions of the Bougainville Public Prosecutor are –

- (a) in accordance with Bougainville laws and the Rules of Court of the Bougainville High Court, subject to Section 177 (b) (*powers of Bougainville Ombudsman in relation to criminal misconduct*), to control the exercise and performance of the prosecution (including appeals and the refusal to initiate, and the discontinuance of, prosecutions) before the Bougainville High Court, and before other courts as provided by or under Bougainville laws; and
- (b) to bring or to decline to bring proceedings under Part XIII (*Leadership Code*) for misconduct in office.

(2) The functions of the Bougainville Public Solicitor are to provide legal aid, advice and assistance for persons in need of help by him, in accordance with a Bougainville law made by an absolute majority vote.

***Division 6. – Removal from Office of Senior Judicial and Legal Office-holders.***

**130. REMOVAL FROM OFFICE OF CHIEF JUSTICE OF BOUGAINVILLE, ETC.,**

The Chief Justice of Bougainville, a Bougainville Judge, the Bougainville Public Prosecutor, the Bougainville Public Solicitor or the Head of other Bougainville Courts may be removed from office only –

- (a) in accordance with this Division; or
- (b) in accordance with Part XIII (*Leadership Code*).

**131. PROCEDURES FOR REMOVAL.**

Where the Bougainville Judicial Appointments Committee is satisfied that the Chief Justice of Bougainville, a Bougainville Judge, the Bougainville Public Prosecutor, the Bougainville Public Solicitor or the Head of other Bougainville Courts, during his tenure of office –

- (a) has been convicted of a criminal offence; or
- (b) has nominated for election to a political office; or
- (c) has actively engaged in politics; or
- (d) is guilty of serious misconduct in office; or
- (e) is unable (whether from physical or mental infirmity or otherwise) to perform the duties of his office; or
- (f) has been declared bankrupt by a court of competent jurisdiction and remains bankrupt,

and that it is proper that the question of his removal from office should be investigated, it may

- (g) appoint a tribunal under Section 132 (*constitution of tribunals, etc.*); and
- (h) refer the matter, together with a statement of the reasons for its opinion, to the tribunal for investigation and report to it.

### **132. CONSTITUTION OF TRIBUNALS, ETC.,**

(1) A tribunal for the purposes of Section 131 (*procedures for removal*) shall consist of a Chairman and two other members, each of whom must be –

- (a) a Judge or former Judge of the Bougainville High Court or of the Supreme Court or of the National Court; or
- (b) a Judge or former Judge of a court of unlimited jurisdiction of a country with a legal system similar to that of Bougainville or Papua New Guinea as a whole, or of a court to which an appeal from such a court lies.

(2) The tribunal shall make due inquiry into any matter referred to it without being limited by legal formalities or the rules of evidence, and shall inform itself in such manner as it thinks proper, subject to compliance with the principles of natural justice.

(3) If the tribunal reports that there are good grounds under Section 131(1)(c) to (f) (*procedures for removal*) for removing the person from office, the Bougainville Judicial Appointments Committee shall by notice in writing to the person, remove him from office.

(4) The Committee shall send a copy of the notice, together with a copy of the report of the tribunal, to –

- (a) the Speaker for presentation to the House of Representatives; and
- (b) the Bougainville Executive Council; and
- (c) the National Judicial and Legal Services Commission.

### **133. SUSPENSION.**

(1) Where a question has been referred to a tribunal under Section 131 (*procedures for removal*), the Bougainville Judicial Appointments Committee may suspend the person concerned from office pending the report of the tribunal, and may remove the suspension at any time.

(2) Unless otherwise determined by the Bougainville Judicial Appointments Committee, the suspension shall be on full pay.

(3) Where at the time of the suspension, a suspended Bougainville Judge or the Head of other Bougainville Courts was dealing with any judicial proceedings, he may continue and complete those proceedings, unless the Bougainville Judicial Appointments Committee in the case of the Chief Justice, or the Chief Justice in any other case, otherwise orders.

## ***Division 7. – Miscellaneous.***

### **134. RULES OF COURT.**

(1) The Judges of the Bougainville High Court may make Rules of Court, not inconsistent with this Constitution or a Bougainville law, with respect to the practice and procedure in and in relation to the Bougainville High Court.

(2) Without limiting the generality of Subsection (1), the Rules of Court may make provision for and in respect of –

- (a) the practice and procedures in the offices of the Bougainville High Court; and
- (b) the service and execution of process and judgements of the Bougainville High Court; and
- (c) the service and execution within Bougainville of process and judgements of foreign courts; and
- (d) the service and execution within Bougainville of process and judgements of courts in the Bougainville Courts other than the Bougainville High Court and Bougainville courts established under Section 126 (*establishment of other courts*); and
- (e) the issue by the Bougainville High Court of letters of request for the service in a foreign country of process of a Bougainville court or for the examination of witnesses in a foreign country; and
- (f) the costs of and relating to proceedings in the Bougainville High Court; and
- (g) the methods of pleading; and
- (h) the attendance of witnesses and the taking of evidence; and
- (i) the means by which particular facts may be proved, and the manner in which evidence of particular facts may be given, in any proceedings or in any application in connection with, or at any stage of, any proceedings; and
- (j) simplified procedures for proceedings under Section 183 (*enforcement of guaranteed rights and freedoms*).

(3) The Rules of Court may require or permit legal argument to be submitted in writing.

(4) If a Bougainville law comes into force that is inconsistent with a Rule of Court, the Rule of Court ceases to have effect to the extent of the inconsistency.

(5) All Rules of Court shall be forwarded by the Chief Justice of Bougainville to the Speaker, as soon as practicable after being made, for presentation to the House of Representatives, and may be disallowed by the House of Representatives.

### **135. LACK OF PROCEDURAL PROVISION.**

If in the circumstances of a particular case before the Bougainville High Court or any other Bougainville court, no provision, or no adequate provision, is made in respect of a matter of procedure or practice, the Court shall give *ad hoc* directions to remedy the lack or inadequacy.

### **136. JURIES AND ASSESSORS.**

A Bougainville law may provide for a system of –

- (a) assessors –
  - (i) being traditional chiefs or other traditional leaders for the purpose of assisting the court in understanding custom and customary practices; and
  - (ii) for the purpose of assisting the court in other specialized matters; and
- (b) juries.

**137. REPORTS OF BOUGAINVILLE JUDGES.**

(1) The Bougainville Judges shall, at least once in each period of 12 months, at such times as are fixed by or under a Bougainville law, give to the Minister responsible for Bougainville Courts, for presentation to the House of Representatives, a report on the work of the Bougainville Courts, with such recommendations as to improvements as they consider proper.

(2) Nothing in Subsection (1) prevents the Bougainville Judges from making, on their own initiative, or in accordance with a Bougainville law, other reports on any aspect of the work of the Bougainville Courts.

**PART X. – BOUGAINVILLE GOVERNMENT SERVICES.**

*Division 1. – Introductory.*

**138. ESTABLISHMENT OF BOUGAINVILLE GOVERNMENT SERVICES.**

(1) The House of Representatives may establish, as and when it considers it suitable in each case, the following Bougainville Government Services: –

- (a) the Bougainville Public Service;
- (b) the Bougainville Police Service;
- (c) the Bougainville Correctional Service.

(2) Bougainville laws may make provision for and in respect of the establishment, powers and functions and all other matters relating to other Bougainville Government Services.

(3) Until the establishment of the Bougainville Government Services referred to in Subsection (1), the Bougainville Peace Agreement as implemented in the National Constitutional Laws shall determine the extent to which the equivalent State Services of the National Government will continue to operate.

**139. CIVILIAN CONTROL.**

All the Bougainville Government Services shall be civilian services and shall be subject at all times to ultimate civilian control.

**140. RESPONSIBILITY OF HEADS OF BOUGAINVILLE GOVERNMENT SERVICES TO BOUGAINVILLE EXECUTIVE COUNCIL.**

(1) The Head of each Bougainville Government Service shall be responsible to the Bougainville Executive Council for –

- (a) the exercise of his powers and the performance of his functions as such Head; and

- (b) the efficient conduct and performance of the Service of which he is the Head.

(2) The responsibility of the Head of a Bougainville Government Service to the Bougainville Executive Council under Subsection (1) shall be effected through the Minister with the political responsibility under Section 85(4) (*responsibilities*) for that Service.

#### **141. DECLARATIONS OF LOYALTY, ETC.,**

A member of a Bougainville Government Service shall, before entering upon the duties of or exercising any of the powers of his office, make –

- (a) the Declaration of Loyalty in accordance with Section 6 (*Declaration of Loyalty to Bougainville*); and
- (b) until any change in the status of Bougainville that may occur following the Bougainville Referendum –
  - (i) the Oath of Allegiance in accordance with Section 7 (*Oath of Allegiance*); and
  - (ii) the Declaration of Loyalty in accordance with Section 6 (*Declaration of Loyalty*),  
of the National Constitution.

***Division 2. – Bougainville Public Services Commission.***

#### **142. ESTABLISHMENT OF THE BOUGAINVILLE PUBLIC SERVICES COMMISSION.**

(1) At such time as is considered suitable by the House of Representatives, a Bougainville Public Services Commission shall be established.

(2) The Commission shall consist of three members who shall be appointed for a term of five years by the Bougainville Senior Appointments Committee, which for the purpose shall include two persons appointed by the National Executive Council.

(3) Unless there are exceptional circumstances, all the members of the Commission must have gained substantial experience in the National Public Service or in the Bougainville Public Service.

(4) Subject to this Constitution, a Bougainville law shall make provision for and in respect of the Commission and for and in respect of its constitution, powers and procedures.

#### **143. FUNCTIONS OF THE COMMISSION.**

(1) The Bougainville Public Services Commission shall, in accordance with a Bougainville law, be responsible for –

- (a) the review of personnel matters connected with the Bougainville Public Service; and
- (b) the continuous review of the Bougainville Government Services and the services of other Bougainville governmental bodies and for advising, either on its own initiative or on request, the Bougainville Executive Council and any authority responsible for any of those Services, on organizational matters in relation to those Services or bodies.

(2) The Bougainville Public Services Commission has such other functions as may be prescribed under this Constitution or a Bougainville law.

- (3) In carrying out its functions under Subsection (1)(b), the Commission –
- (a) shall take into account the policy of the Autonomous Bougainville Government when advising the Bougainville Executive Council and other authorities responsible for those Services; and
  - (b) shall not have any power to direct or control a Bougainville Government Service or the services of other Bougainville governmental bodies.

(4) The Bougainville Public Services Commission shall, in respect of each calendar year, prepare and forward to the President for presentation to the House of Representatives, a report on the advice it has given during the year to the Bougainville Executive Council or other authorities in accordance with Subsection (1)(b) indicating in particular the nature of the advice given and whether or not that advice was accepted.

**144. INDEPENDENCE OF THE COMMISSION.**

The Bougainville Public Services Commission is not subject to direction or control by any person or authority when carrying out its function under Section 143(1)(a) (*functions of the Commission*).

**145. PERSONNEL MATTERS.**

In this Division, "personnel matters" means decisions and other service matters concerning an individual whether in relation to his appointment, promotion, demotion, transfer, suspension, disciplining or cessation or termination of employment (except cessation or termination at the end of his normal period of employment as determined in accordance with law), or otherwise.

***Division 3. – Bougainville Public Service.***

**146. BOUGAINVILLE PUBLIC SERVICE.**

Subject to this Constitution, Bougainville laws shall make provision for all matters relating to the Bougainville Public Service and in particular, for and in respect of –

- (a) standards for management and control of the Bougainville Public Service ; and
- (b) work value and standard for pay for the Bougainville Public Service; and
- (c) classification and grade structures in the Bougainville Public Service, compatible with those of the National Public Service.

**147. HEAD OF BOUGAINVILLE PUBLIC SERVICE.**

(1) At such time as is considered suitable by the House of Representatives an office of Head of the Bougainville Public Service shall be established.

(2) The Head of the Bougainville Public Service shall be appointed (and may be suspended or removed from office for just cause) by the Bougainville Senior Appointments Committee.

(3) A Bougainville law shall make provision for the title of the office, term of appointment, terms and conditions of employment and other matters relating to the office of Head of the Bougainville Public Service.

(4) The Head of the Bougainville Public Service shall be responsible to the Bougainville Executive Council in accordance with Section 140 (*responsibility of Heads of Bougainville Government Services to Bougainville Executive Council*).

#### ***Division 4. – Bougainville Police Service.***

#### **148. BOUGAINVILLE POLICE SERVICE.**

(1) The primary functions of the Bougainville Police Service are, in accordance with this Constitution, the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution and Bougainville laws –

- (a) to serve the community and to preserve peace and good order in Bougainville; and
- (b) to maintain and, as necessary, enforce all laws that apply in Bougainville in an impartial and objective manner; and
- (c) to co-operate fully in the co-operative policing arrangements as set out in Paragraphs 226, 227 and 228 of the Bougainville Peace Agreement.

(2) In carrying out its functions under Subsection (1), the Bougainville Police Service shall at all times –

- (a) have respect for human rights; and
- (b) develop rehabilitatory and reconciliatory concepts of policing; and
- (c) work in harmony and partnership with communities and encourage community participation in its activities; and
- (d) support and work with traditional chiefs and other traditional leaders to resolve disputes and maintain law and order in communities.

(3) The Minister responsible for Bougainville Police Service has no power of command within the Bougainville Police Service except as provided for by this Constitution or a Bougainville law.

(4) In so far as it is a function of the Bougainville Police Service to lay, prosecute or withdraw charges in respect of offences, the members of the Bougainville Police Service are not subject to direction or control by –

- (a) any person outside the Bougainville Police Service; or
- (b) where acting under any arrangement with the National Police Force, any person outside the National Police Force.

#### **149. CHIEF OF BOUGAINVILLE POLICE.**

(1) At such time as is considered suitable by the House of Representatives, there shall be established an office of Head of the Bougainville Police Service, the holder of which office shall be called the Chief of Bougainville Police.

(2) The Chief of Bougainville Police shall be appointed (and may be suspended or removed from office for just cause) by the Bougainville Senior Appointments Committee, which for the purpose shall include the National Commissioner of Police or his representative and one other representative of the National Government appointed by the National Executive Council.

(3) A Bougainville law shall make provision for the period of appointment, terms and conditions of employment, rank and other matters relating to the Chief of Bougainville Police.

(4) The Chief of Bougainville Police shall be responsible to the Bougainville Executive Council in accordance with Section 140 (*responsibility of Heads of Bougainville Government Services to the Bougainville Executive Council*).

#### **150. FURTHER PROVISIONS RELATING TO BOUGAINVILLE POLICE SERVICE.**

Subject to this Constitution, Bougainville laws shall make provision for all matters relating to the Bougainville Police Service and in particular relating to –

- (a) the structures and organization of the Bougainville Police Service; and
- (b) the terms and conditions of service of the Bougainville Police Service; and
- (c) the core training and personnel development arrangements for the Bougainville Police Service; and
- (d) such other matters relating to the Bougainville Police Service as are necessary,

consistent with those of the National Police Force.

#### ***Division 5. – Bougainville Correctional Service.***

#### **151. BOUGAINVILLE CORRECTIONAL SERVICE.**

(1) The primary functions of the Bougainville Correctional Service are the supervision and administration of correctional institutions and the reduction in the need for custodial detention.

- (2) The Bougainville Correctional Service shall –
  - (a) develop concepts of rehabilitation; and
  - (b) develop alternative methods of dealing with offenders; and
  - (c) involve the community and encourage community participation in its work and encourage the integration of offenders into their communities.
- (3) Subject to this Constitution, Bougainville laws shall make provision for –
  - (a) the structures and organization of the Bougainville Correctional Service; and
  - (b) the terms and conditions of service of the Bougainville Correctional Service; and
  - (c) the core training and personnel development arrangements for the Bougainville Correctional Service; and
  - (d) such other matters relating to the Bougainville Correctional Service as are necessary,

consistent with those of the National Correctional Service.

**152. CHIEF OF THE BOUGAINVILLE CORRECTIONAL SERVICE.**

(1) At such time as is considered suitable by the House of Representatives, there shall be established an office of Head of the Bougainville Correctional Service, the holder of which office shall be called the Chief of the Bougainville Correctional Service.

(2) The Chief of the Bougainville Correctional Service shall be appointed (and may be suspended or removed from office for just cause) by the Bougainville Senior Appointments Committee, which for the purpose shall include the National Commissioner for Correctional Service or his representative and one other representative of the National Government appointed by the National Executive Council.

(3) A Bougainville law shall make provision for the term of appointment, terms and conditions of employment, rank and other matters relating to the Chief of the Bougainville Correctional Service.

(4) The Chief of the Bougainville Correctional Service shall be responsible to the Bougainville Executive Council in accordance with Section 140 (*responsibility of Heads of Autonomous Bougainville Government Services to Bougainville Executive Council*).

**PART XI. – FINANCES AND FINANCIAL MANAGEMENT AND CONTROL.**

***Division 1. – General.***

**153. GENERAL PRINCIPLES RELATING TO FINANCES AND FINANCIAL MANAGEMENT.**

(1) In the use of its finances and in the management and control of its finances, the Autonomous Bougainville Government shall –

- (a) aim to achieve fiscal self-reliance as soon as possible; and
- (b) aim to make all governmental institutions and Bougainville governmental bodies (including Bougainville Government Services) and levels of government self-sustaining as far as practicable; and
- (c) take full account of cost implications in making decisions relating to –
  - (i) the establishment and composition of governmental institutions and Bougainville governmental bodies (including Bougainville Government Services); and
  - (ii) the establishment of procedures for consultation through plebiscite under Section 195 (*consultation through plebiscite*); and
  - (iii) the establishment of procedures for participation in, and poll for, law-making under Section 196 (*participation in, and poll for, law-making*); and
  - (iv) the conduct of a plebiscite under Section 195 (*consultation through plebiscite*); and
  - (v) the conduct of a poll under Section 196 (*participation in, and poll for, law-making*); and
- (d) aim to develop and adopt the best possible financial management, accounting and budgeting practices; and

- (e) in the interests of achieving fiscal self-reliance and good financial management –
  - (i) continue to rely on traditional chiefs and other traditional leaders in the governance of their communities; and
  - (ii) utilize the private sector in the provision of goods and services.

(2) The question as to whether the Autonomous Bougainville Government has carried out the requirements imposed on it under Subsection (1) is non-justiciable.

***Division 2. – Outline of Finances of Autonomous Bougainville Government and Finance Administration.***

**154. OUTLINE OF FINANCES OF AUTONOMOUS BOUGAINVILLE GOVERNMENT AND FINANCE ADMINISTRATION.**

(1) The finances of the Autonomous Bougainville Government, as contained in the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution, shall consist of –

- (a) grants from the National Government, being –
  - (i) a recurrent unconditional grant, payable annually until fiscal self-reliance; and
  - (ii) a Police Grant, payable annually; and
  - (iii) restoration and development grants, payable annually; and
  - (iv) conditional grants for specific purposes; and
  - (v) an establishment grant,
 as provided for in Section 326 (*grants*) of the National Constitution and Division III.3 (*financial grants and assistance*) of the *Organic Law on Peace- Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*; and
- (b) revenue from taxes, being –
  - (i) personal income tax collected in Bougainville; and
  - (ii) 30 % of value added tax collected in Bougainville; and
  - (iii) after fiscal self-reliance, a share to be agreed with the National Government of revenues from company tax, customs duties and value added tax collected in Bougainville; and
- (c) revenue from taxes which may be imposed by the National Government other than –
  - (i) company tax; and
  - (ii) value added tax; and
  - (iii) customs duties; and
- (d) revenue from the following taxes which may be imposed by the Autonomous Bougainville Government , being: –
  - (i) liquor licensing fees;
  - (ii) fees for licences to operate or carry on gambling, lotteries and games of chance;
  - (iii) developed property tax;
  - (iv) motor vehicle registration tax;
  - (v) road users tax;
  - (vi) fees and other imposts –

- (A) from the operation of functions available to the Autonomous Bougainville Government under Section 290 (*functions and powers available to the Autonomous Bougainville Government*) and transferred to the Autonomous Bougainville Government; and
  - (B) from the operation of functions in respect of which the Autonomous Bougainville Government has legislated and has reached agreement with the National Government under Section 292 (*subjects not specified in Sections 289, 290 and 291*) of the National Constitution; and
  - (C) as have been available to Provincial Governments and Local - level Governments; and
- (e) foreign aid obtained by the Autonomous Bougainville Government in accordance with Section 327 (*foreign aid*) of the National Constitution; and
  - (f) moneys borrowed by the Autonomous Bougainville Government –
    - (i) by way of foreign loans, in accordance with required approvals and other requirement of the Bank of Papua New Guinea; and
    - (ii) by way of domestic loans, in accordance with regulation of the banking system by the Bank of Papua New Guinea, as permitted by Section 328 (*other financial powers and accountability*) of the National Constitution; and
  - (g) revenue from fisheries, being –
    - (i) the distribution to the Autonomous Bougainville Government of National Government fishing revenues in accordance with Paragraph 86 of the Bougainville Peace Agreement; and
    - (ii) the fees and other revenues obtainable from the allocation to the Autonomous Bougainville Government of the quota of domestic fishing licences for highly migratory and straddling fish stocks; and
  - (h) the share of revenues available to the Autonomous Bougainville Government from activities in areas of sea and seabed beyond the guaranteed three nautical mile limit and within the Exclusive Economic Zone and the continental shelf associated with the Autonomous Region of Bougainville; and
  - (i) in accordance with Paragraph 95 of the Bougainville Peace Agreement, revenue from telecommunications services which the Autonomous Bougainville Government may provide in Bougainville; and
  - (j) moneys derived from commercial activities relating to –
    - (i) the leasing, operation or management of business concessions in aerodromes or shipping ports; and
    - (ii) the sale of Bougainville postage stamps; and
  - (k) investments by the Autonomous Bougainville Government or in which the Autonomous Bougainville Government has a share.
- (2) The Autonomous Bougainville Government may –
- (a) establish its own tax regime for all taxes other than company tax, value added tax and customs duties; and
  - (b) fix rates in respect of –
    - (i) subject to Subsection (3), personal income tax; and

- (ii) subject to Subsection (4), after fiscal self-reliance, company tax; and
  - (iii) all taxes under its own tax regime; and
- (c) establish a Bougainville tax office, which may collect –
- (i) all or any taxes under its own tax regime; and
  - (ii) by agreement with the Internal Revenue Commission, for and on behalf of the Internal Revenue Commission, company tax, value added tax and customs duties.

(3) Until fiscal self-reliance, the rate of personal income tax for Bougainville may be adjusted by the Autonomous Bougainville Government under Subsection (2)(b)(i) by no more than five from the number of percent at which that tax is fixed for that time by the National Government.

(4) The rate of company tax for Bougainville which may be set by the Autonomous Bougainville Government under Subsection (2)(b)(ii) shall not vary at any time by more or less than five from the number of percent at which the company tax is fixed for that time by the National Government.

(5) The Autonomous Bougainville Government shall, as soon as practicable, introduce in the House of Representatives such Bougainville laws as are necessary to enable the Autonomous Bougainville Government to exercise the powers relating to fiscal arrangements under the National Constitutional Laws and this section.

***Division 3. – House of Representatives and Finance.***

**155. FINANCIAL RESPONSIBILITY OF THE HOUSE OF REPRESENTATIVES.**

(1) The raising and expenditure of finance by the Autonomous Bougainville Government, including the imposition of taxation and the raising of loans, is subject to authorization and control by the House of Representatives, and shall be regulated by a Bougainville law, which may also provide for financial management.

- (2) For each fiscal year there shall be a Bougainville Budget comprising –
- (a) estimates of finance proposed to be raised or received and estimates of proposed expenditure by the Autonomous Bougainville Government in respect of that fiscal year; and
  - (b) an appropriation for the expenditure for the service of that year in respect of the general public services; and
  - (c) such other supplementary Budgets and appropriations for expenditure as are necessary.

(3) As required by Paragraph 167 of the Bougainville Peace Agreement, the Autonomous Bougainville Government will not propose a deficit Budget without the prior written approval of the National Minister responsible for finance matters.

**156. EXECUTIVE INITIATIVE.**

(1) The House of Representatives shall not provide for the imposition of taxation, the raising of loans or the expenditure of public moneys of Bougainville except on the recommendation of the Bougainville Executive Council.

(2) The House of Representatives may reduce, but shall not increase or re-allocate, the amount or incidence of, or change the purpose of, any proposed taxation, loan or expenditure.

**157. REVENUE AND EXPENDITURE WITHOUT PRIOR APPROVAL.**

(1) If at the beginning of the fiscal year the House of Representatives has not made provision for public expenditure by the Autonomous Bougainville Government, the Autonomous Bougainville Government may, without authorization other than this section but in accordance with a Bougainville law, expend amounts appropriated for expenditure out of the Bougainville Consolidated Revenue Fund for the purpose not exceeding in total one third of its budgeted expenditure during the immediately preceding fiscal year.

(2) The authority conferred by Subsection (1) lapses when the House of Representatives has made provision for the public expenditure for the fiscal year in question, and any amounts expended by virtue of Subsection (1) are a charge against the expenditure so provided for and shall be properly brought to account accordingly.

*Division 4. – Bougainville Auditor-General.*

**158. ESTABLISHMENT OF OFFICE OF BOUGAINVILLE AUDITOR-GENERAL.**

(1) At such time as is considered by the House of Representatives to be suitable, an office of Bougainville Auditor-General shall be established.

(2) The Bougainville Auditor-General shall be appointed for a period of five years by the Bougainville Senior Appointments Committee, which shall include for the purpose two persons appointed by the National Executive Council.

(3) In the performance of his functions under this Constitution, the Bougainville Auditor-General is not subject to direction or control by any person or authority.

**159. FUNCTIONS OF THE BOUGAINVILLE AUDITOR-GENERAL.**

(1) The primary functions of the Bougainville Auditor-General are to inspect and audit, and to report at least once in each fiscal year to the House of Representatives on –

- (a) the public accounts of the Autonomous Region of Bougainville; and
- (b) the control of, and transactions with or concerning, the public moneys and the property of Bougainville.

(2) Unless other provision is made by law in respect of the inspection and audit of them, Subsection (1) extends to the accounts, finances and property of –

- (a) all arms, Departments, agencies and instrumentalities of the Autonomous Bougainville Government; and
- (b) all bodies set up by a Bougainville law, or by executive or administrative act of the Bougainville Executive Council, for governmental or official purposes.

(3) Notwithstanding that other provision for inspection or audit is made as provided in Subsection (2), the Bougainville Auditor-General may, if he thinks it proper to do so, inspect and audit, and report to the House of Representatives on, any accounts, finances or

property of an institution referred to in that subsection, insofar as they relate to, or are derived from, public moneys or property of Bougainville.

(4) A Bougainville law may expand on and may provide in more detail for, the functions of the Bougainville Auditor-General under Subsections (1), (2) and (3), and may confer on the Bougainville Auditor-General additional functions and duties consistent with the performance of the functions and duties conferred and imposed by Subsections (1), (2) and (3).

***Division 5. – Public Accounts Committee.***

**160. ESTABLISHMENT OF THE PUBLIC ACCOUNTS COMMITTEE.**

There shall be a Public Accounts Committee of the House of Representatives.

**161. FUNCTIONS OF THE COMMITTEE.**

(1) The primary function of the Public Accounts Committee is, in accordance with a Bougainville law, to examine and report to the House of Representatives on the public accounts of Bougainville and on the control of and on transactions concerning, the public moneys and property of Bougainville.

(2) Subsection (1) extends to any accounts, finances and property that are subject to inspection and audit by the Bougainville Auditor-General under Section 159(2) (*functions of the Bougainville Auditor-General*) and to reports by the Bougainville Auditor-General under that subsection or Section 159(3) (*functions of the Bougainville Auditor-General*).

(3) A Bougainville law may expand and provide in more detail for the functions of the Committee under Subsections (2) and (3) and may confer on the Committee additional functions and duties consistent with the performance of the functions and duties conferred and imposed by those subsections.

***Division 6. – Bougainville Salaries and Remuneration Commission.***

**162. THE BOUGAINVILLE SALARIES AND REMUNERATION COMMISSION.**

(1) The Autonomous Bougainville Government may, at such time as is considered by the House of Representatives to be suitable, establish a Bougainville Salaries and Remuneration Commission.

(2) Provision for the composition of the Bougainville Salaries and Remuneration Commission shall be made by amendment of this Constitution or by a Bougainville law made by an absolute majority vote.

**163. FUNCTIONS, ETC., OF THE COMMISSION.**

(1) The Bougainville Salaries and Remuneration Commission shall be responsible for recommending to the House of Representatives from time to time, at intervals determined by the Commission, the salaries, allowances and benefits, financial or otherwise (including pensions or retirement benefits if they are not otherwise provided for by law) of all –

(a) persons holding elective office under this Constitution; and

- (b) Bougainville Constitutional Office-holders (including Bougainville Judges); and
- (c) the Heads of Bougainville Government Services; and
- (d) such other persons as, by amendment of this Constitution, are specified as persons to whom this section applies.

(2) In making a recommendation under Subsection (1), the Bougainville Salaries and Remuneration Commission shall –

- (a) obtain from and take into account advice from the National Salaries and Remuneration Commission on the maintenance of relativities of salaries and conditions of employment with those applicable to similar offices elsewhere in Papua New Guinea and at the National level; and
- (b) consider the size of population of Bougainville and extent of the resources available to the Autonomous Bougainville Government and such of the matters referred to in Section 153 (*general principles relating to finances and financial management*) as are relevant.

(3) The House of Representatives –

- (a) shall determine the salaries, allowances and benefits, financial or otherwise (including pensions or retirement benefits if they are not otherwise provided for by law) of persons referred to in Subsection (1) in accordance with a recommendation of the Bougainville Salaries and Remuneration Commission under this section; and
- (b) may accept or reject, but may not amend, any recommendation from the Bougainville Salaries and Remuneration Commission.

(4) A Bougainville law shall make provision for the powers and procedures of the Bougainville Salaries and Remuneration Commission.

(5) The provisions of this section apply notwithstanding the provisions of any law that prescribes a code of conduct for leaders or imposes a duty, restraint or obligation on leaders acquiring a benefit or gain.

#### **164. FUNCTIONS OF NATIONAL SALARIES AND REMUNERATION COMMISSION.**

(1) Subject to Subsection (2), until the establishment of the Bougainville Salaries and Remuneration Commission under Section 162(1) (*the Bougainville Salaries and Remuneration Commission*), the Salaries and Remuneration Commission established by Section 216A (*Salaries and Remuneration Commission*) of the National Constitution will continue to be responsible for recommending to the House of Representatives the salaries, allowances and benefits, financial or otherwise, (including pensions and retirement benefits if they are not otherwise provided for by law) of all persons referred to in Section 163(1) (*functions of the Commission*).

(2) In carrying out its functions under Subsection (1), the Salaries and Remuneration Commission shall include two persons nominated by the Bougainville Executive Council in accordance with a Bougainville law.

(3) The Autonomous Bougainville Government may make representations to the Salaries and Remuneration Commission concerning the comparative population size and

resources of Bougainville and such of the matters referred to in Section 153 (*general principles relating to finances and financial management*) as are relevant.

- (4) The House of Representatives –
  - (a) shall determine the salaries, allowances and benefits, financial and otherwise (including pensions and retirement benefits if they are not otherwise provided for by law) of persons referred to in Section 163(1) (*functions, etc., of the Commission*) in accordance with a recommendation of the Salaries and Remuneration Commission under this section; and
  - (b) may accept or reject, but may not amend, a recommendation from the Salaries and Remuneration Commission under this section.

## **PART XII. – THE BOUGAINVILLE OMBUDSMAN.**

### **165. THE BOUGAINVILLE OMBUDSMAN.**

- (1) At such time as is considered by the House of Representatives to be suitable, there shall be established an office of Bougainville Ombudsman.
- (2) The Bougainville Ombudsman shall be appointed by the Bougainville Senior Appointments Committee, which for the purpose shall include two persons appointed by the Ombudsman Appointments Committee referred to in Section 217 (*The Ombudsman Commission*) of the National Constitution.
- (3) The salary and other conditions of employment of the Bougainville Ombudsman shall be not less than or inferior to the salary and other conditions of employment of a Bougainville Judge without taking into account any conditions of employment personal to that Judge.
- (4) In the performance of his functions under Section 167 (*functions and powers of the Bougainville Ombudsman*), the Bougainville Ombudsman –
  - (a) is not subject to direction or control by any person or authority; and
  - (b) shall work with traditional chiefs and other traditional leaders and take account of traditional customs as far as is practicable.
- (5) The proceedings conducted by the Bougainville Ombudsman are not subject to review in any way, except by the Bougainville High Court, the Supreme Court or the National Court on the ground that he has exceeded his jurisdiction or has failed to comply with the principles of natural justice.
- (6) Subject to this Constitution, a Bougainville law made by an absolute majority vote may make further provision in respect of the qualifications for appointment, powers, procedures and immunity of the Bougainville Ombudsman.

### **166. PURPOSES OF THE BOUGAINVILLE OMBUDSMAN.**

- The purposes of the establishment of the office of Bougainville Ombudsman are –
- (a) to ensure that all Bougainville governmental bodies are responsive to the needs and aspirations of the People; and
  - (b) to help in the improvement of the work of Bougainville governmental bodies and the elimination of unfairness and discrimination by them; and

- (c) to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by Bougainville governmental bodies; and
- (d) to supervise the enforcement of Part XIII (*Leadership Code*); and
- (e) to provide, or assist in, training courses for persons intending to nominate as candidates for election as President or as a member of the House of Representative to understand the Bougainville Objectives and Directive Principles, the Leadership Code, other provisions of this Constitution and the roles and responsibilities of President and of members of the House of Representatives.

**167. FUNCTIONS AND POWERS OF THE BOUGAINVILLE OMBUDSMAN.**

The Bougainville Ombudsman has such powers and functions, as set out in a Bougainville law made by an absolute majority vote, as are necessary to enable him to achieve the purposes specified in Section 166 (*purposes of the Bougainville Ombudsman*).

**168. REPORTS BY THE BOUGAINVILLE OMBUDSMAN.**

(1) The Bougainville Ombudsman shall, at least once in each period of 12 months, at such time as is fixed by a Bougainville law, give to the President, for presentation to the House of Representatives, a report on the functions and workings of the Bougainville Ombudsman, with such recommendations as to improvement as the Bougainville Ombudsman thinks proper.

(2) Nothing in Subsection (1) prevents the Bougainville Ombudsman from making, on his own initiative or at the request of the House of Representatives or of the Bougainville Executive Council, other reports on any aspect of the functions and workings of the Bougainville Ombudsman.

**PART XIII. – LEADERSHIP CODE.**

**169. APPLICATION OF LEADERSHIP CODE.**

(1) This Part shall apply on and from the date of the establishment of the office of Bougainville Ombudsman under Section 165 (1) (*The Bougainville Ombudsman*) and until that time the provisions of Division III.2 (*Leadership Code*) of the National Constitution shall apply in accordance with the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution.

- (2) The provisions of this Part apply to and in relation to –
- (a) the Speaker; and
  - (b) the President, Vice-President and members of the Bougainville Executive Council; and
  - (c) members of the House of Representatives; and
  - (d) all Bougainville Constitutional Office-holders within the meaning of Section 189 (*Bougainville Constitutional Office-holders*); and
  - (e) the Bougainville Boundaries Commissioner; and
  - (f) all heads of Departments of the Bougainville Public Service; and
  - (g) the Chief of Bougainville Police; and
  - (h) the Chief of the Bougainville Correctional Service; and

- (i) the Clerk of the House of Representatives; and
- (j) executive members of political parties registered under a Bougainville law; and
- (k) persons holding such public offices as are declared under Subsection (4) to be offices to and in relation to which this Part applies.

(3) This Part applies to and in relation to a person referred to in Subsection (2) not only in the office referred to in that subsection but also in any other office or position that he holds under any law by virtue of that office.

(4) A Bougainville law may declare any public office (including an office in any level of formal government below the level of the Autonomous Bougainville Government) to be an office to and in relation to which this Part applies.

(5) In the event of doubt as to whether a person is a person to whom this Part applies, the opinion of the Bougainville Ombudsman is final.

(6) Where a person referred to in Subsection (2) is also subject to the provisions of Division III.2 (*Leadership Code*) of the National Constitution, any finding against him of misconduct in office and any subsequent penalty imposed on him pursuant to Division III.2 (*Leadership Code*) of the National Constitution is deemed to be a finding against him of misconduct in office and a penalty imposed under this Part.

#### **170. CUSTOMARY STANDARDS OF LEADERSHIP.**

A person to whom this Part applies has a duty to conduct himself in such a way, in his public or official life and in his private life and in associations with other persons, as to comply with the long-established standards of customary leadership in Bougainville, including trustworthiness, transparency, and acting in the interests of, and as custodian of wealth for the People, and not for personal gain.

#### **171. OTHER RESPONSIBILITIES OF OFFICE.**

A person to whom this Part applies has a duty to conduct himself in such a way, both in his public or official life and in his private life and in associations with other persons, as –

- (a) to comply with the provisions of Section 170 (*customary standards of leadership*) and with the provisions relating to the responsibilities of leadership set out in a Bougainville law;  
and
- (b) not to –
  - (i) place himself in a position in which he has or could have a conflict of interests or might be compromised when discharging his public or official duties; or
  - (ii) demean his office or position; or
  - (iii) allow his public or official integrity, or his personal integrity, to be called into question; or
  - (iv) endanger or diminish respect for and confidence in the integrity of government in Bougainville.

#### **172. PARTICULAR RESPONSIBILITIES OF OFFICE.**

(1) In particular, a person to whom this Part applies shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by Sections 170 (*customary standards of leadership*) and 171 (*other responsibilities of office*).

- (2) It is the further duty of a person to whom this Part applies –
- (a) to ensure, as far as is within his lawful power, that his spouse and children and any other persons for whom he is responsible (whether morally, legally or by custom), including nominees, trustees and agents, do not conduct themselves in a way that might be expected to give rise to doubt in the public mind as to his complying with his duties under this section; and
  - (b) if necessary, to dissociate himself publicly from any activity or enterprise of any of his associates, or of a person referred to in Paragraph (a), that might be expected to give rise to such a doubt.

(3) The Bougainville Ombudsman may, subject to this Part and to any Bougainville law made for the purpose of this Part, give directions, either generally or in a particular case, to ensure the attainment of the objects of this section.

- (4) A person to whom this Part applies who –
- (a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties; or
  - (b) fails to comply with a direction under Subsection (3) or otherwise fails to carry out the obligations imposed by Subsection (2) or by Section 170 (*customary standards of leadership*) or 171 (*other responsibilities of office*),
- is guilty of misconduct in office.

### **173. FURTHER PROVISIONS CONCERNING THE LEADERSHIP CODE.**

(1) For the purpose of this Part, a Bougainville law made by an absolute majority vote –

- (a) may give to the Bougainville Ombudsman any powers that are necessary or convenient for attaining the objects of this Part and of the Bougainville law; and
- (b) shall empower the Bougainville Ombudsman to require a person to whom this Part applies to dispose of, or place under the control of the public trustee, or of an authority appointed by the Bougainville Ombudsman, any assets or income when this seems desirable for attaining the objects of this Part; and
- (c) may prescribe specific acts that constitute misconduct in office; and
- (d) may create offences (including offences by persons to whom this Part applies and offences by other persons); and
- (e) shall provide for the investigation by the Bougainville Ombudsman of alleged or suspected misconduct in office, and shall confer on him any powers that are necessary or convenient for that purpose; and
- (f) shall provide that the Bougainville High Court –
  - (i) shall determine any cases of alleged or suspected misconduct in office referred to it; and

- (ii) shall, subject to Subsection (2), recommend to the appropriate authority that a person found guilty of misconduct in office be dismissed from the office or position; and
- (iii) may, where the circumstances of the case disclose that a person found guilty of misconduct in office benefited financially or materially from his misconduct, order that the person pays to the Autonomous Bougainville Government –
  - (A) the amount of the financial benefit; or
  - (B) an amount equal to the value of the material benefit, and such order shall operate as an order of the Bougainville High Court; and
- (g) may provide for the suspension from office of a person to whom this Part applies pending the investigation, prosecution and determination of any case of alleged misconduct or suspected misconduct in office by him; and
- (h) may make any other provision that is necessary or convenient for attaining the objects of this Part.

(2) The Bougainville law referred to in Subsection (1) may provide for the imposition of penalties (including reprimand, fine, imprisonment and suspension from office) as an alternative to dismissal from office or position and the Bougainville High Court may recommend that such alternative penalty be imposed and the appropriate authority shall act in accordance with the recommendation.

- (3) For the purpose of Subsections (1)(f)(ii) and (2), the "appropriate authority" –
  - (a) in relation to –
    - (i) a person holding an office referred to in Section 169 (*application of Leadership Code*); or
    - (ii) a person holding an office that is declared under Section 169 (4) (*application of Leadership Code*) to be an office to and in relation to which this Part applies, means the authority which, in accordance with this Constitution or a Bougainville law, appointed him; and
  - (b) in relation to a person holding any other office to which this Part applies, means the appropriate appointing authority.

- (4) Proceedings under Subsection (1)(f) are not judicial proceedings but are subject to natural justice, and –
  - (a) no such proceedings are a bar to any other proceedings provided for by law; and
  - (b) no other proceedings provided for by law are a bar to proceedings under Subsection (1)(f).

#### **174. PROSECUTION FOR MISCONDUCT IN OFFICE.**

(1) Where the Bougainville Ombudsman is satisfied that there is a *prima facie* case that a person has been guilty of misconduct in office, he shall refer the matter to the Bougainville Public Prosecutor for prosecution before the Bougainville High Court.

(2) If the Bougainville Public Prosecutor fails to prosecute the matter within a reasonable period, the Bougainville Ombudsman may prosecute it in his stead.

**175. INVESTIGATION AND PROSECUTION MAY BE CARRIED OUT WHERE PERSON NO LONGER HOLDS OFFICE.**

(1) The investigation, prosecution and determination of cases of alleged or suspected misconduct in office may be initiated and conducted or continued, and penalties may be imposed, notwithstanding that the person, whose conduct in office while being a person to whom this Part applies is the subject of the investigation, prosecution or determination, no longer holds that office and such a person continues, for the purposes of this Part, to be a person to whom this Part applies.

(2) Where the Bougainville High Court determines that a person to whom Subsection (1) applies was guilty of misconduct in office, it may order that he is deemed to have been dismissed from office for misconduct in office and any disqualification under Section 176 (*disqualifications on dismissal*) shall run on and from the date on which the Bougainville High Court determines that he was guilty of misconduct in office.

**176. DISQUALIFICATIONS ON DISMISSAL.**

(1) Subject to Subsection (2), a person who –  
(a) has been dismissed from office; or  
(b) is deemed to have been dismissed from office,  
under this Part for misconduct in office is not eligible –  
(c) for election to any elective public office; or  
(d) for appointment to any office the holder of which is a person to whom this Part applies,  
for a period of three years, after the date of his dismissal or deemed dismissal, or for such longer period up to a maximum of the remaining period of his life, as the Bougainville High Court determines.

(2) The Bougainville High Court may, where the circumstances leading to dismissal or deemed dismissal appear to it to be of such a less serious nature that the three year period referred to in Subsection (1) is harsh, order that the disqualification be for such lesser period as the Bougainville High Court thinks fit.

(3) In the event of doubt as to whether an office or position is an office or position to which Subsection (1)(c) or (d) applies, the opinion of the Bougainville Ombudsman is final.

**177. POWERS OF BOUGAINVILLE OMBUDSMAN IN RELATION TO CRIMINAL MISCONDUCT.**

Where the Bougainville Ombudsman, as a result of an investigation by him under this Part into a case of alleged or suspected misconduct, or in the course of carrying out his functions under Part XII (*The Bougainville Ombudsman*), is satisfied that there is a *prima facie* case that there has been criminal conduct by the person to whom this Part applies in the case of an investigation under this Part, or in any other case, by any person, he may –

(a) in the first instance, refer the matter to the Bougainville Public Prosecutor or to the Bougainville Police Service for criminal prosecution of the person; and

- (b) where no such prosecution has been initiated within a reasonable time from the date of referral under Paragraph (a), himself initiate the appropriate criminal prosecution.

## **PART XIV. – HUMAN RIGHTS.**

### ***Division 1. – Rights.***

#### **178. BASIC RIGHTS.**

The basic rights set out in Division III.3 (*Basic Rights*) of the National Constitution apply in the Autonomous Region of Bougainville.

#### **179. ADDITIONAL RIGHTS.**

Provision may be made in this Constitution at any time for the guarantee of rights and freedoms available to all citizens of Papua New Guinea in the Autonomous Region of Bougainville additional to the basic rights referred to in Section 178 (*basic rights*).

### ***Division 2. – Qualifications on Rights.***

#### **180. QUALIFICATIONS ON THE QUALIFIED RIGHTS.**

(1) A Bougainville law which complies with the requirements of this section may make provision for the regulation or restriction of any of the following qualified rights set out in Subdivision III.3.C (*qualified rights*) of the National Constitution: –

- (a) freedom from forced labour;
- (b) freedom from arbitrary search and entry;
- (c) freedom of conscience, thought and religion;
- (d) freedom of expression;
- (e) freedom of assembly and association;
- (f) freedom of employment;
- (g) right to privacy;
- (h) right to vote and stand for public office;
- (i) right to freedom of information;
- (j) right to freedom of movement;
- (k) protection from unjust deprivation of property.

(2) A Bougainville law referred to in Subsection (1) may regulate or restrict the right or freedom to the extent that the regulation or restriction is necessary –

- (a) taking account of the National Goals and Directive Principles and the Basic Social Obligations of the National Constitution and Part III (*Bougainville Objectives and Directive Principles*) of this Constitution, for the purpose of giving effect to the public interest in any one or more of the following cases: –
  - (i) public safety;
  - (ii) public order;
  - (iii) public welfare;
  - (iv) public health (including plant and animal health);

- (v) the protection of children and persons under disability (whether legal or practical);
- (vi) the development of under-privileged or less advanced groups or areas; or
- (b) in order to protect the exercise of the rights and freedoms of others; or
- (c) to make reasonable provision when the exercise of one such right may conflict with the exercise of another,

to the extent that the law is reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind.

- (3) A Bougainville law referred to in Subsections (1) and (2) shall –
  - (a) be expressed to be a law regulating or restricting a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the National Constitution (being the qualified rights referred to in Subsection (1)(a) to (k) inclusive); and
  - (b) specify the right or freedom that it regulates or restricts; and
  - (c) specify the purpose for which the regulation or restriction is necessary; and
  - (d) be made, and be certified by the Speaker in his certificate under Section 66 (*certification as to making of laws*) to have been made, by an absolute majority vote.

(4) The burden of showing that a Bougainville law is a law that complies with this section is on the party relying on its validity.

### **181. REASONABLY JUSTIFIABLE IN A DEMOCRATIC SOCIETY.**

(1) The question whether a Bougainville law is reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind is to be determined in the light of the circumstances applying at the time when a decision on the question is made.

(2) Only the Bougainville High Court, the Supreme Court, or the National Court may declare that a Bougainville law is not reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind and unless the Court is satisfied that the Bougainville law was at one time so justifiable, such a declaration operates as a repeal of the law from the date of the declaration.

(3) For the purpose of determining whether or not any Bougainville law or matter or thing is reasonably justifiable in a democratic society that has a proper regard for the rights and dignity of mankind, a Court may have regard to –

- (a) the provisions of this Constitution (especially Part III (*Bougainville Objectives and Directive Principles*)) and the National Constitution (especially the National Goals and Directives Principles and the Basic Social Obligations); and
- (b) the Charter of the United Nations; and
- (c) the Universal Declaration of Human Rights and any other declaration, recommendation or decision of the General Assembly of the United Nations concerning Human Rights and fundamental freedom; and

- (d) the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto, and any other international conventions, agreements or declarations concerning human rights and fundamental freedoms; and
- (e) judgements, reports and opinions of the International Court of Justice, the European Commission on Human Rights, the European Court of Human Rights and other international courts and tribunals dealing with human rights and fundamental freedoms; and
- (f) previous laws, practices and judicial decisions and opinions in Bougainville and elsewhere in Papua New Guinea; and
- (g) laws, practices and judicial decisions and opinions in other countries; and
- (h) the materials referred to in Section 214(1) (*use of certain materials as aids to interpretation*); and
- (i) declarations of the International Commission of Jurists and other similar organizations; and
- (j) any other material that the Court considers relevant.

**182. VALIDITY OF EMERGENCY LEGISLATION.**

Nothing in this Part invalidates Bougainville emergency legislation as defined in Part XIX (*emergency procedures and powers*) but nevertheless in so far as is consistent with its purposes and terms such legislation shall be interpreted and applied so as not to affect or reduce a right or freedom referred to in this Part to an extent that is more than is reasonably necessary to deal with the emergency concerned and matters arising out of it, but only so far as is reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind.

***Division 3. – Enforcement of Guaranteed Rights and Freedoms.***

**183. ENFORCEMENT OF GUARANTEED RIGHTS AND FREEDOMS.**

(1) Human rights shall be protected by, and are enforceable in the Bougainville High Court, the Supreme Court or the National Court either on the initiative of the Court itself or on application by any person who has an interest in its protection or enforcement, or in the case of a person who is, in the opinion of the Court, 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 Law Officers of Bougainville; and
- (b) any other person prescribed for the purpose by a Bougainville law; and
- (c) any other person with an interest (whether personal or not) in the maintenance of the principles commonly known as the Rule of Law such that, in the opinion 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 human rights, but this subsection does not limit the persons or classes of persons who have such an interest.

(3) A Court that has jurisdiction under Subsection (1) may make all such orders and declarations as are necessary or appropriate for the purpose 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), in accordance with this subsection and the succeeding provisions of this section.

(4) Any court, tribunal or authority may, on its own initiative or at the request of a person referred to in Subsection (2), or otherwise, delay a decision in any proceedings before it in order to allow a question concerning the effect or application of this Part to be determined in accordance with Subsection (1).

(5) Relief under this section is not limited to cases of actual or imminent infringement of the guaranteed rights and freedoms, but may, if the Court thinks it proper to do so, be given in cases in which there is 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.

(6) The jurisdiction and powers of the Courts under this section are in addition to, and not in reduction of, their jurisdiction and powers under any other provision of this Constitution.

#### **184. DAMAGES FOR BREACH OF RIGHTS.**

(1) This section is in addition to, and not in reduction of, Section 183 (*enforcement of guaranteed rights and freedoms*).

(2) A person whose human rights are infringed is entitled to reasonable damages and, if the Court thinks it proper, exemplary damages in respect of the infringement.

(3) Subject to Subsections (4) and (5), damages may be awarded against a person who committed, or was responsible for, the infringement.

(4) Where the infringement was caused by a Bougainville governmental body, damages may be awarded –

- (a) subject to Subsection (5), against a person referred to in Subsection (3); or
- (b) against the governmental body to which any such person was responsible; or
- (c) against both the person referred to in Subsection (3) and the governmental body to which such person was responsible, in which case the Court may apportion the damages between them.

(5) Damages shall not be awarded against a person who was responsible to a Bougainville governmental body in respect of the action giving rise to the infringement if the action taken by the person was genuinely believed by that person to be required by law, but the burden of proof of the belief is on the party alleging it.

#### **185. HUMAN RIGHTS ENFORCEMENT BODY.**

(1) There may be established by this Constitution a specialist human rights enforcement body with powers to –

- (a) protect and enforce human rights; and
- (b) encourage respect for human rights; and
- (c) educate persons and bodies on all matters pertaining to human rights; and
- (d) encourage reconciliation among parties involved in abuses or infringement of human rights (including all parties involved in the Bougainville conflict).

(2) This Constitution or a Bougainville law made by an absolute majority vote shall make provision for the name of the body referred to in Subsection (1) and for the appointment of its members, its functions, powers, protections, staffing and all other matters relevant to its establishment and operation.

**186. CUSTOMARY METHODS OF DEALING WITH HUMAN RIGHTS ABUSES.**

In any provision of this Part relating to human rights abuses, the customary methods of dealing with such abuses should be utilized wherever possible and all Courts and the body referred to in Section 185 (*human rights enforcement body*) shall take account of any customary settlement of any alleged human rights enforcement matter before it.

**PART XV. – ISSUES ARISING FROM THE BOUGAINVILLE CONFLICT.**

**187. ISSUES ARISING FROM THE BOUGAINVILLE CONFLICT.**

(1) The Bougainville Executive Council shall formulate a policy for –  
(a) dealing with human rights issues and victims of human rights issues arising out of; and  
(b) effecting reconciliation of parties involved in,  
the Bougainville conflict, and to this end shall consult with the National Government.

(2) In so far as is possible, Bougainville customs and practices shall be utilized and employed in dealing with the human rights issues and in effecting the reconciliation referred to in Subsection (1).

(3) The provisions of the Bougainville Peace Agreement, as implemented in Section 344 (*immunity from prosecution*) of the National Constitution relating to immunity from prosecution in respect of certain offences arising from crisis-related activities in relation to the Bougainville conflict are set out in Schedule 6.1 (*National Constitutional Provisions relating to Immunity from Prosecution*) to this Constitution.

(4) The declaration in respect of immunity from prosecution in respect of certain offences arising from crisis-related activities in relation to the Bougainville conflict made by the Head of State, acting with, and in accordance with the advice of the National Executive Council under Section 344(3) (*immunity from prosecution*) of the National Constitution, dated 1 August 2002 and published in the National Gazette on 2<sup>nd</sup> August 2002 is as set in Schedule 6.2 (*Declaration in respect of immunity, etc.*).

**PART XVI. – BOUGAINVILLE CONSTITUTIONAL OFFICE-  
HOLDERS AND BOUGAINVILLE  
CONSTITUTIONAL INSTITUTIONS.**

*Division 1. – General.*

**188. OTHER PROVISIONS RELATING TO BOUGAINVILLE  
CONSTITUTIONAL OFFICE-HOLDERS AND BOUGAINVILLE  
CONSTITUTIONAL INSTITUTIONS.**

This Part shall be read subject to any other provision of this Constitution relating to particular Bougainville Constitutional Office-holders or particular Bougainville Constitutional Institutions.

*Division 2. - Bougainville Constitutional Office-holders.*

**189. BOUGAINVILLE CONSTITUTIONAL OFFICE-HOLDERS.**

- (1) The following are Bougainville Constitutional Office-holders: –
- (a) the Chief Justice of Bougainville;
  - (b) a Bougainville Judge;
  - (c) the Bougainville Public Prosecutor;
  - (d) the Bougainville Public Solicitor;
  - (e) the Head of other Bougainville Courts;
  - (f) the Bougainville Ombudsman;
  - (g) the Bougainville Electoral Commissioner;
  - (h) a member of the Bougainville Public Services Commission;
  - (i) the Bougainville Auditor-General;
  - (j) the holder of any office declared by a Bougainville law to be a Bougainville Constitutional office for the purposes of this Part.

(2) A Bougainville Constitutional Office-holder (other than the Chief Justice of Bougainville, a Bougainville Judge or an Acting Judge who shall be appointed for terms provided for in Part IX (*Administration of Justice*)) shall, subject to Subsection (3), be appointed for a term of five years and is eligible for re-appointment, and, in accordance with a determination of the House of Representatives through legislation, may be appointed on a part-time basis.

(3) Subject to Part IX (*Administration of Justice*), a person who has attained the age of 65 years shall not be appointed or re-appointed to a Bougainville Constitutional Office and a person shall not be appointed or re-appointed for a period that extends beyond the date on which he will attain the age of 65 years, but –

- (a) the Bougainville Senior Appointments Committee may, in its deliberate judgement, in a particular case, extend the retiring age to, but not beyond, 70 years; and
- (b) the term of appointment of a person whose appointment is extended under Subsection (2) varies accordingly.

(4) The total emoluments of a Bougainville Constitutional Office-holder shall not be reduced while he is in office, except –

- (a) as part of a general reduction applicable equally or proportionally to all Bougainville Constitutional Office-holders; or
- (b) as a result of taxation that does not discriminate against him as a Bougainville Constitutional Office-holder, or against Bougainville Constitutional Office-holders generally.

(5) The office of a Bougainville Constitutional Office-holder cannot be abolished while there is a substantive holder of the office, but this subsection does not apply to any additional Bougainville Constitutional office created by a Bougainville law.

- (6) Provisions relating to –
- (a) qualifications for and disqualification from office of a Bougainville Constitutional Office-holder; and
  - (b) conditions of employment general to all Bougainville Constitutional Office-holders; and
  - (c) resignation by a Bougainville Constitutional Office-holder; and
  - (d) rights on termination of employment of a Bougainville Constitutional Office-holder,

are as contained in Schedule 5 (*matters relating to Bougainville Constitutional Office-holders*) to this Constitution or in the provisions of this Constitution relating to individual Bougainville Constitutional Office-holders.

(7) Nothing in this section prevents the making by or under a Bougainville law of reasonable provision for the appointment of a person to act temporarily in the office of a Bougainville Constitutional Office-holder.

#### **190. REMOVAL FROM OFFICE OF CERTAIN BOUGAINVILLE CONSTITUTIONAL OFFICE-HOLDERS.**

(1) This section does not apply to the Chief Justice of Bougainville, a Bougainville Judge or Acting Judge, the Bougainville Public Prosecutor, the Bougainville Public Solicitor or the Head of other Bougainville Courts for whom provision for removal from office is made in Part IX (*administration of justice*).

(2) A Bougainville Constitutional Office-holder may be removed from office only

–

- (a) for inability (whether arising from physical or mental infirmity or otherwise) to perform the functions and duties of his office; or
- (b) for misbehaviour; or
- (c) in accordance with Part XIII (*Leadership Code*) for misconduct in office; or
- (d) for a breach or contravention of a condition of employment laid down in this Constitution.

(3) Where the Bougainville Senior Appointments Committee is satisfied that the question of the removal from office of a Bougainville Constitutional Office-holder should be investigated, it shall –

- (a) by written notice to the Chief Justice of Bougainville, request that he appoint a tribunal consisting of –
  - (i) a Bougainville Judge (who may be himself) and a member of another Bougainville Court established under Section 126 (*establishment of other courts*); or
  - (ii) if no other courts have been established under Section 126 (*establishment of other Courts*), by a Bougainville Judge (who may be himself),to hear and determine the matter; and

- (b) refer to the tribunal the matter of the removal from office of the Bougainville Constitutional Office-holder together with a written statement of the reasons for its opinion, for the tribunal to investigate and report back to it whether or not the Bougainville Constitutional Office-holder should be removed from office.

(4) The tribunal shall make due inquiry into the matter referred to it without being restricted by legal formalities or the rules of evidence and shall inform itself in such manner as it thinks proper, subject to compliance with the principles of natural justice.

(5) Where the tribunal reports that the Bougainville Constitutional Office-holder should be removed from office, the Bougainville Senior Appointments Committee shall –

- (a) by notice in writing to the Bougainville Constitutional Office-holder concerned remove him from office; and
- (b) send a copy of the notice under Paragraph (a) to the Speaker for presentation to the House of Representatives.

(6) Where a question has been referred to a tribunal under this section, the Bougainville Senior Appointments Committee –

- (a) may suspend the Bougainville Constitutional Office-holder from office pending the report of the tribunal; and
- (b) may remove the suspension at any time; and
- (c) shall remove the suspension where the tribunal does not recommend dismissal from office,

and unless otherwise determined by the Bougainville Executive Council, the suspension shall be on full pay.

(7) Where, at the time of the suspension, a suspended Bougainville Constitutional Office-holder was dealing with any quasi-judicial proceedings he may continue and complete these proceedings unless the Bougainville Senior Appointments Committee orders otherwise.

### ***Division 3. – Bougainville Constitutional Institutions.***

#### **191. BOUGAINVILLE CONSTITUTIONAL INSTITUTIONS.**

(1) The Autonomous Bougainville Government may, after compliance with Section 43 (*factors to be considered by Autonomous Bougainville Government before requesting a transfer of a function or power, etc.*), establish such other Bougainville Constitutional Institutions as it considers necessary or desirable to enable it to carry out its powers effectively.

(2) Subject to this Constitution –

- (a) a Bougainville law shall provide, or shall make provision for, the powers and procedures of Bougainville Constitutional Institutions and generally for facilitating the performance of their functions, duties and responsibilities; and
- (b) where no provision is made under Paragraph (a), a Bougainville Constitutional Institution –
  - (i) may provide, to the extent of the deficiency, for its own procedures; and

- (ii) has all reasonable powers that are necessary or convenient for the exercise and performance of its powers, functions, duties and responsibilities.

***Division 4. – Provision of Facilities, etc.,***

**192. PROVISION OF FACILITIES, ETC.,**

Without limiting the generality of any other provision of this Constitution, it is the duty of the Autonomous Bougainville Government and of all Bougainville governmental bodies, and of all office-holders and institutions to ensure, as far as is within their legal powers, that all arrangements are made, staff and facilities provided and steps taken to enable, as far as reasonably may be, all Bougainville Constitutional Institutions and all Bougainville Constitutional Office-holders to perform their functions.

**PART XVII. – BOUGAINVILLE REFERENDUM.**

**193. BOUGAINVILLE REFERENDUM.**

The provisions of the Bougainville Peace Agreement, as implemented in Division XIV.7 (*Bougainville Referendum*) of the National Constitution relating to the referendum on the future political status of Bougainville are as set out in Schedule 7 (*National Constitution provisions relating to Bougainville Referendum*) to this Constitution.

**194. PROCEDURE IN RELATION TO THE BOUGAINVILLE REFERENDUM.**

(1) The Bougainville Referendum shall be held except in accordance with a decision of the House of Representatives under this section.

(2) A decision of the House of Representatives, as provided for in Section 338(7) (*Referendum to be held*) of the National Constitution, that the Bougainville Referendum shall not be held, may be made only during the period commencing on the ninth anniversary of the establishment of the Autonomous Bougainville Government and ending on the fifteenth anniversary of that establishment, and only in accordance with the following procedure: –

- (a) subject to Subsection (3), there must firstly be moved in the House of Representatives a motion that the House of Representatives consider whether the Bougainville Referendum shall not be held;
- (b) the motion under Paragraph (a) must be passed by a three-quarters absolute majority vote;
- (c) where the motion under Paragraph (a) is not passed by a three-quarters absolute majority vote no further procedure may be followed;
- (d) where a motion under Paragraph (a) is passed by a three-quarters absolute majority vote, there shall be widespread consultation with the People of Bougainville;
- (e) not less than three months after the motion under Paragraph (a) is passed by a three-quarters absolute majority vote and after –
  - (i) widespread consultation with the People of Bougainville as required by Paragraph (d); and
  - (ii) consultation between the Autonomous Bougainville Government and the National Government,there shall be moved in the House of Representatives, subject to Subsection (3), a further motion that the Bougainville Referendum shall not be held;

- (f) the motion under Paragraph (e) must be passed by a three-quarters absolute majority vote;
  - (g) where the motion under Paragraph (e) is passed by a three-quarters absolute majority vote, the President shall inform the National Executive Council and the Bougainville Referendum shall not be held;
  - (h) where the motion under Paragraph (e) is not passed by a three-quarters absolute majority vote no further procedure shall follow.
- (3) A motion under Subsection (2)(a) or (e) –
- (a) shall be formulated to avoid a disputed or unclear result; and
  - (b) shall not be moved in the House of Representatives unless written notice of the motion has been –
    - (i) delivered to the Speaker; and
    - (ii) reported by the Speaker to the members of the House of Representatives,
 at least 14 sitting days of the House of Representatives prior to the moving of the motion.
- (4) The failure of a motion under Subsection (2)(a) or (e) to obtain a three-quarters absolute majority vote prevents a further motion under Subsection (2)(a) or (e) from being moved.
- (5) A Bougainville law, made by an absolute majority vote, may make provision for or in respect of any aspect of the procedure referred to in Subsection (2), particularly in respect of the manner of consultation with the People of Bougainville referred to in Subsection (2)(d) and (e)
- (6) Where consultation is required under Subsection (2)(d), the consultation shall not be invalidated by reason of any failure of the People of Bougainville, or a large number of the People of Bougainville, to take part in the consultation process.

## **PART XVIII. – CONSULTATION AND PARTICIPATION.**

### **195. CONSULTATION THROUGH PLEBISCITE.**

- (1) There may be established, by future amendment of this Constitution or by a Bougainville law made by an absolute majority vote, procedures for the conduct of plebiscites throughout Bougainville, or, subject to Subsection (2), a part or parts of Bougainville, on issues which are considered to be of major importance, other than issues relating to the independence of Bougainville.
- (2) A plebiscite under Subsection (1) may be conducted only in a part or in parts of Bougainville where the subject of the plebiscite is relevant to that part or those parts only and where the restriction of the plebiscite to that part or to those parts shall not be divisive.
- (3) The question as to whether or not the restriction of a plebiscite under this section referred to in Subsection (2) is divisive, is non - justiciable.
- (4) An amendment to this Constitution, or a Bougainville law made by an absolute majority vote, may provide or make provision for all aspects of the conduct of plebiscites referred to in Subsection (1) including –

- (a) the class or classes of issues on which a plebiscite may be conducted; and
- (b) the manner of determining the question to be posed in a plebiscite; and
- (c) the promotion of public involvement in a plebiscite; and
- (d) eligibility to vote in a plebiscite; and
- (e) the manner and conduct of voting in and the manner of determining the result of a plebiscite; and
- (f) the effect of the result of a plebiscite; and
- (g) all other matters necessary or convenient to ensure the efficient conduct of a plebiscite.

**196. PARTICIPATION IN, AND POLL FOR, LAW-MAKING.**

- (1) There may be established, by future amendment of this Constitution or by a Bougainville law made by an absolute majority vote, procedures –
  - (a) to enable the People of Bougainville to initiate proposals for making laws; and
  - (b) to provide for consideration of the proposals by the relevant Departments of the Autonomous Bougainville Government and other relevant bodies; and
  - (c) to provide for determination by the People of Bougainville by poll as to whether the proposals become law.
- (2) The procedures referred to in Subsection (1) shall make provision for –
  - (a) the manner of initiating proposals for making laws and the number and qualifications of the People of Bougainville who may make such a proposal and who must support such a proposal, and the manner of signifying their support; and
  - (b) the subjects on which a law may be proposed; and
  - (c) the consultation to be carried out following the making of the proposal; and
  - (d) the manner of determining the wording of the proposed law; and
  - (e) the manner of conducting the poll; and
  - (f) the promotion of public involvement in the poll; and
  - (g) eligibility to vote in the poll; and
  - (h) the manner and conduct of voting and the manner of determining the result of the poll; and
  - (i) the effect of the results of the poll; and
  - (j) the formalities of enactment of a proposed law; and
  - (k) all other results necessary or convenient to ensure that the purposes of this section can be achieved.

**PART XIX. – EMERGENCY PROCEDURES AND POWERS.**

**197. DEFINITIONS.**

In this Part –

“Bougainville emergency legislation” means Bougainville emergency legislation referred to in Section 204 (*management and control of emergencies*);

"declaration of a Bougainville emergency" means a declaration of a

Bougainville emergency under Section 200 (*declaration etc., of Bougainville emergency*);

"declaration of a national emergency" means a declaration of a national emergency under Section 228 (*declaration of national emergency*) of the National Constitution;

"emergency" includes, without limiting the generality of the expression –

- (a) imminent danger of war between Papua New Guinea and another country, or of warlike operations, threatening national security; and
- (b) an earthquake, volcanic eruption, tempest, flood, fire or outbreak of pestilence or infectious disease, or any other natural calamity whether similar to any such occurrence or not or any man-made disaster such as oil-spill, industrial accident or air or shipping disaster, on such an extensive scale as to be likely to endanger the public safety or to deprive the community or any substantial proportion of the community of supplies or services essential to life; and
- (c) action taken, or immediately threatened, by any person that is of such a nature, and on so extensive a scale, as to be likely to endanger the public safety or to deprive the community of supplies or services essential to life;

"period of declared Bougainville emergency" means any period during which a declaration of a Bougainville emergency under Section 200 (*declaration etc., of Bougainville emergency*) is in force;

"period of declared emergency" means any period during which a declaration of emergency referred to in Section 199 (*declarations of emergency generally*) is in force and includes –

- (a) a period of declared Bougainville emergency; and
- (b) a period of declared national emergency;

"period of declared national emergency" means any period during which a declaration of a national emergency is in force in Bougainville by virtue of Section 323 (*declaration of national emergency in Bougainville*) of the National Constitution and this Part.

#### **198. GENERAL APPROACH TO CERTAIN EMERGENCIES.**

In the event of the occurrence of an emergency, as defined in Paragraph (c) of the definition of "emergency" in Section 197 (*definitions*), the Autonomous Bougainville Government shall, where the circumstances of the emergency permit, endeavour to deal with the situation by utilization of measures (including traditional methods of mediation, compromise and reconciliation through the involvement of traditional chiefs and other traditional leaders) without the need to request a declaration of a national emergency.

#### **199. DECLARATIONS OF EMERGENCY GENERALLY.**

Until any change in the status of Bougainville that may occur following the Bougainville Referendum, declarations of emergency may be made as follows, in each case only where it is considered that an emergency exists or is about to come into being such that it is necessary that an emergency be declared and emergency powers invoked: –

- (a) in the case of an emergency of the kind described in Paragraph (b) of the definition of emergency in Section 197 (*definitions*), a declaration of a Bougainville emergency under Section 200 (*declaration etc., of Bougainville emergency*);
- (b) a declaration of a national emergency under Section 228 (*declaration, etc., of national emergency*) of the National Constitution –
  - (i) to apply to Bougainville or part of Bougainville made at the request of the Autonomous Bougainville Government under Section 201 (*declaration, etc., of national emergency at request of Autonomous Bougainville Government*); or
  - (ii) in circumstances to which the provisions of Section 323(1)(d) (*declaration of national emergency in Bougainville*) of the National Constitution relate (being circumstances where, due to the urgency of the situation no consultation between the National Government and the Autonomous Bougainville Government has been possible or practical); or
  - (iii) in circumstances to which the provisions of Section 323(2) (*declaration of national emergency in Bougainville*) of the National Constitution relate (being circumstances where a national emergency is declared in respect of the whole of Papua New Guinea or in respect of Bougainville and substantial areas of Papua New Guinea other than Bougainville).

**200. DECLARATION, ETC., OF BOUGAINVILLE EMERGENCY.**

A declaration of a Bougainville emergency may be made in respect of Bougainville or part of Bougainville by the Bougainville Executive Council and –

- (a) shall be notified as widely and effectively as possible; and
- (b) expires at the end of 21 days after it has been made but may be extended by the House of Representatives from time to time by an absolute majority vote for a period or periods each not exceeding two months; and
- (c) may be revoked at any time by the Bougainville Executive Council or the House of Representatives.

**201. DECLARATION, ETC., OF NATIONAL EMERGENCY AT REQUEST OF AUTONOMOUS BOUGAINVILLE GOVERNMENT.**

A request to the National Executive Council to advise the Head of State to declare a national emergency referred to in Section 199(b)(i) (*declaration of emergency generally*) to apply to Bougainville or part of Bougainville may be made –

- (a) if the House of Representatives is sitting – by a resolution of the House passed by a simple majority vote; or
- (b) if the House is not sitting – by the Bougainville Executive Council, and a request for the declaration to be revoked may be made to the National Executive Council at any time by –
  - (c) the House of Representatives – by resolution of the House passed by a simple majority vote; or

- (d) the Bougainville Executive Council.

**202. REQUEST FOR REVOCATION OF DECLARATION, ETC., WHERE NATIONAL EMERGENCY DECLARED OTHER THAN AT THE REQUEST OF THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.**

(1) Where a declaration of national emergency referred to in Section 198(b)(i) (*declaration of emergency generally*) has been made, in circumstances to which the provisions of Section 323(1)(d) (*declaration of national emergency in Bougainville*) of the National Constitution relate, a request for the declaration to be revoked may be made to the National Executive Council at any time by –

- (a) the House of Representatives – by resolution of the House passed by a simple majority vote; or
- (b) the Bougainville Executive Council.

(2) Where a declaration of national emergency has been made in circumstances to which the provisions of Section 323(2) (*declaration of national emergency in Bougainville*) of the National Constitution relate, a request for the declaration to be revoked, or to be revoked in respect of Bougainville, may be made to the National Executive Council at any time by –

- (a) the House of Representatives – by resolution of the House passed by a simple majority vote; or
- (b) the Bougainville Executive Council.

**203. HOUSE OF REPRESENTATIVES CONTROL.**

(1) Unless the House of Representatives is in session at the time of any declaration of emergency referred to in Section 199 (*declarations of emergency generally*) –

- (a) it shall be called to meet as soon as practicable, and in any event not later than 10 days, after the declaration; and
- (b) thereafter –
  - (i) during a period of declared Bougainville emergency or period of declared national emergency to which Section 199(b)(i) (*declarations of emergency generally*) relates, shall meet at intervals each not exceeding two months; and
  - (ii) during a period of declared national emergency other than that referred to in Subparagraph (i), shall meet as often as the House of Representatives requires.

(2) At each meeting of the House of Representatives during a period of declared emergency the President shall present to the House of Representatives a statement setting out –

- (a) a report on the current position with regard to the circumstances giving rise to the declaration and on the conduct of the emergency; and
- (b) the reasons for the declaration of the emergency or for the continuance of it; and
- (c) a report on the operation of any Bougainville emergency legislation (where the declaration is of a Bougainville emergency); and
- (d) a report on the operation of any national emergency legislation (where the declaration is of a national emergency).

**204. MANAGEMENT AND CONTROL OF EMERGENCIES.**

(1) Subject to this section, a Bougainville law made by an absolute majority vote shall make provision generally for the management and control of emergencies and in particular for –

- (a) during a period of declared Bougainville emergency, Bougainville emergency legislation with power to regulate or restrict human rights to the extent reasonably necessary to deal with the emergency concerned and with matters arising out of it, but only so far as is reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind; and
- (b) a system of emergency committees, comprising members of the House of Representatives, to monitor on behalf of and report to the House of Representatives on the management of the emergency and the need for and operation of the emergency legislation; and
- (c) such other matters relating to the emergency as are required, including arrangements for co-operation with the National Government in the management of the emergency.

(2) In principle, the provisions of the Bougainville law referred to in Subsection (1) shall correspond with the provisions of Part X (*emergency powers*) of the National Constitution, with such adaptation as is appropriate.

## **PART XX – INTERGOVERNMENTAL RELATIONS AND REVIEW.**

### **205. PRINCIPLES OF INTERGOVERNMENTAL RELATIONS, ETC.,**

(1) Until any change in the status of Bougainville that may occur following the Bougainville Referendum, the general principles of intergovernmental relations between the National Government and the Autonomous Bougainville Government are as follows: –

- (a) that the autonomy arrangements, having been reached through consultation and co-operation, should be implemented in a like manner;
- (b) that there be a procedure to avoid, minimize and resolve disputes;
- (c) that the National Government has no power to withdraw powers from the Autonomous Bougainville Government or to suspend it,

being the principles set out in the Bougainville Peace Agreement as implemented in Section 331 (*principles of intergovernmental relations*) of the National Constitution.

(2) The provisions of Division XIV.6 (*intergovernmental relations and review*) of the National Constitution are as set out in Schedule 8 (*National Constitution provisions relating to Intergovernmental Relations and Review*) to this Constitution.

(3) The Bougainville Executive Council shall appoint not less than two persons to be members of the Joint Supervisory Body established under the Bougainville Peace Agreement as implemented in Section 332 (*Joint Supervisory Body*) of the National Constitution.

## **PART XXI. – THIS CONSTITUTION.**

### **206. SUPREMACY OF THE CONSTITUTION.**

(1) Until any change in the status of Bougainville that may occur following the Bougainville Referendum, the National Constitution, National Constitutional Laws and National laws are valid and effective in Bougainville as provided in the Bougainville Peace

Agreement as implemented in Part XIV (*Peace - Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum*) of the National Constitution.

(2) Subject to Subsection (1), this Constitution is the Supreme Law of Bougainville and subject to Section 213 (*construction of Bougainville laws*), all Bougainville laws and all acts (whether legislative, executive or judicial) that are inconsistent with it are, to the extent of the inconsistency, invalid and ineffective.

(3) The provisions of this Constitution are self-executing as far as their respective natures and subject matters allow.

#### **207. ALTERATION OF THIS CONSTITUTION.**

This Constitution may be altered in accordance with Part XXII (*Alteration of this Constitution and of Part XIV (Bougainville Constitution and Bougainville Referendum) of the National Constitution, etc.,*).

#### **208. EVOLUTION OF THIS CONSTITUTION AND OF THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.**

It is the intention of the People of the Autonomous Region of Bougainville that this Constitution and the Autonomous Bougainville Government should develop and evolve as the circumstances and resources of Bougainville change.

#### **209. INTERPRETATIVE JURISDICTION.**

(1) Until any change in the status of Bougainville that may occur following the Bougainville Referendum, the –

- (a) Bougainville High Court; or
- (b) Supreme Court,

have original jurisdiction, to the exclusion of other courts, as to any question relating to the interpretation or application of any provision of this Constitution.

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

#### **210. SPECIAL REFERENCES TO BOUGAINVILLE HIGH COURT.**

(1) Subject to Subsection (4), the Bougainville High Court shall, on application by an authority referred to in Subsection (3), give its opinion on any question relating to the interpretation or application of any provision of this Constitution, including (but without limiting the generality of that expression) any question as to the validity of a Bougainville law or proposed Bougainville law.

(2) The opinion given under Subsection (1) has the same binding effect as any other decision of the Bougainville High Court.

(3) The following authorities only are entitled to make application under Subsection (1): –

- (a) the House of Representatives;
- (b) the President;
- (c) the Bougainville Executive Council;

- (d) the Bougainville Ombudsman;
- (e) any of the Law Officers of Bougainville;
- (f) the Speaker;
- (g) the Bougainville Law Reform Commission.

(4) Subject to any Bougainville law, the Rules of Court of the Bougainville High Court may make provision in respect of matters relating to the jurisdiction of the Bougainville High Court under this section, and in particular as to –

- (a) the form and content of questions to be decided by the Bougainville High Court; and
- (b) the provision of counsel adequate to enable full argument before the Bougainville High Court of any question; and
- (c) cases and circumstances in which the Bougainville High Court may decline to give an opinion.

(5) In this section, "proposed Bougainville law" means a proposed Bougainville law that has been formally placed before the House of Representatives.

## **211. SPECIAL STATUS OF THE PREAMBLE.**

(1) The Preamble to this Constitution forms part of this Constitution and, as appropriate –

- (a) the other provisions of this Constitution and all other Bougainville laws shall be read and applied in the light of the Preamble and so as to give effect to it; and
- (b) in particular, it is the will of the people of Bougainville, expressed through the Bougainville Constituent Assembly, that in the interpretation and application of this Constitution and all other Bougainville laws, the courts shall give full weight to the provisions of the Preamble.

(2) The provisions of the Preamble are non-justiciable.

(3) Notwithstanding Subsection (2), it is the duty of the Autonomous Bougainville Government and of all Bougainville Government Services and officers thereof, as far as within their respective capacities and resources, and all other Bougainville governmental bodies, to apply and give effect to the Preamble as far as is within their respective powers.

## **212. CONSTRUCTION OF THE CONSTITUTION GENERALLY.**

(1) Subject to Section 213 (*construction of Bougainville laws*), for the purposes of the interpretation of this Constitution, Schedule 2 (*Rules for shortening and interpretation of this Constitution*) to this Constitution applies.

(2) The Schedules to this Constitution form part of the Constitution.

## **213. CONSTRUCTION OF BOUGAINVILLE LAWS.**

Until any change in the status of Bougainville that may occur following the Bougainville Referendum, it is hereby declared that –

- (a) this Constitution shall be read and construed subject to the National Constitutional Laws; and
- (b) the Bougainville laws shall be made under this Constitution and shall be read and construed subject to this Constitution, and where a Bougainville law exceeds the authority of this Constitution –
  - (i) to the extent that it exceeds the authority of this Constitution – it is invalid; and
  - (ii) to the extent that it does not exceed the authority of this Constitution – it is valid.

**214. USE OF CERTAIN MATERIALS AS AIDS TO INTERPRETATION.**

(1) The following materials may be used, so far as they are relevant, as aids to interpretation where any question relating to the interpretation of this Constitution arises: –

- (a) the Bougainville Peace Agreement;
- (b) the draft Constitution prepared by the Bougainville Constitutional Commission and the Report of the Bougainville Constitutional Commission;
- (c) the official record of debates and of votes and of proceedings in the Bougainville Constituent Assembly;
- (d) any other papers used or tabled for the purpose of, or in connection with, those debates.

(2) A Bougainville law –

- (a) shall identify the papers referred to in Subsection (1)(d); and
- (b) may make provision for the manner of proof of the documents and papers referred to in Subsection (1).

**215. ENFORCEMENT OF THIS CONSTITUTION.**

(1) In any circumstances where there is no, or insufficient, administrative structure or procedural laws in place, effect shall nevertheless be given to the provisions of this Constitution, as far as practicable, in the light of the Preamble and the other provisions of Bougainville laws, and by way of analogy from other laws (both Bougainville laws and National laws), general principles of justice and generally accepted doctrine.

(2) A Bougainville law may make provision for the enforcement of any provision of this Constitution, and for establishing procedures and penalties for its enforcement.

(3) The Bougainville High Court may, if it thinks it proper to do so, make any order it thinks proper for preventing or remedying a breach of any prohibition, restriction or duty imposed by this Constitution.

**216. ACCESSIBILITY OF THE CONSTITUTION.**

The Autonomous Bougainville Government shall endeavour to ensure that this Constitution is accessible to the People and to this end shall –

- (a) arrange for translation of this Constitution into Tok Pisin and as many tok ples as possible; and
- (b) prepare and circulate widely, explanatory material about the Constitution in English, Tok Pisin and as many tok ples as possible.

**PART XXII. – ALTERATION OF THIS CONSTITUTION AND OF  
PART XIV (BOUGAINVILLE GOVERNMENT AND  
BOUGAINVILLE REFERENDUM) OF THE  
NATIONAL CONSTITUTION, ETC.,**

***Division 1. – Amendment of Part XIV (Bougainville  
Government and Bougainville Referendum) of the  
National Constitution, etc.,***

**217. REQUIREMENTS FOR AMENDMENT OF PART XIV (BOUGAINVILLE  
GOVERNMENT AND BOUGAINVILLE REFERENDUM) OF THE NATIONAL  
CONSTITUTION, ETC.,**

- (1) In this section, “relevant National Constitutional Law” means –
- (a) Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution; and/or
  - (b) The *Organic Law on Peace-Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum*.

(2) The requirements for amendment of a relevant National Constitutional Law are as provided by Section 345 (*requirement for amendment of this Part, etc.*), of the National Constitution and the provisions of this section relating to procedures in Bougainville in respect of such amendment are to give effect to and are not in reduction of the provisions of Section 345 (*requirement for amendment of this Part, etc.*) of the National Constitution.

(3) A Bougainville law, which shall be made within one year of the first meeting of the House of Representatives, shall make provision for all matters relating to the consultation required by Subsections (4) and (5) of this section and Section 218(1)(a) (*National Constitutional Regulations*).

(4) Subject to Subsection (6), where the Autonomous Bougainville Government proposes to seek to present or have presented an amendment to a relevant National Constitutional Law, it shall, before complying with Section 345(2) (*requirement for amendment of this Part, etc.*) of the National Constitution, consult, in accordance with a Bougainville law, with –

- (a) heads of levels of formal government below the level of the Autonomous Bougainville Government; and
- (b) representatives of the traditional chiefs and other traditional leaders at district level; and
- (c) representatives of Churches in Bougainville.

(5) Subject to Subsection (6), where the Autonomous Bougainville Government becomes aware, through consultation or review under Section 345(2) (*requirement for amendment of this Part, etc.*) of the National Constitution, of an amendment proposed by the National Government to a relevant National Constitutional Law, it shall, before finalizing consultation on the matter with the National Government –

- (a) table the proposed amendment in the House of Representatives; and
- (b) provide adequate opportunities for consultation with and consult with –
  - (i) heads of levels of formal government below the level of the Autonomous Bougainville Government; and

- (ii) representatives of the traditional chiefs and other traditional leaders at district level; and
  - (iii) representatives of Churches in Bougainville.
- (6) Where –
- (a) the National Government notifies the Autonomous Bougainville Government that the National Government considers that a proposed amendment of a relevant National Constitutional Law is non-controversial; or
  - (b) the Autonomous Bougainville Government considers that a proposed amendment of a relevant National Constitutional Law is non-controversial,

the Autonomous Bougainville Government shall refer the matter to the House of Representatives, and the House of Representatives may, by an absolute majority vote, decide that the consultation referred to in Subsections (4) and (5) is not required.

(7) The question, whether or not a matter referred to in Subsection (6), is non-controversial, is non-justiciable.

(8) Before the second vote in the National Parliament in accordance with Section 14 (*making of alterations to the Constitution and Organic Laws*) of the National Constitution on an amendment proposed by the Autonomous Bougainville Government or by the National Government to a relevant National Constitutional Law, a motion shall be moved in the House of Representatives in favour of the amendment presented to the National Parliament.

(9) In order for the second vote in the National Parliament to proceed (and, if the vote achieves the majority required, for the amendment to become law), the motion in the House of Representatives referred to in Subsection (5) must be passed –

- (a) where the amendment presented to the National Parliament is to Division XIV.7 (*Bougainville Referendum*) – by a two-thirds absolute majority vote; and
- (b) where the amendment presented to the National Parliament is to any other Division of Part XIV (*Bougainville Government and Bougainville Referendum*) or to an Organic Law made under Part XIV – by a simple majority vote.

(10) The person presiding over the House of Representatives on the occasion of a vote taken under Subsection (9)(a) or (b) shall, as soon as practicable after the vote has been taken, send to the Speaker of the National Parliament, details of the result of the vote.

(11) The failure of any party, with whom the Autonomous Bougainville Government is required to consult under Subsection (4)(a), (b) or (c) or (5)(b), to take part in the consultation process, does not invalidate the consultation process.

## **218. NATIONAL CONSTITUTIONAL REGULATIONS.**

(1) Subject to Subsection (3), where the Bougainville Executive Council becomes aware of any proposal by the National Government for Constitutional Regulations to be made, amended or repealed under Section 349 (*Constitutional Regulations*) of the National Constitution or Section 66 (*Constitutional Regulations*) of the *Organic Law on Peace-*

*Building in Bougainville – Bougainville Autonomous Government and Bougainville Referendum* it shall –

- (a) consult, within a reasonable time, in accordance with a Bougainville law, with –
  - (i) the House of Representatives; and
  - (ii) heads of levels of formal government below the level of the Autonomous Bougainville Government; and
  - (iii) representatives of the traditional chiefs and other traditional leaders at district level; and
  - (iv) representatives of Churches in Bougainville; and
- (b) thereafter move a motion in the Bougainville Executive Council that approval of the proposal be given.

(2) Where the motion referred to in Subsection (1)(b) is passed by a simple majority vote, approval shall be given to the National Government.

(3) The House of Representatives may, by an absolute majority vote, decide that the consultation referred to in Subsection (1)(a) is not required in respect of a matter, considered by it in its absolute discretion, to be non-controversial.

(4) The question, whether or not a matter referred to in Subsection (3), is non-controversial, is non-justiciable.

(5) The failure of any party, with whom the Autonomous Bougainville Government is required to consult under Subsection (1)(a), to take part in the consultation process, does not invalidate the consultation process.

#### ***Division 2. – Alterations to this Constitution.***

### **219. MAKING OF ALTERATIONS TO THIS CONSTITUTION.**

(1) This Constitution may be altered in accordance with this section or, in respect of certain Schedules, with Section 10(1)(c) (*Schedules repeating certain provisions of National Constitutional Laws*), but not so as to make any provision of this Constitution non-compliant with the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution.

(2) A proposed law to alter this Constitution must be supported, on at least two occasions after opportunity for debate on the merits, on a division in accordance with Standing Orders of the House of Representatives by the majority of votes as follows: –

- (a) an alteration to Section 194 (*procedure in relation to the Bougainville Referendum*) – a three-quarters absolute majority vote;
- (b) an alteration to this section – a three-quarters absolute majority vote;
- (c) an alteration to any other provision of this Constitution – a two-thirds absolute majority vote.

(3) Where any amendment to this Constitution is proposed, the Bougainville Executive Council shall, in accordance with the Bougainville Peace Agreement as implemented in Section 287 (*amendment of Bougainville Constitution*) of the National Constitution –

- (a) give notification of it to the National Minister responsible for Bougainville Affairs; and
- (b) where so requested by the National Government, consult with the National Government in relation to the proposed amendment.

(4) Before the House of Representatives votes for the first time on a proposed law to amend this Constitution, the House of Representatives shall consult, in accordance with a Bougainville law, with –

- (a) heads of levels of formal government below the level of the Autonomous Bougainville Government; and
- (b) representatives of the traditional chiefs and other traditional leaders at district level; and
- (c) representatives of Churches in Bougainville.

- (5) The opportunities for debate referred to in Subsection (2) must have been –
- (a) during different meetings of the House of Representatives; and
  - (b) separated in time by at least two months,

and the proposed law must be circulated, in accordance with Standing Orders of the House of Representatives, to all members of the House of Representatives before it is formally introduced into the House of Representatives.

(6) In his certificate under Section 66 (*certification as to making of laws*), the Speaker shall, in the case of a law made to alter this Constitution –

- (a) certify that the requirements of Subsections (4) and (5) were complied with; and
- (b) state –
  - (i) the date on which each vote was taken; and
  - (ii) in relation to each vote, the number of seats in the House of Representatives at the time and the respective numbers of members of the House of Representatives voting for and against the proposal,

and the certificate is, in the absence of proof to the contrary, conclusive evidence of the matters so stated.

(7) Unless the House of Representatives decides otherwise in a particular case, Subsection (2) does not apply where the Speaker, after consultation with the Chief Justice of Bougainville or the most senior Bougainville Judge available, certifies that the proposed law –

- (a) does not affect the substance of the provision to be altered by it; or
- (b) is designed to correct a self-evident error or omission; or
- (c) is merely incidental to or consequential on some other alteration of –
  - (i) this Constitution; or
  - (ii) Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution; or
  - (iii) *The Organic Law on Peace-Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum*,

and such a proposed law may be made in the same way as Bougainville laws.

(8) The Bougainville High Court may, on the application of any person made within four weeks after the date of a certificate under Subsection (7) or such further time as a Bougainville Judge, on application made within that period, considers reasonable in the particular circumstances, disallow the certificate, but otherwise the certificate is conclusive.

### **PART XXIII. – REVIEW OF THIS CONSTITUTION, ETC.,**

#### **220. REVIEW OF THIS CONSTITUTION, ETC.,**

(1) There shall be a review of the provisions and working of this Constitution –

- (a) immediately preceding a review held under Section 337(1)(a) (*reviews*) of the National Constitution; and
- (b) at such other times as the House of Representatives may direct.

(2) A review of the provisions and working of this Constitution may make recommendations as to amendment of this Constitution or of Bougainville laws or of administrative practices.

(3) A Bougainville law made by an absolute majority vote shall make provision for the manner in which a review of the provisions and working of this Constitution shall be conducted, for the appointment of a person or body to undertake the review and for all matters relevant to the conduct of the review.

(4) A report on the findings of each review shall be sent by the person or body responsible for conducting the review to the Speaker for presentation to the House of Representatives.

(5) A Bougainville law may make provision for a Bougainville Law Reform Commission and for its composition, functions, powers and operation.

### **PART XXIV. – MISCELLANEOUS.**

#### **221. LEGAL CAPACITY OF AUTONOMOUS BOUGAINVILLE GOVERNMENT.**

(1) The Autonomous Bougainville Government has power to acquire, hold and dispose of property of any kind and to make contracts in accordance with a Bougainville law.

(2) The Autonomous Bougainville Government may sue and be sued in accordance with a Bougainville law.

#### **222. BOUGAINVILLE CONSTITUTIONAL REGULATIONS.**

(1) The Bougainville Executive Council may make Bougainville Constitutional Regulations, not inconsistent with this Constitution, prescribing all matters that by this Constitution are required or permitted to be prescribed or are necessary or convenient to be prescribed by Bougainville Constitutional Regulation.

(2) A Bougainville Constitutional Regulation shall be tabled in the House of Representatives as soon as practicable after being made, and may be disallowed by the House of Representatives at any time.

- (3) Where any Bougainville Constitutional Regulation is proposed, the Bougainville Executive Council shall –
- (a) give notification of it to the National Minister responsible for Bougainville Affairs; and
  - (b) where so requested by the National Government, consult with the National Government in relation to the proposed Bougainville Constitutional Regulation.

**223. PUBLIC PURPOSES.**

(1) The purposes of the Autonomous Bougainville Government are public purposes for the purpose of Section 53 (*protection from unjust deprivation of property*) of the National Constitution.

(2) A Bougainville law may declare that a purpose is a public purpose for the purposes of –

- (a) Section 53 (*protection from unjust deprivation of property*) of the National Constitution; or
- (b) any Bougainville law that requires such a declaration.

**224. TRANSITIONAL PROVISIONS CONTAINED IN ORGANIC LAW.**

Transitional provisions relating to –

- (a) transfer of assets, etc.; and
- (b) former Provincial laws; and
- (c) saving of contracts, etc.; and
- (d) registration of title of land; and
- (e) pending legal proceedings,

are as contained in Part VI (*additional transitional provisions*) of the *Organic Law on Peace-Building in Bougainville - Autonomous Bougainville Government and Bougainville Referendum*, which Part is set out in Schedule 9 (*Transitional provisions – Part VI of Organic Law on Peace-Building in Bougainville – Bougainville Government and Bougainville Referendum*) to this Constitution.

**225. APPLICATION OF OTHER LAWS.**

Where any –

- (a) National Constitutional Law; or
- (b) Act of the National Parliament,

contains a reference, express or implied, to –

- (c) the North Solomons Province or Bougainville Province – that reference shall, unless the context otherwise requires, be read as a reference to the Autonomous Region of Bougainville or Bougainville; and
- (d) the North Solomons Provincial Government, the Bougainville Transitional Government or the Bougainville Interim Provincial Government – that reference shall, unless the context otherwise requires, be read as a reference to the Autonomous Bougainville Government.

**226. BOUGAINVILLE GAZETTE**

(1) There shall be an official journal of the Autonomous Bougainville Government which shall be known as the Bougainville Gazette.

(2) A Bougainville law shall make provision for all matters relating to the Bougainville Gazette.

**PART XXV. – FIRST BOUGAINVILLE GENERAL ELECTION AND FIRST MEETING OF HOUSE OF REPRESENTATIVES.**

*Division 1. – General.*

**227. EFFECT OF THIS PART.**

The provisions of this Part have effect notwithstanding anything to the contrary in the preceding provisions of this Constitution.

**228. PURPOSES OF THIS PART.**

The purposes of this Part are –

- (a) to enable elections to be conducted to elect the first President of the Autonomous Region of Bougainville and the members of the first House of Representatives; and
- (b) to effect the establishment of the Autonomous Bougainville Government.

**229. INTERPRETATION.**

In this Part –

“first Bougainville general election” means the first election of the President of the Autonomous Region of Bougainville and of the members of the House of Representatives.

*Division 2. Powers and Duties of Bougainville Interim Provincial Government in consultation with Bougainville People’s Congress.*

**230. EXISTING FACILITIES AND PERSONNEL TO BE USED WHERE PRACTICABLE.**

In carrying out its functions under this Part, the Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, shall at all times,

where practicable, utilize existing facilities and personnel of the Bougainville Administration and the appropriate National Government bodies, after making a request for and receiving agreement for the utilization of such facilities and personnel.

**231. BOUGAINVILLE INTERIM PROVINCIAL GOVERNMENT IN CONSULTATION WITH THE BOUGAINVILLE PEOPLE’S CONGRESS MAY ISSUE DIRECTIONS, ETC., IN CERTAIN CIRCUMSTANCES.**

Where the Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, is unable fully to carry out its functions or exercise its powers under this Part due to a want of legislative provision or due to an inadequate legislative provision, the Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, may issue directions to remedy the want or inadequacy of legislative provision but only to the extent necessary to ensure attainment of the purposes referred to in Section 228 (a) and (b) (*purposes of this Part*).

***Division 3. – Arrangements for First Bougainville General Election.***

**232. INTERIM BOUGAINVILLE GAZETTE.**

The Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, shall establish the Interim Bougainville Gazette, which shall be the official journal relating to the first Bougainville general election.

**233. FIRST BOUGAINVILLE GENERAL ELECTION BOUNDARIES DIRECTOR.**

(1) The Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, shall, acting on the recommendation of the Bougainville Provincial Administrator, appoint a suitably qualified person to be the First Bougainville General Election Boundaries Director.

(2) The Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, may reject a recommendation under Subsection (1) and require a further recommendation, but shall not appoint a person who has not been recommended by the Bougainville Provincial Administrator.

(3) The function of the First Bougainville General Election Boundaries Director is to recommend to the Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, within three months of the date of his appointment, the boundaries of the 33 single member constituencies in Bougainville for the purposes of Section 55(2)(b)(i) (*establishment and composition of the House of Representatives*) allocated in accordance with Section 105(1) (*constituencies*), for the purposes of the first Bougainville general election.

(4) In carrying out his function under Subsection (3), the First Bougainville General Election Boundaries Director shall take into consideration the matters referred to in Section 105(5) (*constituencies*).

- (5) The First Bougainville General Election Boundaries Director-
- (a) shall be appointed for such period as is sufficient to enable him to carry out his functions under Subsection (3); and
  - (b) is not subject to direction or control by any person or authority.

(6) The boundaries of the constituencies shall be determined by the Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, in accordance with this section.

(7) The Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, may accept or reject, but may not amend, any recommendations from the First Bougainville General Election Boundaries Director, but may not reject a set of recommendations, which, following previous rejection, has been modified by the First Bougainville General Election Boundaries Director.

**234. CONSTITUENCIES FOR FIRST BOUGAINVILLE GENERAL ELECTION.**

The constituencies for the first Bougainville general election are –

- (a) for the election of the President, all the single member constituencies whose boundaries are determined under Section 233 (*First*

- Bougainville General Election Boundaries Director*) taken together to form one constituency; and
- (b) for the election of the 33 members representing single member constituencies, the constituencies whose boundaries are determined under Section 233 (*First Bougainville General Election Boundaries Director*); and
  - (c) for the election of a woman member and of a former combatant member for each Region (North, Central and South), the constituencies whose boundaries formed the boundaries of the open electorates for the 2002 general election to the National Parliament.

**235. FIRST BOUGAINVILLE GENERAL ELECTION MANAGER.**

(1) The Bougainville Interim Provincial Government, in consultation with the Bougainville People's Congress, shall, on the recommendation of the Bougainville Provincial Administrator, appoint a suitably qualified person to be the First Bougainville General Election Manager.

(2) The Bougainville Interim Provincial Government, in consultation with the Bougainville People's Congress, may reject a recommendation under Subsection (1) and require a further recommendation, but shall not appoint a person who has not been recommended by the Bougainville Provincial Administrator.

(3) The functions of the First Bougainville General Election Manager are to make all preparations for and conduct, in accordance with this Part, the first Bougainville general election.

(4) The First Bougainville General Election Manager, may, for the purposes of the first Bougainville general election, issue guidelines in relation to matters specified in Section 7(3) (*Bougainvillean*), and the electoral provisions set out in Schedule 10 (*electoral provisions relating to the first general election of the President and of members of the House of Representatives*) may make further provision for such guidelines.

- (5) The First Bougainville General Election Manager –
- (a) shall be appointed for such period as is sufficient to enable him to carry out his functions under Subsection (3); and
  - (b) is not subject to direction or control by any person or authority.

**236. FIRST BOUGAINVILLE GENERAL ELECTION.**

(1) Subject to Subsection (2), the commencement of the period of voting in the first Bougainville general election shall be within six months of the date of coming into operation of this Part.

(2) The Bougainville Interim Provincial Government, in consultation with the Bougainville People's Congress, may, after consultation with the First Bougainville General Election Manager, where it considers that arrangements are not sufficiently in place to enable the first Bougainville general election to be held within the period specified in Subsection (1), defer the first Bougainville general election for a period or periods each not exceeding two months but such deferments shall not in total exceed six months.

(3) The Bougainville Interim Provincial Government, in consultation with the Bougainville People's Congress, acting with, and in accordance with, the advice of the first Bougainville General Election Manager, shall fix the first and last days of the period during which voting shall take place at the first Bougainville general election, and the date by which the writs for the election shall be returned, and shall issue writs accordingly.

(4) Subject to this section, the election shall be conducted under the electoral provisions set out in Schedule 10 (*electoral provisions relating to first general election of President and of members of the House of Representatives*) to this Constitution so as to have –

- (a) the President of the Autonomous Region of Bougainville elected in accordance with Section 89 (*election of President*); and
- (b) the other members of the House of Representatives elected in accordance with Section 55 (*establishment and composition of the House of Representatives*).

(5) In the event that the electoral provisions set out in Schedule 10 (*electoral provisions relating to first general election of President and of members of the House of Representatives*) to this Constitution do not make provision, or do not make adequate provision, for any matter relative to the preparation for and conduct of the first general election and matters arising therefrom, the First Bougainville General Election Manager may apply relevant provisions of either or both of the following: –

- (a) the *Electoral Act* of the North Solomons Provincial Government;
- (b) the *National Organic Law on National and Local-level Government Elections*,

with such adaptations as are appropriate in the circumstances.

(6) In respect that Schedule 10 (*electoral provisions relating to first general election of President and of members of the House of Representatives*) to this Constitution applies only to the first general election, it shall on the completion of all matters for which it makes provision, be deemed to be repealed.

(7) In respect that Schedule 10 (*electoral provisions relating to first general election of President and of members of the House of Representatives*) to this Constitution applies only to the first Bougainville general election, and in accordance with Subsection (6) shall be deemed to be repealed on completion of all the matters for which it makes provision, it may for convenience –

- (a) be omitted from copies (other than the certified copies) of this Constitution; and
- (b) be printed and issued separately,

but for the avoidance of doubt it is confirmed that Schedule 10 (*electoral provisions relating to first general election of President and of members of the House of Representatives*) forms part of this Constitution until such deemed repeal.

### **237. INTERIM REGISTRATION OF POLITICAL PARTIES.**

(1) The Bougainville Interim Provincial Government, in consultation with the Bougainville People's Congress, shall, acting on the recommendation of the Bougainville Provincial Administrator, appoint a suitably qualified person to be the Bougainville Political Party Monitor.

(2) The Bougainville Interim Provincial Government, in consultation with the Bougainville People's Congress, may reject a recommendation under Subsection (1) and require a further recommendation, but shall not appoint a person who has not been recommended by the Bougainville Provincial Administrator.

(3) For the purposes of the interim registration of political parties for the first Bougainville general election, the Bougainville Interim Provincial Government, in consultation with the Bougainville People's Congress, shall make and publish a determination as to what constitutes, in relation to a political party –

- (a) a reasonable number of members in all regions of Bougainville; and
- (b) policies on broad subject matters of relevance to Bougainville; and
- (c) organizational structures that meet basic standards of democracy,

and where the Bougainville Political Party Monitor is of the opinion that the membership, policies and organizational structures of a political party are in accordance with the determination, he shall effect interim registration of the political party.

(4) Where the Bougainville Political Party Monitor effects the interim registration under Subsection (3), of a political party, he shall –

- (a) notify –
  - (i) the political party concerned; and
  - (ii) the First Bougainville General Election Manager; and
- (b) cause notification of the interim registration of the political party to be published in the Interim Bougainville Gazette; and
- (c) otherwise give notification to the public of the interim registration of the political party in such manner as he considers both practicable and effective.

(5) A political party cannot take part in the first election of President or the first election of members to the House of Representatives unless it has been registered under this section.

(6) For the purpose of Subsections (5) and (8), “take part in” means, without limiting the generality of the expression –

- (a) advertise or proclaim in any way that a candidate for election –
  - (i) supports its policies; or
  - (ii) is nominated or supported or funded by it; or
- (b) take any action likely to indicate to voters that it supports any candidate.

(7) A candidate for election as first President or to the first House of Representatives shall not –

- (a) accept funds from any political party; or
- (b) hold himself out as supporting or supported by a political party; or
- (c) hold himself out as a candidate supported by a political party,

unless the political party is registered under this section.

(8) For the purposes of this section, “political party” means any party or organization having political aims and desiring to take part in an election.

(9) Nothing in this section is intended to reduce any right conferred by Section 50 (*right to vote and stand for public office*) of the National Constitution, but it is the considered opinion of the People of Bougainville, expressed through the Bougainville Constitutional Commission and the Bougainville Constituent Assembly, that any restrictions imposed by this section are reasonable and are reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind.

**238. DISPUTED ELECTIONS AND RETURNS ARISING FROM FIRST BOUGAINVILLE GENERAL ELECTIONS.**

(1) The functions of hearing and determining disputed elections and returns arising from the first Bougainville general election of the President and of members of the House of Representatives shall be carried out by the National Court.

(2) Disputed elections and returns referred to in Subsection (1) shall be determined in accordance with Part XVIII of the electoral provisions set out in Schedule 10 (*electoral provisions relating to first general election of President and of members of the House of Representatives*).

***Division 4. – Arrangements for the First Meeting of the House of Representatives.***

**239. CALLING OF FIRST MEETING OF HOUSE OF REPRESENTATIVES.**

(1) The Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, shall fix the time, date and place of the first meeting of the House of Representatives after the first Bougainville general election.

(2) The date referred to in Subsection (1) shall be within seven days of the date fixed under Section 236(3) (*first Bougainville general election*) for the return of the writs.

(3) The Bougainville Interim Provincial Government in consultation with the Bougainville People’s Congress, shall give public notification of the time, date and place fixed under Subsection (1) in the manner it considers to be most effective.

**240. EXECUTIVE OFFICER OF THE HOUSE OF REPRESENTATIVES.**

(1) The Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, shall, on the recommendation of the Bougainville Provincial Administrator, appoint a suitably qualified person to be the Executive Officer of the House of Representatives.

(2) The Bougainville Interim Provincial Government in consultation with the Bougainville People’s Congress, may reject a recommendation under Subsection (1) and require a further recommendation, but shall not appoint a person who has not been recommended by the Bougainville Provincial Administrator.

(3) The functions of the Executive Officer are –

- (a) to make arrangements for the first meeting of the first House of Representatives; and
- (b) to compile Interim Standing Orders to provide for –
  - (i) the swearing in of the President and members; and
  - (ii) the appointment of Regional Committees; and
  - (iii) the nomination and election of Speaker and Deputy Speaker; and
  - (iv) the appointment of members of Bougainville Executive Council; and
  - (v) the adoption of Standing Orders; and
  - (vi) such other matters as may be relevant; and
- (a) to take the Chair pending the appointment and swearing in of the Speaker; and
- (b) to act as Clerk of House of Representatives until the appointment of the Clerk under Section 78 (*Clerk and officers of the House of Representatives*).

**PART XXVI. – OTHER INTERIM ARRANGEMENTS.**

**241. INTERIM ARRANGEMENTS IN RELATION TO INSTITUTIONS, OFFICES, ETC.,**

- (1) The functions, powers and duties of the –
  - (a) Bougainville Constitutional Institutions; and
  - (b) Bougainville Constitutional Office-holders; and
  - (c) Bougainville High Court and other Bougainville courts; and
  - (d) Bougainville Judges; and
  - (e) Bougainville Government Services and officers thereof,

for which or whom provision is made in the preceding Parts of this Constitution, shall, until such time as the Bougainville Constitutional Institutions, Bougainville High Court and other

Bougainville courts and the Bougainville State Services are established and the Bougainville Constitutional Office-holders, Bougainville Judges and officers are appointed in accordance with this Constitution, in accordance with the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution, be carried out by the equivalent institutions, Constitutional Office-holders, Courts, Judges, State Services and officers of the National Government, to the extent that their functions, powers and duties permit.

- (2) Until such time as the Bougainville High Court is established and Bougainville Judges are appointed under this Constitution, a Judge of the National Court may be appointed as a Bougainville Judge under Section 309(4) (*appointment of Judges, etc.*) of the National Constitution to carry out such functions of a Bougainville Judge as are required by this Constitution.

## **SCHEDULES.**

### **SCHEDULE 1.**

#### **Sec. 6.**

#### **DECLARATION OF LOYALTY TO BOUGAINVILLE, ITS PEOPLES AND CONSTITUTION.**

I, \_\_\_\_\_ realizing fully the responsibilities to which I am committing myself and the consequences of not living up to this Declaration and those responsibilities, freely and willingly declare my loyalty to Bougainville and its People and to the Constitution of the Autonomous Region of Bougainville adopted by the Bougainville Constituent Assembly (made under the authority of the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution) as altered from time to time in accordance with its provisions, and I promise that I will uphold the Constitution of the Autonomous Region of Bougainville and the laws which apply in Bougainville.

### **SCHEDULE 2.**

#### **Sec. 212 (1). RULES FOR SHORTENING AND INTERPRETATION OF THIS CONSTITUTION.**

##### **PART 1. – INTRODUCTORY.**

#### **SCH. 2.1. APPLICATION OF SCHEDULE 1.**

(1) The rules contained in this Schedule apply, unless the contrary intention appears, in the interpretation of this Constitution.

(2) The rules contained in this Schedule do not apply to any other law, unless they are adopted by law so to apply.

##### **PART 2. – GENERAL.**

#### **SCH. 2.2. MEANING OF CERTAIN EXPRESSIONS.**

(1) In this Constitution –

"absolute majority vote", in relation to proceedings in the House of Representatives means –

- (a) if qualified by reference to a certain fraction or percentage, affirmative votes equal to not less than that fraction or percentage of the total number of seats in the House of Representatives; or
- (b) if not so qualified, affirmative votes equal to more than one half of the total number of those seats;

"act" includes omission or failure to act;

“Advisory Body” means the Advisory Body established under Section 52 (*Advisory Body*);

"alter" in relation to any provision of this Constitution or any other law, includes repeal (with or without re-enactment or the making of other provision), amend, modify, suspend (or remove a suspension) or add to the words or effect of the provision;

"Autonomous Bougainville Government" means the Autonomous Bougainville Government established by this Constitution;

"Autonomous Region of Bougainville" has the meaning given to it in Section 1 (*Autonomous Region of Bougainville*);

“Bougainvillean” means a Bougainvillean as provided for in Section 7 (*Bougainvillean*) (including in the Bougainville law under Section 7(2) and (4));

"Bougainville Auditor-General" means the Bougainville Auditor-General appointed under Section 158 (*Bougainville Auditor-General*);

"Bougainville conflict" means the crisis and conflict occurring in Bougainville (by whatever name known) between 1 October 1988 and 30 August 2001;

"Bougainville Constituent Assembly" means the Bougainville Constituent Assembly established in accordance with Section 284 (*Bougainville Constituent Assembly*) of the National Constitution in accordance with the Bougainville Peace Agreement;

"Bougainville Constitutional Commission" means the Bougainville Constitutional Commission established in accordance with Section 281 (*Bougainville Constitutional Commission*) of the National Constitution in accordance with the Bougainville Peace Agreement;

"Bougainville Constitutional Office-holder" means a Bougainville Constitutional Office-holder under Section 189 (*Bougainville Constitutional Office-holders*);

"Bougainville Correctional Service" means the Bougainville Correctional Service established by Section 138(1)(c) (*establishment of Bougainville Services*);

“Bougainville Courts” means the Bougainville Courts referred to in Section 112 (*Bougainville Courts*);

"Bougainville Executive Council" means the Bougainville Executive Council provided for in Division VI.2 (*Bougainville Executive Council*);

"Bougainville Government Service" means a Bougainville Government Service referred to in Section 138 (*Bougainville Government Services*);

“Bougainville general election” means a general election of the President of the Autonomous Region of Bougainville and of the members of the House of Representatives;

"Bougainville governmental body" means –

- (a) the Autonomous Bougainville Government; or
- (b) any formal government below the level of the Autonomous Bougainville Government; or
- (c) an arm, department, agency or instrumentality of the Autonomous Bougainville Government or of a formal level of

- government below the level of the Autonomous Bougainville Government; or
- (d) a body set up by Bougainville law or administrative act for governmental or administrative purposes;
- "Bougainville Judge" means a Bougainville Judge appointed under Section 124 (*appointment of other Judges*);
- "Bougainville Judicial Appointments Committee" means the Bougainville Judicial Appointments Committee established by Section 121 (*Bougainville Judicial Appointments Committee*);
- "Bougainville law" means a law (other than this Constitution or alterations to it) made by the House of Representatives and includes a subordinate legislative enactment made under a Bougainville law;
- "Bougainville Law Reform Commission" means the Bougainville Law Reform Commission for which provision is made under Section 220 (*review of this Constitution, etc.*);
- "Bougainville Leadership Code" means the Bougainville Leadership Code provided for in Part XIII (*Leadership Code*);
- "Bougainville Ombudsman" means the Bougainville Ombudsman appointed under Section 165(2) (*Bougainville Ombudsman*);
- "Bougainville Peace Agreement" means the Bougainville Peace Agreement signed at Arawa on 30<sup>th</sup> August 2001;
- "Bougainville Police Service" means the Bougainville Police Service established by Section 138(1)(b) (*establishment of Bougainville Government Services*);
- "Bougainville Public Service" means the Bougainville Public Service established by Section 138(1)(a) (*establishment of Bougainville Government Services*);
- "Bougainville Referendum" means the Referendum for which provision is made under Division XIV.7 (*Bougainville Referendum*) of the National Constitution in accordance with the Bougainville Peace Agreement and Part XVII of this Constitution;
- "Bougainville Salaries and Remuneration Commission" means the Bougainville Salaries and Remuneration Commission established by Section 162 (*Bougainville Salaries and Remuneration Commission*);
- "Bougainville Senior Appointments Committee" means the Bougainville Senior Appointments Committee under Part VII (*Bougainville Senior Appointments Committee*);
- "Chief Justice of Bougainville" means the Chief Justice of Bougainville appointed under Section 123 (*appointment of Chief Justice of Bougainville*);
- "citizen" means a citizen of the Independent State of Papua New Guinea;
- "constituency" means the area in relation to which a person is to be elected as a member of the House of Representatives, and in relation to –
- (a) the President – means all the single member constituencies in Bougainville, whose boundaries are determined in accordance with Section 105 (*constituencies*), taken together as one constituency; and

- (b) each of the elected members representing single member constituencies – means the constituency, whose boundaries are determined in accordance with Section 105 (*constituencies*), for which he was elected; and
- (c) each of the women’s representative members – means the Regional constituency whose boundaries are determined in accordance with Section 105 (*constituencies*) for which she was elected; and
- (d) each of the former combatant members – means the Regional constituency, whose boundaries are determined in accordance with Section 105 (*constituencies*) for which he was elected;

"custom" means the customs and usages of Bougainvilleans existing in relation to the matter in question at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial;

"the day fixed for the return of the writs for a general election" means –

- (a) in the case of a general election where there is no extension of the time for the return of any writ or the time for the return of all writs is extended – the day by which the writs are to be returned; and
- (b) in any other case – the day by which the majority of the writs are to be returned;

"fiscal self-reliance" means the first year in which the revenue from company tax, customs duties and 70% of value added tax (or of a tax which replaces value added tax) collected in Bougainville is equal to the value of the recurrent grant referred to in Section 48 of the *Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*;

"fiscal year", in relation to any activity of the Autonomous Bougainville Government, means the period of 12 months commencing on 1 January or on such other date as is fixed by a Bougainville law for the purpose;

“former combatant” means a person who was a combatant in the Bougainville Resistance Force or the Bougainville Revolutionary Army or the Me’ekamui Defence Force during the Bougainville conflict;

"of full capacity" in relation to a person, means that he is not of unsound mind within the meaning of any law relating to the custody or protection of the persons or property of persons of unsound mind;

"House of Representatives" means the House of Representatives established by Section 55 (*establishment and composition of House of Representatives*);

“human rights” means the rights and freedoms referred to in Section 178 (*basic rights*) and Section 179 (*additional rights*);

"law" includes the underlying law;

“Law Officers of Bougainville” means the Law Officer or Law Officers of the Autonomous Region of Bougainville appointed under Section 113 (*Law Officers of Bougainville*);

"lawyer" means a person who has been admitted to practise as a lawyer under a Bougainville law or an Act of the National Parliament;

"the Minister" in relation to this Constitution or any provision, matter or

Executive Council

thing, means the member of the Bougainville

for the time being administering the provision that governs that matter or thing, as the case may be;

"misconduct in office" means misconduct in office as described in Section 172 (*particular responsibilities of office*) or as prescribed by a Bougainville law made for the purposes of that section or Section 173 (*further provisions concerning the Leadership Code*);

"National Constitution" means the Constitution of the Independent State of Papua New Guinea;

"National Court" means the National Court of Papua New Guinea established under Section 166 (*establishment of the National Court*) of the National Constitution;

"National Government" means the National Government of the Independent State of Papua New Guinea;

"National Judicial and Legal Services Commission" means the Judicial and Legal Services Commission established by Section 186 (*establishment of the Commission*) of the National Constitution;

"Papua New Guinea" means the Independent State of Papua New Guinea;

"plebiscite" means a referendum for the purpose of gauging public opinion as provided for in Section 195 (*consultation through plebiscite*);

"poll" means a poll under Section 196 (*participation in, and poll for law-making*);

"President" means the holder of the office of President of the Autonomous Region of Bougainville established under Section 88 (*office of President*);

"public accounts of Bougainville" means all accounts, books and records of, or in the custody, possession or control of, the Bougainville

Executive or of a public officer, relating to public property or public moneys of Bougainville;

"public moneys of Bougainville" includes moneys held in trust by the Bougainville Executive or a public officer in his capacity as such, whether or not they are so held for particular persons;

"public office-holder" means –

- (a) a member of any of the Bougainville Government Services or of the service of a formal level of government; or
- (b) any Bougainville Constitutional Office-holder; or
- (c) the holder of any office or position established by statute for administrative or governmental purposes; or
- (d) the holder of any office or position declared by a statute to be a public office;

"the public trustee" means the officer (by whatever title known) charged with the duty of administering deceased intestate estates;

"referendum on independence" means the Bougainville Referendum;

"Regional Committee" means a Regional Committee under Section 71(1)(b) (*Committees*);

"Regional Government" means a Regional Government under Section 50 (*Regional Government*);

"seat", in relation to the House of Representatives, includes the position of an elected member, whether or not the position is for the time

being filled;  
“simple majority vote” means affirmative votes of more than one half of the persons present and voting;  
“single member constituency” means a constituency which is represented in the House of Representatives by a single member, referred to in Section 105(1)(*constituencies*);  
“Speaker” means the Speaker of the House of Representatives appointed under Section 60(2) (*Speaker*);  
“taxation” includes rates, charges and fees and imposts of any kind;  
“value added tax” includes a tax which replaces value added tax;  
"Vice-President" means the Vice-President of the Autonomous Region of Bougainville under Section 95 (*office of Vice-President*);  
"village court" means a court referred to in Section 126(2) (*establishment of other courts*) having jurisdiction at village level only.

(2) Unless the contrary intention appears, where an expression is defined for any purpose in this Schedule, then for that purpose all grammatical variations and cognate and related expressions are to be understood in the same sense.

(3) Unless the contrary intention appears, a reference in this Constitution to an institution, office or other thing shall be read as a reference to the appropriate institution, office or thing established or provided for in this Constitution, or referred to in the Preamble to this Constitution.

### **SCH. 2.3. THIS CONSTITUTION TAKES ACCOUNT OF CHANGING CIRCUMSTANCES.**

This Constitution is to be interpreted so as to take account of changing circumstances.

### **SCH. 2.4. FAIR MEANING TO BE GIVEN TO LANGUAGE USED.**

(1) This Constitution is intended to be read as a whole.

(2) All provisions of, and all words, expressions and propositions in this Constitution shall be given their fair and liberal meaning.

### **SCH. 2.5. STATEMENTS OF GENERAL PRINCIPLE.**

Where a provision of this Constitution is expressed to state a proposition "in principle", then –

- (a) an act (including a legislative, executive or judicial act) that is inconsistent with the proposition is not, by reason of that inconsistency alone, invalid or ineffectual; but
- (b) if the act is reasonably capable of being understood or given effect to in such a way as not to be inconsistent with the proposition it shall be so given effect to.

### **SCH. 2.6. "NON-JUSTICIABLE".**

Where this Constitution declares a question to be non-justiciable, the question may not be heard or determined by any Court or tribunal, but nothing in this section limits the jurisdiction of the Bougainville Ombudsman or of any other tribunal established for the purposes of Part XIII (*Leadership Code*).

### **SCH. 2.7. GENDER AND NUMBER.**

In this Constitution –

- (a) words importing the masculine gender include females; and
- (b) words in the singular include the plural and words in the plural include the singular.

**SCH. 2.8. PROVISION WHERE NO TIME PRESCRIBED.**

Where no time is prescribed or allowed within which an act is required or permitted by this Constitution to be done, the act shall or may be done, as the case may be, with all convenient speed and as often as the occasion arises.

**SCH. 2.9. EXERCISE AND PERFORMANCE OF POWERS AND DUTIES.**

(1) Where this Constitution confers a power or imposes a duty, the power may be exercised, or the duty shall be performed, as the case may be, from time to time as occasion requires.

(2) Where this Constitution confers a power or imposes a duty on the holder of an office as such, the power may be exercised, or the duty shall be performed, as the case may be, by the holder (whether substantive or other) for the time being of the office.

(3) Where this Constitution confers a power to make any instrument or decision (other than a decision of a court), the power includes power exercisable in the same manner and subject to the same conditions (if any) to alter the instrument or decision.

(4) Subject to Subsection (5), where this Constitution confers a power to make an appointment, the power includes power to remove or suspend a person so appointed, and to appoint another person temporarily in the place of a person so removed or suspended or, where the appointee is for any reason unable or unavailable to perform his duties, to appoint another person temporarily in his place.

(5) The power provided for by Subsection (4) is exercisable only subject to any conditions to which the exercise of the original power or appointment was subject.

**SCH. 2.10. POWER OF MAJORITY OF MORE THAN TWO PERSONS AND QUORUMS.**

(1) Where this Constitution requires or permits an act or thing to be done by more than two persons, a majority of them may do it.

(2) A power conferred by this Constitution, otherwise than on the body in question, to determine the procedures of a body includes power to determine a quorum.

(3) The exception contained in Subsection (2) does not apply to the Bougainville Executive Council.

**SCH. 2.11. ATTAINMENT OF AGE.**

For any purpose of this Constitution, a person attains a certain age at the first moment of the relevant anniversary of his birth.

**SCH. 2.12. REFERENCES TO SERIES.**

(1) Where in this Constitution a reference is made to a series by reference to two numbers, one at the beginning and one at the end of the series, each of those numbers forms part of the series.

(2) The reference in Subsection (1) to numbers includes, where the elements of a series are identified by letters or in some other manner, references to letters or other means of identification.

**SCH. 2.13. RESIDENCE.**

(1) Where in this Constitution there is a requirement for any purpose of permanent residence or of continuous residence in a place (including the area of Bougainville), a Bougainville law may provide that –

- (a) periods of temporary absence from that place shall be counted as periods of residence in that place; or
- (b) periods of temporary absence from that place shall not be counted as periods of residence in that place but otherwise do not affect the continuity of residence.

(2) In Subsection (1), "temporary absence" means, subject to Subsection (3), absence for temporary purposes with the intention of returning.

(3) A Bougainville law may further provide for the definition of classes of absence that constitute or do not constitute temporary absence for the purposes of any provision of this Constitution.

**SCH. 2.14. EFFECT OF TIME LIMITS.**

(1) Where in this Constitution a time limit is imposed for the doing of an act (whether the provision is mandatory, directory or permissive, and whether it is positive or negative), and in a particular case it is not practicable to comply with that limitation, the period shall be deemed to be extended by whatever period is necessary to make compliance practicable.

(2) The operation of Subsection (1) is not excluded by a provision that unqualifiedly specifies a time limit or a maximum time limit.

**SCH. 2.15. REPEAL, ETC.,**

(1) The repeal of this Constitution or a part of this Constitution does not –

- (a) revive anything (including a statute or any part of the underlying law) that was not in force or existing immediately before the repeal took effect; or
- (b) affect the previous operation of the repealed provisions or anything duly done or suffered under them; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed provisions; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of an offence committed against the repealed provisions; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed, as if the repealed provisions had continued in force.

(2) In particular, the repeal of this Constitution or a part of this Constitution does not –

(a) affect any liability under Part XIII (*Leadership Code*); or  
(b) prevent the Bougainville Ombudsman or any other tribunal established for the purpose of that Part from investigating any act, to which the repealed provisions were relevant.

(3) Where this Constitution or part of this Constitution is repealed and re-enacted (with or without modification), a reference in any other law to any of the repealed provisions shall, unless the contrary intention appears, be read as a reference to the amended or replacing provision.

(4) In this section, "repeal" includes revocation, suspension and expiry.

#### **SCH. 2.16. DISALLOWANCE, ETC.,**

(1) Where this Constitution provides that a law may be disallowed, the disallowance takes effect in the same way as a repeal of a provision of this Constitution takes effect except that, if the disallowed law altered any other law, the disallowance revives the other law as in force before the alteration.

(2) For the purpose of Subsection (1), a refusal or failure by the House of Representatives to confirm, approve or extend a law that requires such confirmation, approval or extension has the same effect as a disallowance.

#### **SCH. 2.17. INDEPENDENCE.**

Where this Constitution provides that a person or institution is not subject to control or direction, or otherwise refers to the independence of a person or institution, that provision does not affect –

- (a) control or direction by a court; or
- (b) the regulation, by or under this Constitution or a Bougainville law, of the exercise or performance of the powers, functions, duties or responsibilities of the person or institution; or
- (c) the exercise of jurisdiction under Part XIII (*Leadership Code*), Section 159 (*functions of the Bougainville Auditor-General*), or Division XI.5 (*the Public Accounts Committee*),

and does not constitute an appropriation of, or authority to expend, funds.

#### **SCH. 2.18. REGULATION OF ACTS, ETC.,**

A provision of this Constitution that provides for the regulation of an act or thing does not extend to prohibition, whether in law or in effect.

#### **SCH. 2.19. CONSULTATION.**

(1) Subject to Subsection (2), in principle, where this Constitution or a Bougainville law provides for consultation between persons or bodies, or between persons and bodies, the consultation must be meaningful and allow for a genuine interchange and consideration of views.

(2) Where consultation referred to in this Constitution is consultation between the National Government and the Autonomous Bougainville Government provided for by Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution or by the *Organic Law on Peace Building in Bougainville - Bougainville Government and Bougainville Referendum*, such consultation shall be concluded on the following basis: –

- (a) views shall be communicated in a timely manner in writing (or, by prior written agreement, by electronic equivalent) to a specified point of contact;

- (b) adequate opportunity shall be given to respond in a similar manner;
- (c) where there are differences, meaningful views shall be exchanged within an adequate time-frame, either agreed or specified in a written document (or by prior written agreement, by electronic equivalent) with a view to reaching agreement;
- (c) a clear, written record of the outcome of a consultation shall be prepared and made available to all parties.

**SCH. 2.20. CONFERRING OF POWERS TO INCLUDE DELEGATION, ETC.,**

Where this Constitution confers on an authority legislative or executive powers or functions, it includes the power of delegation or subdelegation of such powers or functions.

**SCH. 2.21. PRINCIPLES OF NATURAL JUSTICE.**

(1) Subject to this Constitution, the principles of natural justice are the general rules and principles of law known by that name developed for control of judicial and administrative proceedings.

(2) The minimum requirement of natural justice is the duty to act fairly and, in principle, to be seen to act fairly.

**SCHEDULE 3.**

**Sec. 1**

**BOUNDARIES OF BOUGAINVILLE PROVINCE SPECIFIED IN NATIONAL ORGANIC LAW ON PROVINCIAL BOUNDARIES.**

**PROVINCIAL BOUNDARIES.**

**BOUGAINVILLE PROVINCE.**

Commencing at the point of intersection of the meridian 154 degrees east longitude with the Equator thence by the said Equator east to its intersection with the meridian 160 degrees east longitude thence by the said meridian 160 degrees east longitude south to its intersection with the parallel 4 degrees 50 minutes south latitude thence by the said parallel 4 degrees 50 minutes south latitude west to its intersection with the meridian 159 degrees east longitude thence by a straight line south-westerly to a point distant 6 nautical miles on a bearing of 42 degrees true from Cape Friendship thence by a straight line southerly to a point distance 4 nautical miles on a bearing of 70 degrees 30 minutes true from Cape Friendship aforesaid thence by a straight line south-westerly to a point distant 3 nautical miles due south from the southern point of the peninsula which bounds the harbour of Tonelei on the east thence by a straight line south-westerly to a point distant 3 nautical miles due south from Moila Point thence by a straight line westerly to a point distant 8 nautical miles on a bearing of 249 degrees true from Moila Point aforesaid thence by a straight line south-westerly to the intersection of the parallel 8 degrees south latitude with the meridian 154 degrees east longitude thence by the said meridian 154 east longitude north to the point of commencement.

**SCHEDULE 4.**

**Sec. 42.**

**NATIONAL CONSTITUTION PROVISIONS RELATING TO FUNCTIONS AND POWERS OF THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.**

**“290. FUNCTIONS AND POWERS AVAILABLE TO THE BOUGAINVILLE GOVERNMENT.**

(1) Subject to this Part and the Agreement, the functions and powers available to the Bougainville Government in and in relation to Bougainville are as specified in this section.

(2) The functions and powers available to the Bougainville Government in and in relation to Bougainville are the following: –

- (a) agriculture;
- (b) arts;
- (c) building regulations;
- (d) cemeteries;
- (e) censorship;
- (f) children;
- (g) churches and religion;
- (h) civil registration;
- (i) communications and information services within Bougainville;
- (j) community development;
- (k) corporation law;
- (l) culture;
- (m) education;
- (n) energy (including electricity and power generation and distribution);
- (o) environment;
- (p) family law;
- (q) fire service;
- (r) fisheries (other than highly migratory or straddling stocks);
- (s) forestry and agro-forestry;
- (t) gambling, lotteries and games of chance;
- (u) harbours and marine;
- (v) health;
- (w) heritage;
- (x) home affairs, including youth and social welfare;
- (y) housing (but not State-owned housing);
- (z) information technology;
- (za) insurance;
- (zb) intellectual property;
- (zc) labour and employment (other than industrial relations);
- (zd) land and natural resources;
- (ze) land, sea and air transport;
- (zf) language;
- (zg) libraries and measures;
- (zh) licensing of public entertainment;
- (zi) liquor;
- (zj) livestock;
- (zk) local-level government;
- (zl) manufacturing;

- (*zm*) mining;
- (*zn*) non-banking financial institutions;
- (*zo*) oil and gas;
- (*zp*) parks and reserves;
- (*zq*) physical planning;
- (*zr*) professions;
- (*zs*) public holidays;
- (*zt*) public works;
- (*zu*) science and technology;
- (*zv*) sports and recreations;
- (*zw*) statistics (other than National Census);
- (*zx*) symbols of the Bougainville Government;
- (*zy*) time zones;
- (*zz*) tourism;
- (*zza*) trade, commerce and industry;
- (*zzb*) waste management;
- (*zzc*) water and sewerage;
- (*zzd*) water sources;
- (*zze*) wild life preservation;
- (*zzf*) wills and succession;
- (*zzg*) such other functions and powers for which, in accordance with this Part and the Agreement, the Bougainville Government may be responsible.

- (3) The Bougainville Government is responsible for –
- (*a*) administration of justice including dispute resolution; and
  - (*b*) the operation and the functions and powers of Bougainville Constitutional Office-holders; and
  - (*c*) the operation of and the powers and functions of Bougainville Government Services,

in accordance with the Agreement and this Part.

(4) Where the function and power relating to foreign investment applications has been transferred to the Bougainville Government, it shall be exercised in the following manner: –

- (*a*) each application for foreign investment relating to Bougainville shall be lodged in duplicate, one for the National Government and one for the Bougainville Government;
- (*b*) each application must satisfy the National Government's reasonable foreign investment requirements for Papua New Guinea as a whole;
- (*c*) the Bougainville Government, through the Bougainville Public Service or by an authority established by the Bougainville Government for the purpose, shall be responsible for considering each application and for determining whether the requirements referred to in Paragraph (*b*) are met;
- (*d*) where satisfied that an application meets the requirements referred to in Paragraph (*b*), the Bougainville Government through the Bougainville Public Service or by an authority established by the Bougainville

- Government for the purpose, may accept the application, or without limit to its discretion, may refuse it or accept it subject to conditions;
- (e) the Bougainville Government, through the Bougainville Public Service or by an authority established by the Bougainville Government for the purpose, and the National Government, and any authority established by the National Government for the purpose, shall consult and co-operate at all stages of the consideration of an application;
  - (f) there shall be joint and ongoing review and development of foreign investment policy by the two Governments and the authorities referred to in Paragraph (e) to promote restoration and development in Bougainville;
  - (g) a dispute as to whether an application does or does not comply with the requirements referred to in Paragraph (b) shall be resolved through the dispute resolution procedure.

(5) The Bougainville Government shall have the functions and powers necessary to develop the infrastructure relative to its powers and functions under this section.

**“291. FUNCTIONS AND POWERS OF THE NATIONAL GOVERNMENT AND OF THE BOUGAINVILLE GOVERNMENT IN RELATION TO CRIMINAL LAW.**

(1) The provisions of Sections 295 (*process of transfer of functions and powers*), 296 (*relationships of National and Bougainville laws*) and 298 (*National Government assets and land*) do not apply to this section.

- (2) The Bougainville Government shall have power, subject to Subsection (4) –
- (a) to adopt the *Criminal Code*; and
  - (b) to create and set penalties for offences incidental to the exercise of its agreed powers and functions; and
  - (c) to amend National laws relating to summary offences and other laws relating to criminal law as they apply in Bougainville; and
  - (d) to make laws relating to criminal law, other than a law equivalent to the *Criminal Code*.

(3) The *Criminal Code* shall apply in and to Bougainville until adopted under Subsection (2)(a).

(4) Where the Bougainville Government has adopted the *Criminal Code* under Subsection (2) (a), it may amend the *Criminal Code* as adopted –

- (a) with the consent of the National Government; or
- (b) in accordance with the following: –
  - (i) the principles contained in the Agreement being: –
    - (A) changes of the principles of the criminal law shall be evolutionary;
    - (B) there shall be no large scale changes to the coverage of subjects by the criminal law;
  - (ii) the procedures contained in the Agreement being: –
    - (A) the Bougainville Government will cause to be published in the National Gazette amendments to the *Criminal*

*Code* as adopted proposed by the Bougainville Government and such amendments shall not come into operation without the agreement of the National Government;

- (B) in the event that the National Government does not accept any amendments proposed by the Bougainville Government, it may require further consultation with the Bougainville Government and in the event of failure to agree, the dispute resolution procedure shall apply.

**“292. SUBJECTS NOT SPECIFIED IN SECTIONS 289, 290 AND 291.**

- (1) Subject to Subsection (2), the function and power in relation to any subject –
- (a) not specified in Section 289 (*powers and functions of the National Government*), Section 290 (*powers and functions available to the Bougainville Government*) and Section 291 (*functions and powers of the National Government and of the Bougainville Government in relation to criminal law*); and
  - (b) not coming within the category of any subject specified in Section 289 (*powers and functions of the National Government*) Section 290 (*powers and functions available to the Bougainville Government*) and Section 291 (*functions and powers of the National Government and of the Bougainville Government in relation to criminal law*),

shall be a power and function of the National Government, until otherwise determined in accordance with this section.

(2) Where the National Government or the Bougainville Government proposes to legislate on a subject to which Subsection (1) applies, it shall notify the other Government of its proposals and consult with the other Government with a view to reaching agreement on which Government should be responsible for the subject, and where agreement is not reached, it shall not legislate.

(3) Where either the National Government or the Bougainville Legislature passes a law on a subject to which Subsection (1) applies, the other Government may invoke the dispute resolution procedure, and –

- (a) pending final determination of the dispute the law shall not take effect, unless both Governments agree that it should take effect; and
- (b) on the determination of the dispute resolution procedure, the law shall or shall not take effect in accordance with that determination.

(4) Any dispute between the National Government and the Bougainville Government over which Government is responsible for a function or power shall be resolved by applying the principles governing the division of powers as specified in the Agreement.

**“293. INTERNATIONAL OBLIGATIONS, ETC., OF THE STATE IN RESPECT OF THE POWERS AND FUNCTIONS OF THE BOUGAINVILLE GOVERNMENT.**

(1) In this section, “international obligations” includes treaties and other written international agreements to which the State is or becomes a party.

(2) The powers and functions available to the Bougainville Government specified in Section 290 (*powers and functions available to the Bougainville Government*) will not be

exercised in a manner inconsistent with Papua New Guinea's international obligations and human rights regime –

- (a) in existence on the date of the coming into operation of this Part; and
- (b) entered into after the date of coming into operation of this Part, in accordance with this section.

(3) The National Government –

- (a) shall consult with the Bougainville Government on –
  - (i) any proposed new international obligations likely to affect the exercise by the Bougainville Government of the functions and powers available to it under this Part; or
  - (ii) any proposed future border agreement (other than one concerning defence or national security) affecting the jurisdiction of the Bougainville Government; and
- (b) shall not enter into a border agreement (other than one concerning defence or national security) affecting the jurisdiction of the Bougainville Government without the agreement of the Bougainville Government.

(4) For the purposes of Section 117(3) (*treaties*), the consent of Papua New Guinea to be bound as a party to a treaty which –

- (a) has a purpose of altering the autonomy arrangements contained in the Agreement; or

- (b) being a border agreement (other than one concerning defence or national security) affects the jurisdiction of the Bougainville Government,

shall not be given unless –

- (b) the National Government and the Bougainville Government have agreed on the contents of the treaty; and
- (c) the provisions of Section 117(3)(a) or (b) (*treaties*) have been complied with.

(5) Any disagreement between the National Government and the Bougainville Government as to whether any treaty has a purpose of altering the autonomy arrangement contained in the Agreement shall be resolved in accordance with the dispute resolution procedure.

(6) Any differences between the National Government and the Bougainville Government arising from generally accepted rules of international law shall be resolved in accordance with the dispute resolution procedure.

(7) The Bougainville Government may, through an agreed mechanism, request the assistance or concurrence of the National Government –

- (a) to participate in the negotiation of international agreements of particular relevance to Bougainville; or
- (b) to negotiate international agreements on its own account.

**“294. FUNCTIONS AND POWERS OF THE BOUGAINVILLE GOVERNMENT ON ESTABLISHMENT AND WITHIN 12 MONTHS THEREAFTER.**

(1) Prior to the establishment of the Bougainville Government the Bougainville Interim Provincial Government may give to the National Government reasonable notice of –

- (a) functions or powers available to the Bougainville Government to be transferred; and
- (b) institutions expected to be established under the Bougainville Constitution,

within the period of 12 months commencing on the date of the establishment of the Bougainville Government.

(2) The Bougainville Government shall, on its establishment, have the same functions and powers as the Bougainville Interim Provincial Government, together with such other functions and powers transferred under Subsection (1).

**“295. PROCESS OF TRANSFER OF FUNCTIONS AND POWERS.**

Where the Bougainville Government wishes a function or power available to it to be transferred to it, it shall –

- (a) take full account of its needs and capacity in relation to the functions or power; and
- (b) initiate the transfer by giving to the National Government 12 months’ notice of its intention to seek the transfer of the function or power; and
- (c) consult with the National Government concerning the transfer,

unless both Governments otherwise agree.

**“296. RELATIONSHIP OF NATIONAL AND BOUGAINVILLE LAWS.**

(1) National laws relating to the functions and powers available to the Bougainville Government shall continue to apply until replaced by Bougainville laws.

(2) The –

- (a) National Government may legislate on subjects specified in Section 290 (*functions and powers available to the Bougainville Government*) but not so as to be inconsistent with Bougainville laws on such subjects; and
- (b) the Bougainville Government may legislate on subjects specified in Section 289 (*functions and powers available to the National Government*) but not so as to be inconsistent with National laws on such subjects.

**“297. MANNER OF IMPLEMENTATION OF TRANSFER OF FUNCTIONS AND POWERS.**

An Organic Law shall make provision for –

- (a) the transfer together of closely linked functions and powers; and
- (b) the manner of overcoming difficulties of capacity or economic circumstances preventing the effective exercise of a function or power; and
- (c) the resolution of issues in dispute in the event of failure to overcome difficulties referred to in Paragraph (b); and
- (d) the resolution of difficulties in dividing the personnel, assets or funding of an institution or service organized on a regional or National basis; and

- (e) the making of arrangements to share access to or use of an institution or service organised on a regional or National basis to include cost-sharing; and
- (f) the plans prepared and agreed by the National Government and the Bougainville Government for co-operating in implementing the transfer of functions for which the Bougainville Government will become responsible.

**“298. NATIONAL GOVERNMENT ASSETS AND LAND.**

(1) Subject to Subsection (2), the National Government shall transfer to the Bougainville Government, at the same time as the transfer of a function or power, such assets and land as are associated with the function or power.

(2) Where the National Government has a continuing responsibility in respect of a function or power transferred to the Bougainville Government, it may retain assets and land associated with that function or power to the extent necessary to carry out its continuing responsibility.

**“299. TRANSFER OR DELEGATION OF FUNCTIONS AND POWERS.**

The National Government or the Bougainville Government may, by agreement, transfer or delegate any function or power (including a financial function or power) to the other Government.”.

**SCHEDULE 5.**

**Secs. 122, 189**

***MATTERS RELATING TO BOUGAINVILLE CONSTITUTIONAL OFFICE-HOLDERS***

**5.1 QUALIFICATIONS FOR APPOINTMENT AS CHIEF JUSTICE OF BOUGAINVILLE OR AS A BOUGAINVILLE JUDGE.**

(a) **Qualification to be held by a citizen.**

A citizen is qualified to be appointed as Chief Justice of Bougainville or as a Bougainville Judge if –

- (i) he –
  - (A) is a graduate in law of a university in Papua New Guinea or of a university of another country the degree in law of which is recognised by the Bougainville Judicial Appointments Committee as a sufficient academic qualification for appointment; and
  - (B) has been admitted to practise as a lawyer for not less than four years; and
  - (C) is not disqualified under Schedule 5.7; or
- (ii) he –
  - (A) is a graduate of a university in Papua New Guinea or of a university of another country the degree in law of which is recognized by the Bougainville Judicial Appointments Committee as a sufficient academic qualification for appointment; and

- (B) has not less than five years experience in Bougainville or Papua New Guinea as a whole –
  - (1) as a Deputy Chief Magistrate; or
  - (2) as a Principal Magistrate; or
  - (3) as a Magistrate Grade V; or
  - (4) as a Magistrate Grade IV; or
  - (5) as a Magistrate Grade III; or
  - (6) as a Magistrate or the equivalent in a Bougainville court referred to in Section 112(1)(b) (*Bougainville Courts*); or
  - (7) partly as any one of the categories specified in Subclauses (1) to (6) and partly as another; and
- (C) is not disqualified under Schedule 5.7.

(b) **Qualifications to be held by a non-citizen.**

A non-citizen is qualified to be appointed as Chief Justice of Bougainville or as a Bougainville Judge if –

- (i) he –
  - (A) is a graduate of a university in Papua New Guinea or of a university of another country the degree in law of which is recognized by the Bougainville Judicial Appointments Committee as a sufficient academic qualification for appointment; and
  - (B) is or has been a lawyer who has practised as a lawyer for not less than five years –
    - (1) in Bougainville or Papua New Guinea as a whole; or
    - (2) in a country with a legal system that, in the opinion of the Bougainville Judicial Appointments Committee, is substantially similar to the legal system of Bougainville or Papua New Guinea as a whole; or
    - (3) in Bougainville or Papua New Guinea as a whole and in a country referred to in Subclause (2); and
- (ii) he is or has been a Judge of a court of unlimited jurisdiction in a country with a legal system that, in the opinion of the Bougainville Judicial Appointments Committee, is substantially similar to the legal system of Bougainville or Papua New Guinea as a whole, and is not disqualified under Schedule 5.7.

**5.2 QUALIFICATIONS FOR APPOINTMENT AS BOUGAINVILLE PUBLIC PROSECUTOR OR BOUGAINVILLE PUBLIC SOLICITOR.**

A person is qualified to be appointed as the Bougainville Public Prosecutor or as the Bougainville Public Solicitor –

- (a) if he is a lawyer who has practised as a lawyer –
  - (i) in Papua New Guinea; or
  - (ii) in a country with a legal system that, in the opinion of the Bougainville Judicial Appointments Committee, is substantially similar to the legal system of Papua New Guinea; or
  - (iii) in Papua New Guinea and in a country referred to in Subparagraph (ii),

for a period of not less than seven years after obtaining full admission to practise as a lawyer; and

- (b) where he is a person to whom Subparagraph (ii) refers and he has not been admitted to practise in Papua New Guinea, he is qualified to be so admitted.

### **5.3 QUALIFICATIONS FOR APPOINTMENT AS BOUGAINVILLE OMBUDSMAN.**

A person is eligible for appointment as the Bougainville Ombudsman where he is, in the opinion of the Bougainville Senior Appointments Committee, a person of integrity, independence of mind, resolution and high standing in the community, and with relevant experience in public administration, law, accountancy or other relevant discipline.

### **5.4 QUALIFICATIONS FOR APPOINTMENT AS BOUGAINVILLE ELECTORAL COMMISSIONER.**

A person is eligible for appointment as the Bougainville Electoral Commissioner where he –

- (a) has experience of conducting National elections, Provincial elections, Local-level Government elections or elections of the President or of members of the House of Representatives; and
- (b) is, in the opinion of the Bougainville Senior Appointments Committee, a person of integrity and independence of mind.

### **5.5 QUALIFICATIONS FOR APPOINTMENT AND DISQUALIFICATIONS FROM OFFICE AS BOUGAINVILLE AUDITOR-GENERAL.**

5.5.1 A person is eligible for appointment as the Bougainville Auditor-General if he possesses such accountancy qualifications as, in the opinion of the Bougainville Senior Appointments Committee, are appropriate.

5.5.2 The Bougainville Auditor-General shall not directly or indirectly accept or receive any benefit from, or participate in, any enterprise, institution, fund or other body –

- (a) that holds a concession from the Autonomous Bougainville Government or the National Government; or
- (b) that is assisted in any way by the Autonomous Bougainville Government or the National Government; or
- (c) in the management of which the Autonomous Bougainville Government or the National Government has a share; or
- (d) that is subject to –
- (i) the control of the Autonomous Bougainville Government or the National Government; or
- (ii) inspection and audit by the Bougainville Auditor-General or the National Auditor-General.

5.5.3 Nothing in Schedule 5.5.2 prevents the Bougainville Auditor-General from obtaining normal bank loans from a bank, which is wholly or partially owned by the Autonomous Bougainville Government or the National Government.

### **5.6 QUALIFICATIONS FOR APPOINTMENT AS HEAD OF OTHER BOUGAINVILLE COURTS.**

A person who –

- (a) is qualified for appointment as a Bougainville Judge; and

- (b) is a graduate in law of a university in Papua New Guinea and has not less than five years experience in Bougainville or Papua New Guinea as a whole as a full-time magistrate or as a member of a Bougainville court; and
- (c) has knowledge and experience of the Bougainville situation and of Bougainville kastom,

is qualified for appointment as the Head of other Bougainville Courts.

## **5.7 DISQUALIFICATION FROM OFFICE OF CERTAIN BOUGAINVILLE CONSTITUTIONAL OFFICE-HOLDERS.**

**5.7.1** Schedule 5.7.2 does not apply to a Constitutional Office-holder appointed by the Bougainville Judicial Appointments Committee.

**5.7.2** A person is not qualified to be, or to remain, a Bougainville Constitutional Office-holder to whom this Schedule 5.7 applies if he is –

- (a) President, or a candidate for election as President; or
- (b) a member of, or a candidate for election to –
  - (i) the House of Representatives; or
  - (ii) a level of formal government in Bougainville; or
  - (iii) the National Parliament; or
  - (iv) a Provincial Government; or
  - (v) a Local-level Government or Authority; or
- (c) an office-holder in a political party registered under a Bougainville law or under a National law; or
- (d) declared bankrupt by a court of competent jurisdiction and remains bankrupt; or
- (e) of unsound mind within the meaning of any law relating to the protection of the person or property of persons of unsound mind; or
- (f) under sentence of death or imprisonment.

## **5.8 SPECIAL CONDITIONS OF EMPLOYMENT OF BOUGAINVILLE CONSTITUTIONAL OFFICE-HOLDERS.**

**5.8.1** A Bougainville Constitutional Office-holder shall not –

- (a) actively engage in politics; or
- (b) subject to Schedule 5.8.2, engage either directly or indirectly in the management or control of a corporation or other body of persons carrying on business for profit; or
- (c) except on leave of absence granted by the President, or because of illness, absent himself from office for more than 14 consecutive days or more than 28 days in any period of 12 months; or
- (d) subject to Schedule 5.8.3, acquire by gift or otherwise, or use or hold in any other manner any interest in, any property or solicit, accept or receive any other benefit in addition to his terms and conditions of employment.

**5.8.2** Nothing in Schedule 5.8.1(b) prevents a Bougainville Constitutional Office-holder from holding office in a professional body in relation to which his qualifications are relevant.

**5.8.3** Subject to Part XIII (*Leadership Code*), a Bougainville Constitutional Office-holder may purchase, lease or otherwise acquire land in the same manner and subject to the same condition as any other Bougainvillean.

**5.9 RESIGNATION.**

**5.9.1** A Bougainville Constitutional Office-holder may resign by giving three months' notice in writing of his intention to do so to the Bougainville Senior Appointments Committee, or, in the case of a Bougainville Constitutional Office-holder appointed by the Bougainville Judicial Appointments Committee, to the Bougainville Judicial Appointments Committee.

**5.9.2** In the case of the Chief Justice of Bougainville or of a Bougainville Judge the period of three months specified in Schedule 5.9.1 shall be deemed to commence on the twenty second day after the receipt by the Bougainville Judicial Appointments Committee of the notice except where the Committee by notice in writing to the Chief Justice of Bougainville or to the Bougainville Judge, as the case may be, fixes an earlier date.

**5.9.3** A Bougainville Constitutional Office-holder may withdraw his resignation at any time before its commencement.

**5.10 ANNUAL REPORTS, ETC.,**

Subject to the provisions of this Constitution, a Bougainville Constitutional Office-holder –

(a) shall, at least once in every period of 12 months and at such times as are fixed by the Bougainville Executive Council, give to the President, for presentation to the House of Representatives, a report on the work of his constitutional office, with such recommendations as to improvement as he thinks proper; and

(b) may, on his own initiative, and shall, in accordance with a Bougainville law, make other reports on the work of his constitutional office.

**5.11. ACTING BOUGAINVILLE CONSTITUTIONAL OFFICE-HOLDER.**

A person who is qualified for appointment as a Bougainville Constitutional Office-holder may be appointed to be an acting Bougainville Constitutional Office-holder –

(a) to fill temporarily a vacancy; or

(b) in the case of the absence from duty for any reason of a Bougainville Constitutional Office-holder.

**5.12. RIGHTS ON TERMINATION OF EMPLOYMENT.**

A Bougainville law shall make provision for the rights of a Bougainville Constitutional office-holder on the termination of his employment as such.

**SCHEDULE 6.**

**Sec. 187**

**IMMUNITY FROM PROSECUTION**

**6.1 PROVISIONS OF NATIONAL CONSTITUTION RELATING TO IMMUNITY FROM PROSECUTION.**

**“344. IMMUNITY FROM PROSECUTION.**

(1) The purpose of this section is to assist in the reconciliation process in Bougainville, and it is the intention of the Parliament that the provisions of this section be so applied as to assist in achieving this purpose.

(2) There shall be immunity from prosecution in accordance with this section in respect of certain offences arising from crisis-related activities in relation to the Bougainville conflict.

(3) The Head of State, acting with, and in accordance with, the advice of the National Executive Council, may, by declaration published in the National Gazette, declare –

- (a) subject to Paragraph (b), the class or classes of offences to which the immunity is to apply or not apply; and
- (b) the nature of crisis-related activities which shall qualify the offences for immunity; and
- (c) the period of time to which the immunity shall apply; and
- (d) such other matters as are necessary to ensure that the immunity can be effected.

(4) Where a declaration has been made under Subsection (3), no charge shall be laid and no prosecution –

- (a) shall be initiated; or
  - (b) if initiated, shall be pursued,
- in respect of an offence –
- (c) included in the offences described pursuant to Subsection (3)(a); and
  - (d) of a nature described in Subsection (3)(b); and
  - (e) committed during the period specified in Subsection (3)(c).

(5) The provisions of this section – may

- (a) be applied generally in respect of classes of offences and classes of circumstance without the need to identify alleged offenders; and
- (b) shall apply to offences whether or not a charge has been laid in respect of them”.

## **6.2 DECLARATION IN RESPECT OF IMMUNITY.**

### **“CONSTITUTION**

#### **DECLARATION IN RESPECT OF IMMUNITY FROM PROSECUTION IN RESPECT OF CERTAIN OFFENCES ARISING FROM CRISIS-RELATED ACTIVITIES IN RELATION TO THE BOUGAINVILLE CONFLICT.**

I, Silas Atopare G.G.M.G.,K.St.J., Governor General, by virtue of the powers conferred by Section 344(3) of the Constitution and all other powers me enabling, acting with, and in accordance with, the advice of the National Executive Council, hereby Declare that, in respect of the immunity from prosecution granted by Section 344(2) of the Constitution, in respect of certain offences arising from crisis-related activities in relation to the Bougainville conflict:-

- (a) the classes of offences to which the immunity is to apply are as set out in the Schedule hereto; and
- (b) the crisis-related activities which qualify offences for the immunity are activities:-
  - (i) in pursuit of the objectives of any of the parties to the conflict including, but not limited to, the ordering and or carrying out activities in the course of armed conflict or against a person believed to be a member or supporter of one of the parties to the conflict; or
  - (ii) relating to the self-defence of an individual, family, group or party; or
  - (iii) in defence of the community, public order and/or justice where normal constitutional processes could not be applied; or
  - (iv) involving non-compliance with regulatory, licensing or requirements where compliance was impracticable on account of the crisis; and
- (c) the immunity shall apply in respect of offences committed during the period commencing 1<sup>st</sup> October, 1988 and ending:-
  - (i) in respect of offences other than:-
    - (A) those committed in activities referred to in Paragraph (b)(iv); and
    - (B) those relating to illegal possession, ownership and control of firearms, on 30<sup>th</sup> August, 2001; and
  - (ii) in respect of offences committed in activities referred to in Paragraph (b)(iv) above – on the date on which compliance becomes practicable or on the date of establishment of the autonomous Bougainville Government, whichever shall first happen; and
  - (iii) in respect of offences relating to the illegal possession, ownership and control of firearms – on the date of verification by the Director of the United Nations Observer Mission on Bougainville that the weapons to which the weapons disposal agreement applies are secured and contained under the supervision of that Mission, or, in respect of persons in control of the weapons collected pursuant to the weapons disposal agreement, on the completion of stage 3 of that agreement; and
- (d) any person charged with an offence covered by this Declaration may, at any time after being so charged, make application to the Court for a declaration that the offence with which he is charged is an offence to which the immunity applies, and upon the hearing of the application the onus of establishing that the immunity does not apply shall be upon the prosecution.

## SCHEDULE

Any offence within Papua New Guinea jurisdiction specified in:-

- (a) Part II (*Offences against Public Order*) of the *Criminal Code* (Chapter 262); and
- (b) Part III (*Offences against the Administration of Law and Justice and against Public Authority*) of the *Criminal Code* (Chapter 262); and
- (c) Divisions 1, 3, 4 and 5 of Part IV (*Offences Injurious to the Public in General*) of the *Criminal Code* (Chapter 262); and
- (d) Part V (*Offences against the Person and Relating to Marriage and Parental Rights and Duties and against the Reputation of Individuals*) of the *Criminal Code* (Chapter 262), excepting the offences specified in the following:-
  - (i) Section 301 (*Infanticide*);

- (ii) Section 312 (*Killing unborn child*);
- (iii) Division 7 (*Assaults on females; abduction*);
- (iv) Division 9 (*Bigamy and offences relating to parental rights and duties*);  
and
- (e) Part VI (*Offences relating to Property and Contracts*) of the *Criminal Code* (Chapter 262); and
- (f) Part VII (*Preparation to Commit Offences; Conspiracy; Accessories after the Fact*) of the *Criminal Code* (Chapter 262); and
- (g) *Summary Offences Act* (Chapter 264); and
- (h) any piece of legislation imposing regulatory, licensing or similar requirements relating to crisis-related activities to which Paragraph (b)(iv) of this Declaration relates, to the extent that the offence is related to non-compliance with the regulatory, licensing or similar provisions; and
- (i) any piece of legislation relating to the possession, control or use of firearms, to the extent that the offence is related to the illegal possession, control or use of firearms.

Dated this 1<sup>st</sup> day of August, 2002

SILAS ATOPARE  
Governor-General.”

## SCHEDULE 7.

### Sec. 193.

#### NATIONAL CONSTITUTION PROVISIONS RELATING TO BOUGAINVILLE REFERENDUM.

##### *“Division 7. – Bougainville Referendum.*

#### “338. REFERENDUM TO BE HELD.

(1) Subject to this section, a Referendum on the future political status of Bougainville shall be held in accordance with this Division.

(2) Subject to Subsection (7), the Referendum shall be held on a date agreed after consultation by the Bougainville Government with the National Government, which date shall be not earlier than 10 years and, notwithstanding any other provisions, not more than 15 years after the election of the first Bougainville Government.

(3) The date referred to in Subsection (2) shall be determined after considering whether –

- (a) weapons have been disposed of in accordance with the Agreement; and
- (b) in accordance with Subsection (4), it has been determined that the Bougainville Government has been and is being conducted in accordance with internationally accepted standards of good governance.

(4) The question whether the Bougainville Government has been and is being conducted in accordance with internationally accepted standards of good governance shall be determined in accordance with the review and the dispute resolution procedure.

(5) For the purposes of Subsection (4), the internationally accepted standards of good governance, as they are applicable and implemented in the circumstances of Bougainville and Papua New Guinea as a whole, include democracy, the opportunity for participation by Bougainvilleans, transparency, accountability, and respect for human rights and the rule of law, including this Constitution.

(6) The National Government and the Bougainville Government shall co-operate in ensuring progress towards achieving and maintaining the standards referred to in Subsection (5).

(7) The Referendum shall not be held where the Bougainville Government decides, in accordance with the Bougainville Constitution, after consultation with the National Government, that the Referendum shall not be held.

**“339. THE QUESTION OR QUESTIONS TO BE PUT.**

The question or questions to be put at the Referendum –

- (a) shall be agreed to by the National Government and the Bougainville Government; and
- (b) shall be formulated to avoid a disputed or unclear result; and
- (c) shall include a choice of separate independence for Bougainville.

**“340. MANNER OF CONDUCTING REFERENDUM.**

(1) An Organic Law shall make provision for the manner in which the Referendum is to be conducted and in particular shall make provision for and in relation to –

- (a) the authorities to be jointly responsible for preparing for and conducting the Referendum and for the arrangements whereby they shall exercise joint authority; and
- (b) electorates and polling places; and
- (c) electoral rolls, enrolment, objections to enrolment and appeals relating to enrolment; and
- (d) postal voting; and
- (e) polling and scrutiny; and
- (f) interpreters; and
- (g) offences; and
- (h) polling and scrutiny; and
- (i) communicating the results of the Referendum to the National Government and to the Bougainville Government; and
- (j) the invitation of international observers to observe the conduct of the Referendum; and
- (k) such other matters as may be required effectively to conduct the Referendum.

(2) The Referendum may be held in conjunction with an election.

**“341. REFERENDUM TO BE FREE AND FAIR.**

The National Government and the Bougainville Government shall co-operate to ensure that the Referendum is free and fair.

**“342. REFERENDUM RESULTS AND IMPLEMENTATION.**

(1) The National Government and the Bougainville Government shall consult over the results of the Referendum.

(2) Subject to the consultation referred to in Subsection (1), the Minister responsible for the Bougainville Referendum shall table the results of the Referendum in the National Parliament and the Speaker of the National Parliament shall furnish to the Bougainville Executive a copy of the minutes of the relevant proceedings and any decision made in the National Parliament regarding the Referendum.

**“343. RESOLUTION OF DIFFERENCES ON REFERENDUM.**

Any differences between the National Government and the Bougainville Government in relation to the Referendum shall be resolved in accordance with the dispute resolution procedure.”

**SCHEDULE 8.**

**Sec. 205 (2)**

**NATIONAL CONSTITUTION PROVISIONS ON INTERGOVERNMENTAL RELATIONS AND REVIEW.**

***“Division 6. – Intergovernmental Relations and Review.***

**“330. INTERPRETATION.**

In this Division unless the contrary intention appears –

“dispute” means any disagreement between the National Government and the Bougainville Government in relation to the autonomy for Bougainville and the referendum for Bougainville;

“dispute resolution procedure” means the dispute resolution procedure set out in Section 333 (*Joint Supervisory Body*);

“intergovernmental relations” means relations between the National Government and the Bougainville Government;

“Joint Supervisory Body” means the Joint Supervisory Body established by Section 332 (*Joint Supervisory Body*);

“review” means review under Section 337 (*reviews*).

**“331. PRINCIPLES OF INTERGOVERNMENTAL RELATIONS.**

The general principles of intergovernmental relations between the National Government and the Bougainville Government are as follows:-

- (a) that the autonomy arrangements, having been agreed through consultation and co-operation, should be implemented in like manner;
- (b) that there be a procedure to avoid, minimize and resolve disputes;
- (c) that the National Government has no power to withdraw powers from the Bougainville Government or to suspend it.

**“332. JOINT SUPERVISORY BODY.**

- (1) There is established a Joint Supervisory Body consisting of –
  - (a) not less than two members appointed by the National Executive Council; and
  - (b) not less than two members appointed by the Bougainville Executive.
  
- (2) There shall be an equal number of members appointed under Subsection (1)(a) and (b).
  
- (3) The functions of the Joint Supervisory Body are –
  - (a) to oversee implementation of the Agreement and of this Part, in accordance with the Agreement; and
  - (b) to provide a consultative forum at which consultation between the National Government and the Bougainville Government and their agencies can take place.
  
- (4) The Joint Supervisory Body shall have such powers as are necessary to enable it to perform its functions under this Part and the Agreement.
  
- (5) The Joint Supervisory Body –
  - (a) subject to Paragraph (b), shall, at its first meeting, develop its own procedures and fix the frequency of its meeting (which shall be at least once in each year); and
  - (b) provide that any of its members may put matters on an agenda of a meeting; and
  - (c) at its first meeting elect one of the members under Subsection (1)(a) to be the Chairman and at its second meeting elect one of the members under Subsection (1)(b) to be the Chairman and thereafter elect a Chairman from Subsection (1)(a) and (b) in rotation.

**“333. DISPUTE RESOLUTION PROCEDURE.**

The dispute resolution procedure is as follows:-

- (a) subject to express provisions relating to consultation in this Part and the Agreement, the National Government and the Bougainville Government shall try to resolve a dispute by consultation –
  - (i) where appropriate, between the relevant agencies of each Government; or
  - (ii) where consultation under Subparagraph (i) is not practicable or successful, through the Joint Supervisory Body;
- (b) where a dispute cannot be resolved by consultation under Paragraph (a), it shall be referred for mediation and arbitration under Section 334 (*mediation and arbitration*), unless otherwise agreed by the National Government and the Bougainville Government;
- (c) where a dispute cannot be resolved under Paragraph (a) or (b), or where the parties otherwise agree it may be submitted to the jurisdiction of the courts;
- (d) where a dispute involves a point of law, that point of law may be submitted to the jurisdiction of the courts without application of Paragraph (a) or (b).

**“334. MEDIATION AND ARBITRATION.**

(1) Where a dispute proceeds to arbitration, the National Government and the Bougainville Government shall agree on the Mediator or Arbitrator.

(2) The Mediator or Arbitrator shall determine procedures to be followed in the initial consideration of a dispute referred to him and shall determine whether a dispute is or is not suitable for mediation or arbitration.

(3) Where the Mediator or Arbitrator determines that a dispute is not suitable for arbitration or mediation, he shall issue to each of the parties to the dispute a certificate to that effect.

(4) Where the mediation or arbitration proceeds, the Mediator or Arbitrator shall determine the procedures to be followed.

**“335. DISPUTE RESOLUTION IN THE COURTS.**

The Courts shall have jurisdiction in a dispute –

- (a) in accordance with Section 333 (d) (*dispute resolution procedure*), where a dispute involves a point of law; and
- (b) where the parties so agree; and
- (c) where the mediation or arbitration procedure fails to resolve the dispute and one or other party wishes to take the matter to Court; and
- (d) prescribed as a dispute in relation to which the Courts have jurisdiction.

**“336. PANEL OF PERSONS WITH APPROPRIATE EXPERTISE.**

(1) Subject to Subsection (2), at any stage in the dispute resolution procedure, the parties may agree to appoint a panel of persons with expertise appropriate to the matter in dispute.

(2) Where a Mediator or Arbitrator has been appointed in respect of a dispute, his consent to the appointment of a panel under Subsection (1) shall be sought.

**“337. REVIEWS.**

(1) The National Government and the Bougainville Government –

- (a) shall meet as close as is practicable to the fifth anniversary of the establishment of the Bougainville Government and every five years thereafter, jointly to review the autonomy arrangements; and
- (b) may agree to additional reviews of the autonomy arrangements at any time; and
- (c) shall present a report of each review under Paragraph (a) or (b) to the National Parliament and to the Bougainville Legislature.

(2) A review under Subsection (1) of the autonomy arrangements shall follow and consider separate reviews by independent experts of particular aspects, including –

- (a) the financial arrangements – grants, taxes and progress towards fiscal self-reliance; and
- (b) the Bougainville Government Services and other aspects of public sector administration in Bougainville – including size, efficiency, effectiveness, and related matters; and
- (c) technical and legal aspects, including issues arising from judicial interpretation, and the distribution of powers and functions; and

(d) such other areas as the Bougainville Government and the National Government may agree.

(3) The terms of reference for a review shall specify that, unless otherwise agreed, they are intended to improve, clarify and strengthen the autonomy arrangements consistently with the objectives and principles in the Agreement.

(4) The National Government and the Bougainville Government may, by agreement, defer the specialist reviews or incorporate the issues with which they deal in the general review.

(5) The reports of the specialist reviews will include drafts or drafting instructions for any legislative amendments they recommend.

(6) In the event that either the National Parliament or the Bougainville Legislature passes any amendments proposed under Subsection (5) according to its own constitutional procedures and the other does not, the Bougainville Government on behalf of the Bougainville Legislature and the National Government on behalf of the National Parliament shall follow the dispute resolution procedure up to the level of mediation or arbitration.

(7) Any point of law arising from the application of Subsection (6) shall be referred to the Supreme Court.

(8) A Mediator or Arbitrator may not give directions to the National Parliament or the Bougainville Legislature but may order the National Government and the Bougainville Government to present a report in the National Parliament and the Bougainville Legislature recording the views of both Governments and containing their own recommendations on differences between them.

(9) In addition to the reviews under Subsection (1), the National Government and the Bougainville Government shall hold annual, wide-ranging consultations on the general operation of the autonomy arrangements.

(10) Unless the National Government and the Bougainville Government agree to some other method, the consultation under Subsection (9) shall be held through the Joint Supervisory Body.”

## SCHEDULE 9.

### Sec. 224.

#### **TRANSITIONAL PROVISIONS – PART VI OF ORGANIC LAW ON PEACE-BUILDING IN BOUGAINVILLE - AUTONOMOUS BOUGAINVILLE GOVERNMENT AND BOUGAINVILLE REFERENDUM.**

##### **“PART V. – ADDITIONAL TRANSITIONAL PROVISIONS.**

##### **“67. TRANSFER OF ASSETS, ETC.,**

All assets and liabilities of the Bougainville Interim Provincial Government immediately before the establishment of the Bougainville Government are, on that establishment, transferred and become assets and liabilities of the Bougainville Government.

##### **“68. FORMER PROVINCIAL LAWS.**

(1) Laws made by the Bougainville Interim Provincial Government are deemed to have been repealed on the establishment of the Bougainville Government.

(2) All or any laws or any part of a law –

(a) made by the Bougainville Interim Provincial Government under the *Organic Law on Provincial Governments and Local – Level Government*, notwithstanding the repeal effected by Subsection (1); and

(b) made by any Provincial Government (by whatever name known) of Bougainville Province (by whatever name known) (other than a Provincial Constitution) under the *Organic Law on Provincial Government (repealed)*, notwithstanding any repeal or deemed repeal of such laws,

are, on the establishment of the Bougainville Government, deemed to be in force insofar as not inconsistent with Part XIV (*Peace-Building on Bougainville – Autonomous Bougainville Government and Bougainville Referendum*) of the Constitution and this Organic Law, and may be amended or repealed by the Bougainville Government.

(3) Any references in a law or part of a law adopted under Subsection (2) to offices or bodies under –

(a) *the Organic Law on Provincial Government (repealed)*; or

(b) *the Organic Law on Provincial Governments and Local-level Governments*,

shall be read as references to corresponding offices and bodies established under the Bougainville Constitution or Bougainville laws.

##### **“69. SAVING OF CONTRACTS, ETC.,**

All contracts and arrangements, other than contacts of employment, entered into, made with or addressed to the Bougainville Interim Provincial Government are, to the extent that they were immediately before the establishment of the Bougainville Government binding on and enforceable against the Bougainville Interim Provincial Government, binding on and of full force and effect against or in favour of the Bougainville Government as fully and effectually as if the Bougainville Government had been a party to them or bound by them or entitled to the benefit of them.

**“70. REGISTRATION OF TITLE OF LAND.**

(1) Where any property vested in the Bougainville Interim Provincial Government is land registered under the *Land Registration Act* (Chapter 191) the Registrar of Titles, shall, without formal transfer, on application in that behalf by the Bougainville Government, enter the Bougainville Government on the register kept under that Act, and on entry or registration, grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

(2) No stamp duty or other duty, tax, or fee is payable on a registration made under Subsection (1).

**“71. PENDING LEGAL PROCEEDINGS.**

Where, immediately before the establishment of the Bougainville Government, any arbitration, action or proceeding was pending or existing by, against or in favour of the Bougainville Interim Provincial Government, it does not, on the commencement date, abate or discontinue but it may be prosecuted, continued or enforced by, against or in favour of the Bougainville Government.”

## **SCHEDULE 10.**

**Secs. 55(9), 110(1), 236(4), (5), (6) and (7), 238(2)**

### **ELECTORAL PROVISIONS RELATING TO THE FIRST GENERAL ELECTION OF PRESIDENT OF THE AUTONOMOUS REGION OF BOUGAINVILLE AND OF MEMBERS OF THE HOUSE OF REPRESENTATIVES.**

#### **ARRANGEMENT OF SECTIONS.**

##### **PART I. – PRELIMINARY.**

1. Application.
2. Interpretation.
  - “approved form”
  - “Bougainvillean”
  - “candidate”
  - “category of election”
  - “constituency”
  - “Election Enrolment Tribunal”
  - “elector”
  - “electoral officer”
  - “first Bougainville general election”
  - “Interim Bougainville Gazette”
  - “Manager”
  - “member”
  - “officer”
  - “Returning Officer”
  - “Roll”
  - “this Constitution”.

##### **PART II. – ADMINISTRATION.**

3. Function of the Manager.
4. Provincial Administrator to make available staff.
5. Delegation.
6. Returning Officers.
7. Assistant Returning Officers.
8. Appointment in cases of emergency.
9. Date from which appointments are to take effect.
10. Candidates not to be electoral officers.
12. Keeping of forms.
13. Guidelines on matters relating to “a Bougainvillean.”

##### **PART III. – ARRANGEMENTS FOR BOUGAINVILLEANS OUTSIDE BOUGAINVILLE.**

13. Arrangements for Bougainvilleans outside Bougainville.

#### **PART IV. – FIRST GENERAL ELECTION.**

14. First general election.

#### **PART V. – POLLING PLACES.**

15. Polling places.

#### **PART VI. –ELECTORAL ROLLS.**

16. Rolls.
17. Form of Rolls.
18. New Rolls.
19. Additions, etc., to new Rolls.
20. Objections and notices to have effect in relation to new Rolls.
21. Printing of Rolls.
22. Inspection.
23. Officers and others to furnish information.

#### **PART VII. – QUALIFICATIONS FOR AND DISQUALIFICATIONS FROM ENROLMENT AND VOTING.**

24. Persons entitled to enrolment.

#### **PART VIII. – ENROLMENT.**

25. Officers.
26. Addition of names to Rolls.
27. Claims for enrolment or transfer of enrolment.
28. Form of claim for enrolment or transfer of enrolment.
29. Compulsory enrolment and transfer.
30. Registration of claim.
31. Notification of rejection of claim.
32. Time of altering Rolls.
33. Penalty on officer neglecting to enrol claimants.
34. Alteration of Rolls, etc.,
35. Special provisions for certain nominations.
36. Incorrect enrolment.
37. Alterations to be initialled.
38. Inquiry by Returning Officer.

#### **PART IX. – OBJECTIONS.**

39. Name on Roll may be objected to.
40. Objection.
41. Duty to object.
42. Notice of objection.
43. Answer to objection.
44. Determination of objection.

#### **PART X. – APPEALS.**

45. Election Enrolment Tribunals.
46. Appeal to Election Enrolment Tribunal.

### **PART XI. – WRITS FOR FIRST GENERAL ELECTION.**

47. Writs for first general election.
49. Form of writs.
50. Time of issue of writs.
51. Address of writs.
51. Date of nomination.
52. Date of polling.
53. Date of return of writ.
54. General election to commence on same day.
55. Duty of returning officer on receipt of writ.

### **PART XII. – NOMINATIONS.**

56. Candidates must be nominated.
57. Qualifications for nomination.
58. Mode of nomination.
59. To whom nominations made.
60. Form of consent to act.
61. Formal defects.
62. Deposit to be forfeited in certain cases.
63. Place of nomination.
64. Hour of nomination.
65. Declaration of nominations.
66. Withdrawal of nominations.
67. Return of deposit in case of candidate's death.
68. Proceedings on nomination day.
69. Failure of election.

### **PART XIII. – THE POLLING.**

#### ***Division 1. – Polling Schedule.***

70. Polling Schedule.
71. Publication of polling schedule.
72. Adherence to polling schedule.
73. Appeal.
74. Election not open to challenge.

#### ***Division 2. – General Provision.***

75. Returning Officer to make arrangements.
76. Allocation of polling places
77. Substitute.

78. No licensed premises to be used.
79. Separate voting compartments.
80. Ballot boxes.
81. Certified list of voters.
82. Form of ballot papers.
83. Ballot papers.
84. Ballot papers to be initialled.
85. Scrutineers at the polling.
86. Provisions relating to scrutineer.
87. Persons present at polling.
88. The polling.
89. Elections at which electors are entitled to vote.
90. Persons claiming to vote to give name and other particulars.
91. Questions to be put to voter.
92. Finger to be marked
93. Right of elector to receive ballot papers.
94. List of voters to be marked on issue of ballot papers.
95. Votes to be marked in private.
96. Method of marking ballot paper.
97. Assistance to certain voters.

***Division 3. – Special provisions in certain cases.***

98. Voter claiming to vote whose name on Roll has been marked.
99. Blind or physically incapacitated voters.
100. Dealing with voters, etc., under this Division.

***Division 4. – Miscellaneous.***

101. Spoilt ballot paper.
102. Adjournment of polling on account of riot.

**PART XIV. – THE SCRUTINY.**

***Division 1. – Preliminary.***

103. Scrutiny.
104. Counting centres.
105. Officers to conduct scrutiny.
106. Scrutineers at scrutiny.
107. Conduct of scrutiny.
108. Action on objection to ballot papers.
109. Informal ballot papers.

***Division 2. – Provision Relating to the Scrutiny of Ordinary Votes.***

110. Scrutiny of ordinary votes in elections.

***Division 3. – Provisions Relating to Scrutiny of Votes under Division XIII.3.***

111. Conduct of scrutiny.
112. Action on receipt of ballot papers under Division XIII.3.

113. Preliminary scrutiny of votes cast under Division XIII.3.
114. Further scrutiny.
115. Informal ballot papers under Division XIII. 3.
116. Parcelling of ballot papers.
117. Opening of sealed parcels of ballot papers.
118. Opening of sealed parcels of declarations.
119. Preservation of ballot papers and declarations
120. Mode of determining the result of the scrutiny.
121. Further provisions relating to scrutiny.

***Division 4. – Recount.***

122. Re-count.
123. Reservation of disputed ballot papers.
124. Conduct of re-count.

**PART XV. – INTERPRETERS.**

125. Interpreters.
126. Duty of interpreters.

**PART XVI. – THE RETURN OF THE WRITS.**

127. Return of the writs.
128. Correction of errors.
129. Extension of time.

**PART XVII. – OFFENCES.**

130. Illegal practices.
131. Heading to electoral advertisement.
132. Articles to be signed.
133. Matter broadcast.
134. Display of certain electoral posters prohibited.
135. Removal of prohibited electoral poster.
136. Injunctions.
137. Cards in polling booths.
138. Untrue statements on electoral paper, etc.,
139. Signature to electoral paper.
140. Witnessing electoral papers.
141. Making marks on ballot papers.
142. Electoral offences.
143. Prohibition of canvassing near polling booth.
144. Badges or emblems in polling booths.
145. Failure to transmit claims.
146. Forging or uttering electoral papers.
147. Employers to allow employees leave of absence to vote.
148. Protection of the official mark.
149. Disorderly behaviour at meeting.
150. Neglect to initial ballot paper, etc.,
151. Offender may be removed from polling booth.
152. Defamation of candidate.

- 153. Publication of matter regarding candidates.
- 154. Liability for indirect acts.

### **PART XVIII. – DISPUTED ELECTIONS, RETURNS, ETC.,**

- 155. Method of disputing returns.
- 156. Exercise of Jurisdiction of National Court.
- 157. Requisites of petition.
- 158. Deposit as security for costs.
- 159. No proceedings unless requisites complied with.
- 160. Right of Manager to be represented.
- 161. Powers of National Court.
- 162. Production of papers or documents, etc.,
- 163. Inquiries by National Court.
- 164. Voiding election for illegal practices.
- 165. National Court to report case of illegal practice.
- 166. Natural justice to be observed.
- 167. Immaterial errors not to vitiate elections.
- 168. Evidence that person not permitted to vote.
- 169. Decision to be final.
- 170. Copies of petition and order of National Court to be sent to the President and the Speaker.
- 171. Counsel or solicitor.
- 172. Costs.
- 173. Deposits applicable for costs.
- 174. Other costs.
- 175. Effect of decisions.
- 176. Definition of “petition”.

### **PART XIX. – MISCELLANEOUS.**

- 177. Council of Elders rules on advertising, etc.,
- 178. Institution of proceedings for offences.
- 179. Certificate evidence.
- 180. Electoral matter may be sent by electronic means.
- 181. Averments deemed to be proved.
- 182. Defendant may be called upon to give evidence.
- 183. Production of claims for enrolment etc.,
- 184. Preservation of ballot papers

### **SCHEDULE.**

#### **FORMS.**

## SCHEDULE 10.

### ELECTORAL PROVISIONS RELATING TO THE FIRST GENERAL ELECTION OF PRESIDENT OF THE AUTONOMOUS REGION OF BOUGAINVILLE AND OF MEMBERS OF THE HOUSE OF REPRESENTATIVES.

#### PART I. – PRELIMINARY.

##### 1. APPLICATION.

- (1) These electoral provisions apply to the first general election of –
- (a) the President of the Autonomous Region of Bougainville; and
  - (b) the other elected members of the House of Representatives in accordance with Section 55(2)(b)(i), (ii) and (iii) (*establishment and composition of the House of Representatives*) of this Constitution, being –
    - (i) 33 directly elected members, each representing a single member constituency; and
    - (ii) three women members, each one representing a constituency for a separate Region (North, Central and South), elected to represent the interests of the women of the Region; and
    - (iii) three former combatant members, each one representing a constituency for a separate Region (North, Central and South) meeting the requirements of Section 58(1)(d), elected to represent the interests of the former combatants of the Region.

(2) Until the making of the Bougainville law referred to in Section 106(4) (*Bougainville Electoral Commissioner and elections generally*) of this Constitution, these electoral provisions shall also apply to –

- (a) supplementary elections where an election is deemed to have failed under Section 69; and
- (b) new elections following a declaration by the National Court under Section 161(1)(h) that an election is absolutely void; and
- (c) by-elections, where the need for a by-election arises in accordance with Section 108 (*by-elections*) of this Constitution.

##### 2. INTERPRETATION.

(1) In these electoral provisions, unless the contrary intention appears –

“approved form” means a form approved by the Commissioner;

“Bougainvillean” means a Bougainvillean as provided for in Section 7 (*Bougainvillean*) of this Constitution;

“candidate” means a person who has nominated and includes a person who, within two months before the first day of the polling period, announces himself as a candidate for election as President or as a member of the House of Representatives;

“category of election” has the meaning given to it in Subsection (2);

“constituency” means the area in relation to which a person is to be elected as a member of the House of Representatives and in relation to –

- (a) the President – means all the single member constituencies, whose boundaries are determined in accordance with Section 233 (*First Bougainville General*

- Election Boundaries Director*) of this Constitution, taken together as one constituency; and
- (b) each of the 33 directly elected members, representing single member constituencies – means the single member constituencies whose boundaries are determined in accordance with Section 233 (*First Bougainville General Election Boundaries Director*) of this Constitution; and
  - (c) the three women members, one from each Region (North, Central and South) elected to represent the interest of the women of the Region – means the Regional constituencies, whose boundaries are determined in accordance with Section 105(3) (*constituencies*) of this Constitution; and
  - (d) the three former combatant members, one from each Region (North, Central and South) elected to represent the interests of former combatants of the Region – means the Regional constituencies whose boundaries are determined in accordance with Section 105(3) (*constituencies*) of this Constitution;
- “Election Enrolment Tribunal” means an Election Enrolment Tribunal established under Section 45 and, in relation to a constituency, means the Election Enrolment Tribunal for that constituency;
- “elector” means a person whose name appears on the roll as an elector;
- “electoral officer” includes the Manager, a Returning Officer, an Assistant Returning Officer, presiding officer, assistant presiding officer, substitute presiding officer, poll clerk, interpreter and doorkeeper;
- “first Bougainville general election” means the first general election of President of the Autonomous Region of Bougainville and of members of the House of Representatives, and, where applicable, includes any other election referred to in Section 1(2);
- “Interim Bougainville Gazette” means the Interim Bougainville Gazette established under Section 232 (*Interim Bougainville Gazette*) of this Constitution;
- “Manager” means the First Bougainville General Election Manager appointed under Section 235 (*First Bougainville General Election Manager*) of this Constitution;
- “member” means an elected member of the House of Representatives and where appropriate includes the President;
- “officer” means –
- (a) an officer or employee of the National Public Service; and
  - (b) a member of the Police Force; and
  - (c) a member of the Correctional Service; and
  - (d) an officer or employee of the Interim Bougainville Provincial Government; and
  - (e) an officer or employee of a Council of Elders; and
  - (f) an officer or employee of a governmental body;
- “Returning Officer”, in relation to a constituency, means the Returning Officer for that constituency;
- “Roll” means an Electoral Roll under these electoral provisions;
- “this Constitution” means the Constitution of the Autonomous Region of Bougainville.

(2) For the purposes of these electoral provisions each of the following is a category of election: –

- (a) an election of President;
- (b) an election of a member to represent a single member constituency;
- (c) an election of a woman member to represent a Regional constituency to represent the women of the Region;

(d) an election of a former combatant member to represent a Regional constituency to represent the former combatants of the Region.

(3) Notwithstanding any other law, where a time limit is imposed under these electoral provisions for the taking of an action, then unless the contrary intention appears, that time limit is mandatory.

(4) Unless the contrary intention appears, or the context otherwise requires, a reference in these electoral provisions to a Part, Division or Section, means the Part, Division or Section of these electoral provisions.

## **PART II. – ADMINISTRATION.**

### **3. FUNCTION OF THE MANAGER.**

It is the function of the Manager to organize and conduct the first general election of the President and of the members of the House of Representatives and such other elections as are required to be organized and conducted under these electoral provisions in accordance with Section 1.

### **4. PROVINCIAL ADMINISTRATOR TO MAKE AVAILABLE STAFF.**

The Bougainville Provincial Administrator shall, when so requested by the Manager, make available to the Manager and to each Returning Officer such staff as may be necessary for the discharge of the functions conferred on the Manager by these electoral provisions.

### **5. DELEGATION.**

(1) The Manager may, by instrument in writing, delegate to an officer all or any of his powers and functions under these electoral provisions (except this power of delegation), so that the delegated powers or functions may be had, exercised and performed by the delegate in relation to such constituency or constituencies, or to such matters or class of matters, or to the whole of Bougainville or such part of Bougainville, as is or are specified in the instrument of delegation.

(2) Every delegation under Subsection (1) is revocable, in writing, at will.

(3) No delegation under this section prevents the exercise or performance of a power or function by the Manager.

### **6. RETURNING OFFICERS.**

The Manager shall, by notice in the Interim Bougainville Gazette, appoint a Returning Officer for each constituency, who shall be charged with the duty of giving effect to these electoral provisions within or for his constituency, subject to any directions of the Manager, but nothing in these electoral provisions prevents a person being appointed as the Returning Officer for more than one constituency.

### **7. ASSISTANT RETURNING OFFICERS.**

(1) Subject to this section, the Manager may, by notice published in the Interim Bougainville Gazette, appoint a person to be an Assistant Returning Officer for a constituency or a part of a constituency.

(2) A person appointed to be an Assistant Returning Officer for the whole or a part of a constituency may, subject to these electoral provisions and to the control of the Returning

Officer, perform the functions and exercise the powers of the Returning Officer, in, or in relation to, that constituency or that part of the constituency, as the case may be.

(3) An Assistant Returning Officer shall not be appointed for a part of a constituency for which fewer than 100 electors are enrolled.

#### **8. APPOINTMENT IN CASES OF EMERGENCY.**

(1) Subject to Subsection (2), in the event of a vacancy occurring in an office of Returning Officer or Assistant Returning Officer, or in the absence from duty of any such officer, the Manager may, by notice in writing, appoint a person to perform the duties of the office during the period of the vacancy or absence.

(2) The Manager shall publish each notice under Subsection (1) in the Interim Bougainville Gazette.

(3) In the event of a vacancy occurring in an office of Assistant Returning Officer appointed under Section 7, or in the absence from duty of any such officer, the Returning Officer may, by instrument in writing, appoint a person to perform the duties of the office during the period of the vacancy or absence.

#### **9. DATE FROM WHICH APPOINTMENTS ARE TO TAKE EFFECT.**

A person appointed to be a Returning Officer under Section 6 or an Assistant Returning Officer under Section 7 shall be deemed to have been appointed as from the date specified in his notice of appointment, or, if no such date is specified, as from the date of his appointment.

#### **10. CANDIDATES NOT TO BE ELECTORAL OFFICERS.**

No candidate shall be appointed an electoral officer, and if an electoral officer becomes a candidate he thereby vacates his office.

#### **11. KEEPING OF FORMS.**

All Returning Officers shall keep forms of claim for enrolment and transfer and such other forms as are approved forms and shall without fee supply them to the public and assist the public in their proper use.

#### **12. GUIDELINES ON MATTERS RELATING TO “A BOUGAINVILLEAN”.**

(1) The Manager may, in respect of the first Bougainville general election, issue guidelines to assist in determining whether or not a person is a Bougainvillean and such guidelines may include –

- (a) the nature of providing evidence of customary practices; and
- (b) the nature of providing evidence of birth outside Papua New Guinea; and
- (c) all matters relevant to the consequences of dissolution of a marriage involving a person who is a Bougainvillean; and
- (d) all other matters arising from the provisions of Section 7 (*Bougainvillean*) of this Constitution.

- (2) Where the Manager has issued guidelines under Subsection (1) he shall –
- (a) cause them to be published in the Interim Bougainville Gazette; and
  - (b) otherwise bring them to the public notice in such manner as he considers both practicable and effective.

**PART III. – ARRANGEMENT FOR BOUGAINVILLEANS OUTSIDE BOUGAINVILLE.**

**13. ARRANGEMENTS FOR BOUGAINVILLEANS OUTSIDE BOUGAINVILLE.**

(1) For the purposes of this section, “Bougainvillean outside Bougainville” means a Bougainvillean who, during the period of preparation for and/or voting in the first Bougainville general election, will be outside Bougainville.

(2) A Bougainvillean outside Bougainville may enrol under these electoral provisions provided that –

- (a) he makes a claim in writing for enrolment in accordance with these electoral provisions; and
- (b) the information in his claim is confirmed by the Manager by such enquiries as the Manager considers appropriate.

(3) The Manager may –

- (a) specify where enrolled Bougainvilleans outside Bougainville may cast their votes; and
- (b) make such arrangements as are practicable to facilitate voting elsewhere in Papua New Guinea by Bougainvilleans outside Bougainville.

(4) These electoral provisions –

- (a) are deemed to be amended to the extent necessary to give effect to this section; and
- (b) shall be read so as to give effect to this section.

**PART IV. – FIRST GENERAL ELECTION.**

**14. FIRST GENERAL ELECTION.**

(1) The first general election of the President of the Autonomous Region of Bougainville and of the members of the House of Representatives shall be conducted by the Manager in accordance with these electoral provisions.

(2) Subject to this Constitution, the President and members shall be elected under a system of universal, adult citizen Bougainvillean suffrage, and the voting age is 18 years.

(3) For the purposes of the election of the President –

- (a) all constituencies for the election of the 33 directly elected members representing single member constituencies together form one constituency; and
- (b) the Rolls of those constituencies together form one Roll.

(4) Where a person votes in an election of any two or more categories of election at the same time by virtue of Division XIII. 2 that person –

- (a) need only make one declaration required by that Division; and
- (b) his ballot papers may be enclosed in one envelope.

**PART V. – POLLING PLACES.**

**15. POLLING PLACES.**

- (1) The Manager may, by written notice –
- (a) appoint a chief polling place for each constituency; and
  - (b) appoint such other polling places for each constituency as he thinks necessary and practicable; and
  - (c) abolish a polling place.

(2) No polling place shall be abolished after the issue of the writ and before the time appointed for its return.

**PART VI. – ELECTORAL ROLLS.**

**16. ROLLS.**

- (1) There shall be a Roll of the electors for each of –
- (a) the election of President in accordance with Section 14(3); and
  - (b) 33 single member constituencies; and
  - (c) the three Regional constituencies of North, Central and South for women members and former combatant members.

(2) The Manager may utilize the Rolls of electors used in the 2002 general election to the National Parliament as the basis for the Rolls required by Subsection (1).

**17. FORM OF ROLLS.**

(1) A Roll shall be in such form as is determined by the Manager and shall set out the name, address and occupation and sex of each elector, and shall contain such further particulars as the Manager directs.

(2) A direction under Subsection (1) may relate to the whole or a part of Bougainville.

**18. NEW ROLLS.**

(1) All persons who are entitled to be enrolled on a Roll shall, subject to these electoral provisions, be so enrolled.

(2) New Rolls for any constituency shall be prepared whenever the Manager, by notice published in the Interim Bougainville Gazette, directs.

(3) Subject to Subsection (4), a notice under Subsection (2) may specify the manner in which the Rolls shall be prepared, and may require any person, or member of a class of persons, entitled to enrolment on a new Roll and whose name does not appear on it to make to the proper officer a claim for enrolment or transfer of enrolment and otherwise to comply with these electoral provisions relating to compulsory enrolment under Section 29.

(4) Notwithstanding anything in Subsection (3), where an elector is enrolled in respect of an address in a constituency for which he is entitled to be enrolled, he shall not be required to make any further claim for enrolment in connection with the preparation of a new Roll under this section.

(5) Where the Manager is of the opinion that an existing Roll is substantially inaccurate, he may in a notice under Subsection (2) specify that all or any of the provisions of Subsections (3) and (4) shall not apply and may require any person or member of a class of

persons entitled to enrolment on a new Roll to make to the proper officer a claim for enrolment or transfer of enrolment and otherwise to comply with these electoral provisions relating to compulsory enrolment under Section 29.

(6) The Manager shall, as soon as it is practicable to do so after the preparation of new Rolls, by notice published in the Interim Bougainville Gazette, notify that the new Rolls have been prepared.

**19. ADDITIONS, ETC., TO NEW ROLLS.**

Upon the receipt by the Returning Officer of a new Roll for a constituency the Returning Officer shall –

- (a) make additions, alterations and corrections in it; and
- (b) remove names from it,

in accordance with information received by him between the date of the notice directing the preparation of new Rolls and the date of the notification that the Rolls have been prepared, where the additions, alterations or corrections have not already been made in, or the removals have not been made from, the Roll.

**20. OBJECTIONS AND NOTICES TO HAVE EFFECT IN RELATION TO NEW ROLLS.**

Where objections have been lodged or notices of objection have been issued and action in respect of those objections or notices has not been completed before the notification of the preparation of new Rolls, the objections or notices have effect in relation to the new Rolls as if those Rolls had been in existence at the time of the lodging of the objections or the issuing of the notice.

**21. PRINTING OF ROLLS.**

(1) Rolls shall be printed whenever the Manager so directs.

(2) Supplemental Rolls, setting out additions since the latest print of the Rolls, may, as necessary, be prepared and printed immediately after the issue of the writs for an election, and at such other times as the Manager directs.

**22. INSPECTION.**

Copies of the latest print of the constituency Roll and of all supplemental prints shall be open for public inspection at the office of the Returning Officer at all convenient times during his ordinary office hours without fee, and at such other places as the Returning Officer appoints for the purpose.

**23. OFFICERS AND OTHERS TO FURNISH INFORMATION.**

All officers and all occupiers of habitations and all persons who are, or appear to be, entitled to enrolment shall upon application furnish to the Manager or to a Returning Officer, or to an electoral officer acting under the directions of the Manager or the Returning Officer, all information that he requires in connection with the preparation, maintenance or revision of the Rolls.

**PART VII. – QUALIFICATIONS FOR AND DISQUALIFICATIONS  
FROM ENROLMENT AND VOTING.**

**24. PERSONS ENTITLED TO ENROLMENT.**

- (1) All persons who –
- (a) have a right to vote under Section 110 (*right to vote*) of this Constitution; and
  - (b) comply with the requirements of Part VIII (*enrolment*) of these electoral provisions for enrolment for a constituency,
- are entitled to enrolment.
- (2) All persons whose names are on the Roll for a constituency are, subject to these electoral provisions, entitled to vote at elections of a member for the constituency, but no person is entitled to vote more than once at an election.

(3) Subsection (2) does not prevent a person voting in an election of any two or more of the categories of election when the elections are being held at the same time, but no person may vote more than once in each category of election.

**PART VIII. – ENROLMENT.**

**25. OFFICERS.**

- (1) The Manager may appoint persons to assist in the compilation and revision of the Rolls.
- (2) A person appointed under Subsection (1) has such functions and duties as the Manager directs.

**26. ADDITION OF NAMES TO ROLLS.**

In addition to any other method provided for by law, names may be added to Rolls in accordance with claims for enrolment or transfer of enrolment.

**27. CLAIMS FOR ENROLMENT OR TRANSFER OF ENROLMENT.**

- (1) In accordance with Section 24, a person whose name is not on the Roll for any constituency who makes a claim for enrolment is entitled to have his name placed on the roll –
- (a) in the constituency in which he resides; or
  - (b) if he does not reside in any constituency but was born in a constituency – in the constituency in which he was born; or
  - (c) if he does not reside and was not born in any constituency – in the constituency in which he last resided; or
  - (d) if he does not and never has resided in any constituency and was not born in any constituency – in any constituency in which is located the customary land of the clan lineage to which he belongs.

(2) Subject to this section and Section 24, where there is a change in circumstances in relation to a person whose name is on the Roll for a constituency, he is entitled to have his name transferred to the Roll for the constituency on which he is entitled to be as a result of the change in circumstances.

(3) Where the name of a person is placed on a Roll in accordance with Subsection (1) or (2), he shall be enrolled in respect of –

- (a) if he claimed enrolment by virtue of residence in a constituency – the address of his place of residence in that constituency; or
- (b) if he claimed enrolment by virtue of birth in a constituency – the address of his last known place of residence in that constituency, or, if none, the address of his place of birth; or
- (c) if he claimed enrolment by virtue of past residence in a constituency – his last known place of residence in that constituency; or
- (d) if he claimed enrolment by virtue of the location of the customary land of the clan lineage to which he belongs – an address in that location.

## **28. FORM OF CLAIM FOR ENROLMENT OR TRANSFER OF ENROLMENT.**

(1) The Manager may, in relation to a person or class of persons, direct that a claim for –

- (a) enrolment under Section 27(1); or
- (b) transfer of enrolment under Section 27(2),

be in the approved form, and may in circumstances specified by the Manager be made by facsimile.

(2) Where the Manager has not given a direction under Subsection (1), the Returning Officer may, subject to Subsection (3), determine the manner and form of a claim.

(3) Where a claim for enrolment or transfer of enrolment –

- (a) is in the approved form; or
- (b) is in writing; or
- (c) is transmitted by facsimile, to a facsimile number directed by the Manager,

it shall be signed by the claimant and witnessed by a person who shall sign his name as witness in his own handwriting and who shall be an elector or a person who is qualified to be an elector.

(4) Where a person is to witness a claim for enrolment or transfer of enrolment either –

- (a) where the claim is made on the approved form or in writing and he is to sign that form or writing in accordance with Subsection (3); or
- (b) where the Returning Officer has determined in accordance with Subsection (2), that the claim need not be in writing but must be made in the presence of a witness,

he must, before he signs the approved form or writing or before he allows the claimant to make his oral claim, satisfy himself, by inquiry from the claimant or otherwise, that the statements supporting the claim are true, unless he knows them to be true.

(5) A person, who fails to comply with Subsection (4), is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**29. COMPULSORY ENROLMENT AND TRANSFER.**

- (1) A person who is entitled –
- (a) to have his name placed on a Roll for a constituency in accordance with Section 27(1); or
  - (b) to have his name transferred to the Roll for another constituency in accordance with Section 27(2),

shall at the first reasonable practicable opportunity, make a claim to the Returning Officer for that constituency.

(2) A person who is entitled to have his name placed on the Roll for a constituency whether by way of enrolment or transfer of enrolment, and whose name is not on that Roll on the expiration of one month from the date on which he became so entitled, is guilty of an offence unless his non-enrolment is not in consequence of his failure to comply with Subsection (1).

(3) It is a defence to a charge for an offence against Subsection (2) if the defendant shows –

- (a) that he did not know, and had no reasonable opportunity of knowing, that his name was not on the Roll for which he was entitled to be enrolled; or
- (b) that he had no reasonable opportunity of making a claim for enrolment or transfer of enrolment.

(4) Where a person whose name is on the Roll for a constituency –

- (a) being a person enrolled by virtue of residency in that constituency – changes his place of residence to another place within that constituency; or
- (b) being a person enrolled by virtue of being born in that constituency – takes up residency in that constituency at an address other than that in respect of which he is enrolled; or
- (c) being a person enrolled by virtue of prior residency in that or any other constituency – takes up residency in the constituency at an address other than that in respect of which he is enrolled; or
- (d) being a person enrolled by virtue of the location of the customary land of the clan lineage to which he belongs in that constituency – takes up residence in the constituency at an address other than that in respect of which he is enrolled,

he shall notify the change of address to the Returning Officer for that constituency at the first reasonable opportunity.

(5) Subject to Subsection (6), the provisions of Section 27 shall apply to, and in relation to, a claim under Subsection (1) or a notification under Subsection (4).

(6) Where it is not reasonably practicable for a person to comply with all or any of the requirements imposed on him by this section he shall take such action as is reasonable in the circumstances to fulfil, as nearly as possible, those requirements and it is a defence to a charge under this section that he took such action.

(7) A person who is guilty of an offence against this section is punishable, upon conviction, by a fine not exceeding K50.00

(8) A prosecution for an offence against this section shall not be instituted without the consent of the Manager.

### **30. REGISTRATION OF CLAIM.**

(1) Upon receipt of a claim for enrolment or transfer of enrolment, notification of change of address within a constituency or application for the alteration or correction of particulars of an existing enrolment, the Returning Officer shall note the date of its receipt by him, and if the claim, notification or application is in order and he is satisfied that the claimant is entitled to be enrolled or to have his name transferred or the particulars of his enrolment altered or corrected, as the case may be, the Returning Officer shall, subject to Section 31 –

- (a) enter on the Roll kept by him the name of the claimant and the particulars relating to him; and
- (b) in the case of a transfer of enrolment, give notice of the transfer to the Returning Officer keeping the Roll from which the elector's name has been transferred.

(2) An interim acknowledgment of the receipt, after the issue of the writ for an election and before the close of the polling at the election, of a claim for enrolment or transfer of enrolment may be issued to the claimant by the Returning Officer in an approved form.

(3) The Returning Officer keeping the Roll from which an elector's name has been transferred shall, upon receipt of notice of the transfer in the approved form, remove the elector's name from the Roll kept by him.

### **31. NOTIFICATION OF REJECTION OF CLAIM.**

The Returning Officer, on receipt of a claim for enrolment or transfer of enrolment, shall, subject to Section 32, after making such inquiry as he considers necessary, if he is satisfied that the claimant is not entitled to enrolment or transfer of enrolment in accordance with the claim, notify the claimant as soon as practicable by post to the claimant's postal address or delivery to the claimant's place of residence as shown on his claim that his claim has been rejected, specifying the reason for the rejection, and advise the claimant that he is entitled, at any time within one month after the receipt of the notification, to appeal against the rejection in accordance with these electoral provisions.

### **32. TIME OF ALTERING ROLLS.**

Notwithstanding anything in these electoral provisions –

- (a) claims for enrolment or transfer of enrolment which are received after 4 p.m. on the day of the issue of the writ for an election shall not be registered until after the end of the polling period for the election; and
- (b) except by direction of the Returning Officer, no name shall be removed from a Roll under a notification of transfer of enrolment received after 4 p.m. on the day of the issue of the writ for an election and before the end of the polling period for the election.

### **33. PENALTY ON OFFICER NEGLECTING TO ENROL CLAIMANTS.**

An officer, who receives a claim for enrolment or transfer of enrolment and who, without reasonable excuse (proof of which is on him) fails to do everything necessary on his part to be done to secure the enrolment of the claimant in pursuance of the claim, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

**34. ALTERATION OF ROLLS, ETC.,**

(1) In addition to other powers of alteration conferred by these electoral provisions, a Returning Officer may alter a Roll kept by him and associated documentation by –

- (a) correcting a mistake or omission in the Roll; and
- (b) correcting a mistake or omission in the particulars of the enrolment of an elector; and
- (c) altering, on the application in writing in the approved form of an elector, the original name, address or occupation of the elector on the same Roll; and
- (d) removing the name of a deceased elector; and
- (e) striking out the superfluous entry where the name of the same elector appears more than once on the same Roll; and
- (f) reinstating a name removed by mistake; and
- (g) reinstating a name removed as the result of an objection where he is satisfied that the objection was based on a mistake as to fact and that the person objected to still retains and has continuously retained his right to the enrolment in respect of which the objection was made; and
- (h) removing a name from the Roll where he is satisfied that the elector has ceased to be qualified for enrolment on the Roll.

(2) Where the name of an elector has, in error, been incorrectly placed on the Roll for a constituency for which he is not entitled to be enrolled, and the elector is entitled to have his name placed on the Roll for another constituency, the Returning Officer for the constituency for which the elector is wrongly enrolled shall remove the name of the elector from that Roll and shall notify the Returning Officer for the other constituency, and that last-mentioned Returning Officer shall place the name of the elector on his Roll and shall notify the elector of the change of enrolment.

(3) No alteration under this section shall, without the authority of the Returning Officer, be made at any time after 4 p.m. on the day of the issue of the writ for an election and before the end of the polling period of the election.

**35. SPECIAL PROVISIONS FOR CERTAIN NOMINATIONS.**

Notwithstanding anything in these electoral provisions, where a person who is entitled to do so has nominated for a constituency other than the constituency for which he is enrolled –

- (a) the Returning Officer for the constituency for which he nominates shall place his name on the Roll for that constituency and notify the Returning Officer for the constituency for which he is enrolled who shall remove his name from the Roll for that constituency; and
- (b) if the nomination is withdrawn, the Returning Officer for the constituency for which he was nominated shall remove his name from the Roll for that constituency and notify the Returning Officer for the other constituency who shall (unless he has in the meantime nominated for some other constituency) restore his name to the Roll for that other constituency; and

- (c) if he fails to be elected, the Returning Officer for the constituency for which he was nominated shall remove his name from the Roll for that constituency and notify the Returning Officer for the other constituency who shall restore his name to the Roll for that other constituency; and
- (d) if he is elected and later ceases to be the member for the constituency, the Returning Officer for the constituency for which he was the member shall remove his name from the Roll for that constituency and notify the Returning Officer for the other constituency who shall restore his name to the Roll for that other constituency unless he has ceased to be eligible for enrolment in that constituency and has been enrolled in another constituency.

**36. INCORRECT ENROLMENT.**

Where a person whose name has been placed on the Roll for a constituency is not entitled to enrol for that constituency and that person secured enrolment under a claim in which he made a false statement, the Returning Officer may, at any time between the date of the issue of the writ for an election for that constituency and before the end of the polling period for that election, remove the name from that Roll.

**37. ALTERATIONS TO BE INITIALLED.**

Every alteration of a Roll shall be made in such manner that the original entry shall not be obliterated, and the reason for each alteration and the date of the alteration shall be set against the alteration, together with the initials of the Returning Officer or of the person who makes the alteration on behalf of the Returning Officer.

**38. INQUIRY BY RETURNING OFFICER.**

(1) The Returning Officer may, subject to the direction of the Manager, make inquiries as to the names of persons entitled to be enrolled, but who are not enrolled, or who have changed their place of residence from one address in the constituency to another address in that constituency without notifying the Returning Officer.

(2) Where the Returning Officer is satisfied that a person has failed to comply with the provisions of Section 29, he may notify him of the non-compliance in the approved form.

(3) A person may reply to a notice under Subsection (2) in the approved form.

(4) Where a person –

(a) fails to reply to a notice under Subsection (2); or

(b) does not reply to a notice under that subsection in a satisfactory manner,

the Returning Officer may, with the consent of the Manager, institute proceedings against that person in respect of an offence under Section 29(2).

**PART IX. – OBJECTIONS.**

**39. NAMES ON ROLL MAY BE OBJECTED TO.**

(1) A name on a Roll may be objected to by objection in writing lodged with or made by the Returning Officer.

(2) A sum of K10.00 shall be deposited in respect of each objection lodged by a person other than an electoral officer, to be forfeited to the Bougainville Interim Provincial Government or the Autonomous Bougainville Government if the objection is held by the Returning Officer to be frivolous.

**40. OBJECTION.**

An objection under Section 39 shall be in the approved form, and shall be signed by an elector enrolled on the same Roll as the person objected to, or by the Returning Officer or an Assistant Returning Officer.

**41. DUTY TO OBJECT.**

It is the duty of the Returning Officer and of any Assistant Returning Officer to lodge or make an objection in writing, setting out the grounds of the objection, in respect of any name which he has reason to believe ought not to be retained on the Roll.

**42. NOTICE OF OBJECTION.**

(1) When an objection is made by or lodged with a Returning Officer, the Returning Officer shall, subject to Subsection (3), give notice as soon as practicable of the objection to the person objected to.

(2) A notice under Subsection (1) may be in the approved form and may be served by being posted or delivered to the address of enrolment or the last-known place of residence of the person objected to.

(3) Where the Returning Officer is satisfied that the ground of objection stated in an objection is not a good ground of objection or is frivolous, he may dismiss the objection, in which case no notice of the objection need be given to the person objected to.

**43. ANSWER TO OBJECTION.**

(1) A person objected to under this Part may, orally or in writing in the approved form, answer the objection.

(2) The answer to a notice of objection shall, where it is in writing, be signed by the person to whom the notice is directed, in the presence of a witness who shall be –  
(a) an elector; or  
(b) a person qualified to be an elector.

(3) An answer to an objection shall be given or delivered, as the case may be, to the Returning Officer for the constituency to which the Roll relates.

**44. DETERMINATION OF OBJECTION.**

(1) Subject to Subsection (2), the Returning Officer shall determine an objection under this Part as soon as practicable after receipt by him of the answer of the person objected to, or, if no answer is received within a period of one month after the posting or delivery of the notice referred to in Section 42(1) and if it appears that the person objected to is not entitled to be enrolled on the Roll in respect of which the objection has been made, the Returning Officer shall remove the name of the person from that Roll and shall cause a copy of the notice of determination to be posted to or served on the objector and the person objected to.

(2) No name shall be removed from a Roll under this section after 4 p.m. on the day of issue of the writ for an election and before the end of the polling period for the election.

## **PART X. – APPEALS.**

### **45. ELECTION ENROLMENT TRIBUNALS.**

- (1) There is established for each constituency an Election Enrolment Tribunal.
- (2) An Election Enrolment Tribunal shall consist of –
  - (a) a traditional chief or other traditional leader of the area comprising the constituency, who is not a candidate for election, appointed by the Bougainville Provincial Administrator, which traditional chief or traditional leader shall be the Chairman; and
  - (b) two other persons of good standing in the constituency who are not candidates for election, appointed by the Bougainville Provincial Administrator.

### **46. APPEAL TO ELECTION ENROLMENT TRIBUNAL.**

- (1) A person –
  - (a) who has made a claim for enrolment or transfer of enrolment in accordance with these electoral provisions, and has not been enrolled; or
  - (b) whose name has been removed from a Roll by the Returning Officer after an objection,

may at any time within one month after the receipt of notice of the rejection of the claim, or of notice of the determination of the objection, as the case may be, make application to the Election Enrolment Tribunal for the constituency for which he seeks to be enrolled for an order directing that his name be enrolled or reinstated on the Roll, as the case requires.

(2) Where an objection has been determined by the Returning Officer adversely to the person objecting, that person may apply to the Election Enrolment Tribunal for the constituency for which he seeks to be enrolled for an order sustaining the objection.

(3) Where an application under this section has made reference to the decision of the Returning Officer upon an objection, the applicant shall serve the objector or the person objected to, as the case requires, with notice of the application, and the person so served may appear, or may in writing authorize any person to appear on his behalf, to resist the application.

(4) An application to the Election Enrolment Tribunal for an order –

- (a) directing that the name of an elector be enrolled or reinstated on the Roll, as the case requires, under Subsection (1); or
- (b) sustaining an objection under Subsection (2),

shall be in writing.

(5) An application under Subsection (4)(b) shall be lodged within 14 days after the determination of the objection.

(6) Service of notice of application under Subsection (3) shall be delivered by any practical method to the last known place of residence of the objector or the person objected to, as the case requires.

(7) The Election Enrolment Tribunal may hear and determine an application under this section.

(8) The Chairman of the Election Enrolment Tribunal shall send to the Returning Officer a certified copy of the order of the Election Enrolment Tribunal, and the Returning Officer shall make such entries (if any) upon the Roll as are necessary to give effect to the order.

## **PART XI. – WRITS FOR FIRST GENERAL ELECTION.**

### **47. WRITS FOR FIRST GENERAL ELECTION.**

The Bougainville Interim Provincial Government, in consultation with the Bougainville People's Congress, shall, in accordance with the provisions of Section 236(3) (*first Bougainville general election*) of this Constitution, issue –

- (a) a writ for the election of the President of the Autonomous Region of Bougainville in accordance with Section 89(1) (*election of President*) of this Constitution; and
- (b) a writ for each of the 33 single member constituencies for the election in each constituency of a member of the House of Representatives to represent the single member constituency, in accordance with Section 55(2)(b)(i) (*establishment and composition of the House of Representatives*) of this Constitution; and
- (c) a writ for each of the three Regional constituencies for the election in each constituency of a woman member of the House of Representatives, to represent the interest of women in the Region, in accordance with Section 55(2)(b)(ii) (*establishment and composition of the House of Representatives*) of this Constitution; and
- (d) a writ for each of the three Regional constituencies for the election in each constituency of a former combatant member of the House of Representatives, to represent the interests of former combatants in the Region, in accordance with Section 55(2)(b)(iii) (*establishment and composition of the House of Representatives*) of this Constitution.

### **48. FORM OF WRITS.**

(1) The writ for election of –

- (a) the President – shall be in Form 1; and
- (b) a member to represent a single member constituency – shall be in Form 2; and
- (c) a woman member to represent the interests of women – shall be in Form 3; and
- (d) a former combatant member to represent the interest of former combatants – shall be in Form 4,

set out in the Schedule to this Schedule and shall fix the date for –

- (e) nominations; and
- (f) the first and last days during which polling shall take place; and
- (g) the return of the writ.

- (2) The Manager shall, as soon as practicable after issue of the writs –
  - (a) advertise that they have been issued –
    - (i) in the Interim Bougainville Gazette; and
    - (ii) in at least one newspaper circulated in Bougainville; and
    - (iii) otherwise in the manner he considers to be most effective; and
  - (b) forward a copy of each writ to the Bougainville Interim Provincial Government, the Bougainville People’s Congress and to each Council of Elders; and
  - (c) take such further steps as he considers desirable to ensure adequate publicity.

**49. TIME OF ISSUE OF WRITS.**

For the purposes of these electoral provisions, a writ shall be deemed to have been issued at the hour of 4 p.m. on the day on which the writ was issued.

**50. ADDRESS OF WRITS.**

- (1) Writs for election –
  - (a) of President – shall be addressed to the Returning Officer for the election of President; and
  - (b) of the members representing single member constituencies – shall be addressed to the respective Returning Officers for the constituencies; and
  - (c) of the women members to represent the interests of women – shall be addressed to the respective Returning Officer for the Regional constituencies for the election of the women members to represent the interests of women; and
  - (d) of the former combatant members to represent the interests of former combatants – shall be addressed to the respective Returning Officer for the Regional constituencies for the election of the former combatant members to represent the interests of former combatants.

(2) The Manager may advise any Returning Officer by telephone, written notice or facsimile of the issue of the writ for an election and the particulars of the writ, and the Returning Officer may act on the advice as if the writ had been received by him.

**51. DATE OF NOMINATION.**

The date fixed for the nomination of the candidates shall be not less than seven days nor more than 14 days after the date of the writ.

**52. DATE OF POLLING.**

(1) The date fixed for the commencement of the polling period shall be not less than five weeks nor more than eight weeks after the date of the writ.

(2) The end of the polling period shall be not more than five weeks after its commencement.

**53. DATE OF RETURN OF WRIT.**

The date fixed for the return of the writ shall not be more than 14 days after the end of the polling period.

**54. GENERAL ELECTION TO COMMENCE ON SAME DAY.**

The same day shall be fixed for the commencement of the polling period in each constituency, and all writs shall be made returnable on the same day.

**55. DUTY OF RETURNING OFFICE ON RECEIPT OF WRIT.**

On the receipt of a writ, the Returning Officer to whom it is directed shall endorse on it the date of its receipt.

**PART XII. – NOMINATIONS.**

**56. CANDIDATES MUST BE NOMINATED.**

No person is qualified to be elected as President or as a member unless he has been duly nominated.

**57. QUALIFICATIONS FOR NOMINATION.**

(1) No person is qualified for nomination for a constituency –

(a) as President, unless he is qualified as a candidate for President in accordance with Section 91 (*qualifications for and disqualifications from election as President*) of this Constitution, or as a member of the House of Representatives (other than President), unless he is qualified as a candidate for that constituency in accordance with Section 56 (*qualifications for and disqualifications from election*) of this Constitution; and

(b) while he is nominated for another constituency and that last-mentioned nomination has not been withdrawn.

(2) A person who has nominated for one category of election is not qualified for nomination in another category while the first-mentioned nomination has not been withdrawn.

**58. MODE OF NOMINATION.**

(1) A nomination shall be in the approved form and shall

–

(a) name the candidate, his place of residence and occupation; and  
(b) specify whether he is nominating for election as President, as a member for a single member constituency (giving the name of the constituency), or as a woman member to represent the interests of women (giving the name of the Regional constituency) or as a former combatant member to represent the interests of former combatants (giving the name of the Regional constituency); and

(c) be witnessed by a person to whom the candidate is personally known; and

(d) in the case of a person nominating for election as a former combatant member to represent the interests of former combatants, be accompanied with –

(i) a statement signed by the person as to whether he is a former combatant of the Bougainville Revolutionary Army or of the Bougainville Resistance Force or of the Me'ekamui Defence Force; and

(ii) a letter of support of his nomination signed by –

(A) 20 members of the former combatant group to which he belonged; and

- (B) 10 members of one of the other former combatant groups, all resident in the constituency for which he nominates, and each of whom shall, after his signature, indicate his membership in the former combatants' Association; and
- (iii) a certificate (which shall not be unreasonably withheld) signed by the Joint Presidents of the former combatants' Association to the effect that –
  - (A) the person nominating is a member of the Association, and was a combatant (paitman); and
  - (B) the persons signing the letter of support referred to in Subparagraph (ii) are members of the Association.

(2) In this section, “former combatants’ Association”, means the registered Association (by whatever name known) of former combatants of the Bougainville Revolutionary Army and of the Bougainville Resistance Force and of the Me’ekamui Defence Force, recognized by the Bougainville Interim Provincial Government, in consultation with the Bougainville People’s Congress, as the official former combatants’ Association.

- (3) No nomination is valid unless –
  - (a) the person nominated consents in writing to act if elected, and declares that he is qualified under this Constitution to be elected as President or as a member, as the case may be; and
  - (b) the nomination paper, or the facsimile or other notification referred to in Section 59(3), as the case may be, is received by the Returning Officer after the issue of the writ and before the hour of nomination; and
  - (c) at the time of the delivery of the nomination paper the person nominated or some person on his behalf deposits with the Returning Officer or other person to whom the nomination is made the sum of K500.00 in money or in a banker’s cheque drawn on a bank licensed by the Bank of Papua New Guinea.

## **59. TO WHOM NOMINATIONS MADE.**

- (1) Nominations of candidates for election as –
  - (a) President – shall be made to the Returning Officer for the election of President, or to a person authorized by the Manager for that purpose; and
  - (b) a member representing a single member constituency - shall be made to the Returning Officer for the constituency for which the election is to be held, or to an Assistant Returning Officer for that constituency, or to a person authorized by the Manager for that purpose; and
  - (c) a woman member to represent the interests of women in a Region – shall be made to the Returning Officer for the election of a woman member to represent the interests of women for the Regional constituency for which the election is to be held or to a person authorized by the Manager for that purpose; and
  - (d) a former combatant member to represent the interests of former combatants in a Region – shall be made to the Returning Officer for the election of a former combatant member to represent the interests of

former combatants for the Regional constituency for which the election is to be held or to a person authorized by the Manager for that purpose.

- (2) Nominations may be made at any time after the issue of the writ and –
  - (a) in the case of a nomination made to the Returning Officer – before the hour of nomination; and
  - (b) in the case of a nomination made –
    - (i) to an Assistant Returning Officer or person authorized by the Manager; or
    - (ii) in respect of a person who is not enrolled for the constituency, before the commencement of the period of seven days immediately preceding the hour of nomination.

(3) Where a nomination is made to an Assistant Returning Officer or other person authorized by the Manager, he shall immediately notify the Returning Officer by facsimile or other manner approved by the Manager, in the approved form, of the details of the nomination and deposit and shall forward the nomination to the Returning Officer.

**60. FORM OF CONSENT TO ACT.**

The consent and the declaration of qualifications referred to in Section 58(3)(a) shall be sufficient if the candidate signs the form of consent and declaration on the nomination paper, but the Returning Officer receiving the nomination, facsimile or other advice of the nomination, as the case may be, may accept any other form of consent and declaration, whether accompanying the nomination paper or not, that he considers satisfactory, and that acceptance is final.

**61. FORMAL DEFECTS.**

No nomination shall be rejected by reason of a formal defect or error if the Returning Officer receiving the nomination, or the facsimile or other advice of it, as the case may be, is satisfied that the requirements of these electoral provisions have been substantially complied with.

**62. DEPOSIT TO BE FORFEITED IN CERTAIN CASES.**

The deposit under Section 58(3)(c), made by or on behalf of a candidate at an election shall be retained pending the election, and after the election shall be returned to the candidate, or to some person authorized by him in writing to receive it, if he has obtained more than 10% of the total number of votes polled by the successful candidate in the election, and otherwise it is forfeited to the Autonomous Bougainville Government.

**63. PLACE OF NOMINATION.**

The office of the Returning Officer for the constituency is the place of nomination in that constituency.

**64. HOUR OF NOMINATION.**

The hour of nomination is 11.00 a.m. on the day of nomination.

**65. DECLARATION OF NOMINATIONS.**

The Returning Officer for the constituency for which an election is being held shall, at the hour of nomination, attend at the place of nomination for the constituency, and shall there

publicly produce all nomination papers and facsimile or other advices of nominations received by him, and declare the names, addresses and occupations of all candidates nominated.

**66. WITHDRAWAL OF NOMINATIONS.**

(1) A candidate may withdraw his nomination by lodging with the Returning Officer for the constituency or with an Assistant Returning Officer for the constituency or a person authorized for that purpose by the Manager, a notice of withdrawal in the approved form signed by him, and thereupon the nomination shall be cancelled and the deposit lodged shall be returned.

- (2) A withdrawal of nomination may be made –
- (a) in the case of a notice of withdrawal lodged with the Returning Officer – at any time before the hour of nomination; or
  - (b) in the case of a notice of withdrawal lodged with an Assistant Returning Officer or other person referred to in Subsection (1) – more than 24 hours before the hour of nomination.

(3) Where a notice of withdrawal of nomination is lodged with an Assistant Returning Officer or other person referred to in Subsection (1), he shall immediately notify the Returning Officer by any manner approved by the Manager, in the approved form, of the withdrawal and forward the notice to the Returning Officer.

**67. RETURN OF DEPOSIT IN CASE OF CANDIDATE'S DEATH.**

In the case of the death of a candidate before the end of the polling period, the deposit lodged by him shall be returned to his legal personal representative.

**68. PROCEEDINGS ON NOMINATION DAY.**

(1) If, at the hour of nomination, one candidate only is nominated for a constituency the Returning Officer shall declare that candidate duly elected.

(2) If in an election more candidates than one are nominated, the proceedings shall stand adjourned to the commencement of the polling period.

**69. FAILURE OF ELECTION.**

- (1) An election shall be deemed to have failed if no candidate is –
- (a) nominated; or
  - (b) returned as elected.

(2) Subject to these electoral provisions, whenever an election fails a new writ shall be issued for a supplementary election by the Manager, as soon as practicable after the failure occurs.

(3) Where an election has failed, the supplementary election shall be held upon the Roll which was prepared for the purpose of the election which failed.

**PART XIII. – THE POLLING.**

*Division 1. – Polling Schedule.*

**70. POLLING SCHEDULE.**

(1) Subject to any directions given by the Manager, the Returning Officer shall, as soon as practicable after the close of nominations, prepare a polling schedule showing the anticipated dates and times, within the polling period for the constituency, during which the polling booths will open at the polling places in the constituency, in such manner as he considers will give all electors in the constituency a reasonable and sufficient opportunity to vote at the election.

(2) Nothing in Subsection (1) or in these electoral provisions shall be construed to mean that polling shall be conducted on each day throughout the polling period or on any particular day in the polling period.

#### **71. PUBLICATION OF POLLING SCHEDULE.**

(1) The Returning Officer shall take such action as he considers necessary or desirable or as directed by the Manager, to ensure adequate publicity for the polling schedule.

(2) A copy of the polling schedule shall be forwarded to the Bougainville Interim Provincial Government, the Bougainville People's Congress and any Councils of Elders in the constituency and shall be exhibited at such other places in the constituency as the Returning Officer appoints.

(3) A copy of the polling schedule for a constituency shall be forwarded to each candidate for the constituency.

#### **72. ADHERENCE TO POLLING SCHEDULE.**

(1) As far as possible, polling booths shall be open in accordance with the polling schedule, and the Returning Officer and presiding officers shall take all such action as is necessary or desirable for that purpose, whether expressly authorized by these electoral provisions or not.

(2) Subject to any directions given by the Manager, the Returning Officer may, where it becomes impracticable to adhere to a polling schedule, vary the schedule, in which case the provisions of Section 70 shall, as far as practicable, be observed in relation to the variation.

(3) Subject to any directions given by the Returning Officer, a presiding officer may, where in his opinion it is necessary or desirable in order to meet an unforeseen contingency or emergency and it is impracticable for the Returning Officer to vary the polling schedule under Subsection (2), depart from the polling schedule in relation to a polling place, and shall advise the Returning Officer of the departure and of the reasons for it as soon as practicable.

(4) Where the presiding officer departs from the polling schedule in relation to a polling place, he shall take such action as he considers is practicable to ensure adequate publicity for that departure at that polling place and amongst the electors likely to vote at it.

#### **73. APPEAL.**

(1) An elector may, not less than 14 days before the commencement of the polling period for a constituency, appeal to the Manager for an order varying a polling schedule on the ground that it does not give to all electors in the constituency or in a part of the constituency a reasonable opportunity for voting in the election.

(2) Notwithstanding an appeal under Subsection (1), but subject to Section 72, a polling schedule remains valid and in force until varied by order of the Manager under Subsection (1).

(3) In making an order under Subsection (1) the Manager shall give such directions as he considers desirable and practicable to ensure adequate publicity for the order.

**74. ELECTION NOT OPEN TO CHALLENGE.**

An election shall not be challenged on the ground of failure to observe a polling schedule or to comply with the provisions of Section 71, or of a variation or a departure from a polling schedule.

*Division 2. – General Provisions.*

**75. RETURNING OFFICER TO MAKE ARRANGEMENTS.**

(1) If, on the day of nomination, the proceedings stand adjourned to the commencement of the polling, the Returning Officer shall immediately make all necessary arrangements for taking the poll, and in particular shall –

- (a) appoint a presiding officer to preside at each polling place and all necessary assistant presiding officers, poll clerks, and door-keepers; and
- (b) provide and furnish proper polling booths and ballot boxes; and
- (c) provide ballot papers and all necessary certified lists of voters.

(2) The presiding officer shall, on or before the day of polling, determine the whole or the part of the polling place that shall be the polling booth in relation to that polling place.

(3) In an emergency during the polling due to the absence of an assistant presiding officer, poll clerk, or doorkeeper, or to unforeseen and continued pressure at the polling which cannot be met by the duly appointed officers, the presiding officer may appoint a person to act as assistant presiding officer, poll clerk or doorkeeper, and the person so appointed or acting shall be deemed to have been duly appointed if the Returning Officer afterwards ratifies the appointment.

(4) No person under the age of 18 years shall be appointed to be or to act as presiding officer or assistant presiding officer.

(5) An assistant presiding officer may, subject to any directions of the presiding officer, exercise all or any of the powers of the presiding officer, and shall, in respect of the exercise of those powers, be deemed to be the presiding officer.

**76. ALLOCATION OF POLLING PLACES.**

(1) The Returning Officer shall on the day of nomination, or as soon thereafter as is practicable, allocate each voter in a constituency to a particular polling place in that constituency and no voter shall be allowed to vote at a polling place other than the one to which he has been allocated under this section.

(2) The Returning Officer shall take all reasonable steps to inform voters to which polling place they have been allocated under this section.

**77. SUBSTITUTE.**

A presiding officer may appoint an officer to be his substitute to perform his duties during his temporary absence, and the substitute may, while so acting, exercise all the powers of the presiding officer and shall, in the exercise of those powers, be deemed to be the presiding officer.

**78. NO LICENSED PREMISES TO BE USED.**

No part of any premises licensed, or the subject of a permit under any law relating to the sale or consumption of alcohol, shall be used for the purpose of a polling booth.

**79. SEPARATE VOTING COMPARTMENTS.**

Polling booths shall have one or more separate voting compartments, constructed so as to screen the voters from observation while they are marking their ballot papers, and each voting compartment shall be furnished with a pencil for the use of voters.

**80. BALLOT BOXES.**

(1) Each polling booth shall be provided with the necessary ballot box or ballot boxes.

(2) A ballot box shall have a cleft in the cover through which the ballot papers may be deposited in the box, and shall be provided with means for securely closing the cleft so that, when the cleft is so closed, no ballot papers or other matters or things can be deposited or placed in the box or withdrawn from it.

(3) A ballot box shall be capable of being securely fastened with a lock.

**81. CERTIFIED LIST OF VOTERS.**

The certified list of voters to be used by a presiding officer at a polling place shall be the list of the electors on the Roll enrolled for the constituency for which the polling place is prescribed, certified by the Returning Officer, and shall, before the hour of commencing the poll in the polling area, be delivered to the presiding officer for his guidance during the polling.

**82. FORM OF BALLOT PAPERS.**

(1) Ballot papers to be used in an election shall be in the approved form.

(2) There shall be a separate ballot paper for the election in each of the categories of election.

**83. BALLOT PAPERS.**

In printing the ballot papers to be used in an election –

(a) the names of all candidates duly nominated shall be printed in an order determined as follows:-

(i) the Returning Officer shall, at the place of nomination, immediately after the close of nominations and before all persons present, make out in respect of each candidate a slip bearing the name of the candidate as shown on his nomination, or the other advice of his nomination, enclose the respective slips in separate blank envelopes of exact similarity and deposit the several envelopes in a locked ballot box;

- (ii) the Returning Officer shall then thoroughly shake and rotate the ballot box and shall permit any other person present, if he so desires, to do the same;
  - (iii) the ballot box shall then be opened and an officer shall take out and open the envelopes from the ballot box one by one;
  - (iv) the candidate whose name appears on the slip enclosed in the envelope first taken from the ballot box shall be placed first on the ballot papers, the candidate whose name appears on the slip enclosed in the envelope next taken from the ballot box shall be placed next on the ballot papers, and so on until the placing of all the candidates has been determined; and
- (b) where similarity in the names of two or more candidates is likely to cause confusion, the names of those candidates may be set out with such description or addition as will distinguish them from one another; and
- (c) except as otherwise prescribed, a square shall be printed opposite the name of each candidate.

#### **84. BALLOT PAPERS TO BE INITIALLED.**

(1) No ballot paper shall be delivered to a voter without being first initialled by the presiding officer, and an exact account shall be kept of all initialled ballot papers.

(2) The initials of the presiding officer shall be placed on the back of the ballot paper in such a position so as to be easily seen when the ballot paper is folded so as to conceal the names of the candidates.

#### **85. SCRUTINEERS AT THE POLLING.**

(1) Scrutineers may be appointed by candidates to represent them at polling places during polling, but so that not more than one scrutineer, other than relieving scrutineers, shall be allowed to each candidate at each polling booth on any one day.

(2) Appointments of scrutineers shall be made by notice in writing or by facsimile addressed to the Returning Officer or presiding officer, and the notice or facsimile shall be signed by the candidate and shall give the name and address of each scrutineer.

#### **86. PROVISIONS RELATING TO SCRUTINEER.**

- (1) A scrutineer who –
- (a) interferes with or attempts to influence an elector within the polling booth; or
  - (b) communicates with a person in the polling booth except so far as is necessary in the discharge of his functions; or
  - (c) enters a compartment of a polling booth whilst a voter is present in that compartment,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(2) A scrutineer shall not be prevented from entering or leaving a polling booth during the polling, and during his absence a relieving scrutineer may act in his place, but so that only one scrutineer for each candidate shall be present in the polling booth at any one time.

(3) A scrutineer who commits a breach of this section, or who misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling booth by a member of the Police Force or by a person authorized by the presiding officer to remove him.

(4) A scrutineer may not be used to assist any voter to vote under Section 97 or 99.

**87. PERSONS PRESENT AT POLLING.**

A candidate shall not in any way take part in the conduct of the polling, and no person, other than the presiding officer, assistant presiding officers, officers, poll clerks, interpreters, doorkeepers and scrutineers, and the electors voting and about to vote, shall enter or remain or be permitted to enter or remain in the polling booth during the polling except by permission of, and on such conditions as are determined by, the presiding officer.

**88. THE POLLING.**

(1) Subject to Subsections (2) and (3), the polling shall be conducted as follows: –

- (a) before the first ballot paper is placed in an empty ballot box, the Returning Officer or, if he is not present, the presiding officer, shall, in the presence of the poll clerk and of any scrutineers, show that the ballot box is empty, and shall then securely fasten its cover;
- (b) the poll shall open at each polling place at 8 a.m. on each day (other than a Sunday or a public holiday) during the period for taking the poll at that polling place, and shall not close until all electors present in the polling booth at 6 p.m. and desiring to vote, have voted;
- (c) the doors of the polling place shall be closed at 6 p.m. and no person shall be admitted after that hour to the polling booth for the purpose of voting;
- (d) at the close of the polling on each day of the polling period at a polling place, the presiding officer shall, in the presence of the poll clerk and of any scrutineers who are in attendance, publicly close, fasten, lock and take charge of the ballot box;
- (e) when –
  - (i) a ballot box is full or no longer required; or
  - (ii) the polling period for all polling places for which he is the presiding officer has ended,whichever first occurs, the presiding officer shall, with the least possible delay, forward the ballot box to the appropriate counting centre for the purposes of scrutiny under Part XIV, and it shall on no account be opened except in accordance with these electoral provisions.

(2) Notwithstanding anything in Subsection (1), where –

- (a) the Returning Officer or the presiding officer considers it necessary, the polling may commence at any particular polling place at a time later than 8 a.m. and, except on the last day of the polling period for the constituency, may close at a time later than 6 p.m.; and
- (b) the presiding officer considers that all electors entitled and likely to vote at any particular polling place have done so, or the Returning Officer so directs, the poll may close at that polling place at a time earlier than 6 p.m.

(3) Nothing in Subsection (2) shall be deemed to authorize the commencement of the scrutiny before the end of the polling period in every constituency.

**89. ELECTIONS AT WHICH ELECTORS ARE ENTITLED TO VOTE.**

(1) Subject to Division 3, an elector shall only be admitted to vote for –

- (a) the President; and
- (b) the member for the single member constituency for which he is enrolled; and
- (c) the woman member to represent the interests of women for the Regional constituency for which he is enrolled; and
- (d) the former combatant member to represent the interests of former combatants for the Regional constituency for which he is enrolled.

(2) For the purposes of this section, the Rolls in force at the time of the election are evidence of the right of each person so enrolled to vote at an election, unless he shows by his answer to a question prescribed by Section 91 that he is not entitled to vote.

**90. PERSONS CLAIMING TO VOTE TO GIVE NAME AND OTHER PARTICULARS.**

A person claiming to vote at a polling booth shall state his full name or names, and, if so desired by the presiding officer for the purpose of identifying the name under which the vote is claimed, any other particulars necessary to be stated in the Roll or to enable him to be identified in the Roll.

**91. QUESTIONS TO BE PUT TO VOTER.**

(1) Subject to these electoral provisions, the presiding officer –

- (a) may, and at the request of a scrutineer shall, put to a person claiming to vote the following questions: –
  - (i) “Have you already voted either here or elsewhere in this election (or these elections (*as the case requires*))?”; and
  - (ii) “Are you at least 18 years of age?”; and
  - (iii) “Are you a Bougainvillean?”; and
  - (iv) “Are you qualified to vote?”; and
- (b) may, and at the request of a scrutineer shall, also put to any person claiming to vote, whose name appears on the certified list of voters the following question: –  
“Are you the person whose name appears as (*here state name*) on the certified list of voters for this constituency?”.

(2) Before putting the question specified in Subsection (1)(a)(iv) to a person claiming to vote, the presiding officer may, and at the request of a scrutineer shall, explain to that person what the qualifications to vote are.

(3) If a person claiming to vote to whom any of the questions specified in Subsection (1) are put –

- (a) refuses to answer fully a question so put to him; or
- (b) does not answer the question prescribed in Subsection (1)(a)(i) absolutely in the negative, so put to him; or
- (c) does not answer a question specified in Subsection (1)(a)(ii), (iii) or (iv) or (b) absolutely in the affirmative when so put to him,

his claim to vote shall be rejected.

(4) The voter's answer to a question put to him by the presiding officer under this section is conclusive, and the matter shall not, subject to this section, be further inquired into during the polling.

## **92. FINGER TO BE MARKED.**

(1) Subject to Subsection (6), a person claiming to vote shall show to the presiding officer –

- (a) the fifth finger on his left hand calculated from and including the thumb of that hand, or if he has no fifth finger the next finger between where the fifth finger would otherwise be and the thumb; or
- (b) if he has no left hand or no fingers on his left hand, the equivalent finger on his right hand,

to ascertain if he has already been marked with indelible ink.

(2) Subject to Subsection (6), the presiding officer shall mark the finger specified in Subsection (1) with indelible ink.

(3) If a person claiming to vote –

- (a) is found to have an indelible ink mark already on his finger; or
- (b) refuses to show his finger as required under Subsection (1); or
- (c) refuses to permit the presiding officer to mark his finger under Subsection (2),

his claim to vote shall be rejected.

(4) The presiding officer may require a person to show him his finger marked with indelible ink in accordance with this section before that person's ballot paper is deposited in a ballot box in accordance with Section 95 or 97 or is enclosed in an envelope in accordance with Section 99 or 100, and where in the opinion of the presiding officer the mark is not clearly visible, he may mark the finger again.

(5) Where a voter refuses to have his finger re-marked in accordance with Subsection (4), his ballot paper shall not be deposited in a ballot box or enclosed in an envelope in accordance with this Act, as the case may be, but shall be treated as a spoilt ballot paper.

(6) The Manager may, by notice published in the Interim Bougainville Gazette, declare prior to the polling that marking with indelible ink in accordance with Subsection (2) shall not be carried out during the election specified in the notice.

## **93. RIGHT OF ELECTOR TO RECEIVE BALLOT PAPERS.**

(1) The presiding officer or a poll clerk shall, at the polling, hand to each person claiming to vote at the polling place to which he has been allocated in accordance with Section 76 (1), a ballot paper in respect of each category of election duly initialled by the presiding officer –

- (a) if the name under which he claims to vote is on the certified list of voters for the polling place and his right to vote is not challenged; or
- (b) if the name under which he claims to vote is on the certified list of voters for the polling place and his right to vote is challenged, and his

- answers to the questions prescribed under Section 91(1) show that he is entitled to vote; or
- (c) if he claims to vote under Division 3 and complies with the provisions of that Division.

(2) The presiding officer, at the request of a scrutineer, shall note any objection by the scrutineer to the right of a person to vote, and shall keep a record of that objection.

(3) If the presiding officer puts to a person all or any of the questions prescribed under Section 91(1), his right to vote shall be deemed to have been challenged.

**94. LIST OF VOTERS TO BE MARKED ON ISSUE OF BALLOT PAPERS.**

Immediately upon handing the ballot papers to a person claiming to vote, the presiding officer or a poll clerk shall place a mark against the person's name on the certified list of voters if his name is on that list.

**95. VOTES TO BE MARKED IN PRIVATE.**

Except as otherwise prescribed, a voter upon receipt of ballot papers shall without delay and prior to quitting the booth –

- (a) retire alone to some unoccupied compartment of the booth, and in there, in private, mark his vote on the ballot papers in the manner required by Section 96; and
- (b) fold the ballot papers so as to conceal his votes and to show clearly the initials of the presiding officer, and exhibit them so folded to the presiding officer, and then openly, and without unfolding them, deposit them in the ballot box; and
- (c) then quit the booth.

**96. METHOD OF MARKING BALLOT PAPER.**

Subject to these electoral provisions, an elector shall record his vote on his ballot papers by placing an "X" in the square opposite the name of the candidate for whom he votes in such a way as to indicate clearly his preference for that candidate only.

**97. ASSISTANCE TO CERTAIN VOTERS.**

(1) If a voter satisfies the presiding officer that his sight is impaired or that he is so physically incapacitated that he is unable to vote without assistance, the presiding officer shall permit a person appointed by the voter to enter an unoccupied compartment of the booth with the voter, and mark, fold and deposit the voter's ballot papers for him in the ballot box.

(2) If a voter referred to in Subsection (1) fails to appoint a person under that subsection, or if a voter satisfies the presiding officer that he is so illiterate that he is unable to vote without assistance, the presiding officer, in the presence of –

- (a) if the voter so desires, the voter or a person appointed by the voter for the purpose; or
- (b) in the absence of any such appointment, the poll clerk,
- shall mark, fold and deposit his ballot papers for him in the ballot box.

(3) A person appointed under Subsection (1) to assist a voter who discloses any knowledge of the vote of the voter, or who influences or attempts to influence, the vote of the voter, is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding three months.

*Division 3. – Special Provisions in Certain Cases.*

**98. VOTER CLAIMING TO VOTE WHOSE NAME ON ROLL HAS BEEN MARKED.**

(1) Notwithstanding anything in these electoral provisions, where a voter, against whose name on the certified list of voters used at a polling place in the constituency for which he is enrolled, a mark has been placed in accordance with Section 94, claims to vote in an election at that polling place and makes a declaration in the approved form before the presiding officer, he may, subject to Sections 24 and 91, be permitted to vote.

(2) The ballot paper of a voter under this section shall be dealt with as prescribed in Section 100.

**99. BLIND OR PHYSICALLY INCAPACITATED VOTERS.**

(1) If a voter who claims to vote under Section 97 satisfies the presiding officer that his sight is so impaired or that he is so physically incapacitated that he is unable to vote without assistance, the presiding officer shall –

- (a) fill in the form of declaration with the required particulars relating to the enrolment of the voter as required by the voter; and
- (b) read over to the voter the form of declaration; and
- (c) require the voter to sign the form of declaration –
  - (i) in his own handwriting if he is able to do so; or
  - (ii) with his mark as his personal signature if he is unable to sign his name in his own handwriting; and
- (d) cause the signature of the voter, if made by means of a mark, to be witnessed by a scrutineer present, or if no scrutineer be present, by the poll clerk; and
- (e) complete and attest the declaration; and
- (f) permit a person appointed by the voter to enter an unoccupied compartment of the booth with the voter and to mark, in accordance with the voter's instructions, and fold the ballot papers for the voter; and
- (g) enclose the ballot papers in the envelope bearing the declaration of the voter, securely fasten the envelope and deposit it in the ballot box.

(2) If a voter to whom Subsection (1) applies fails to appoint a person under that subsection, or if a voter satisfies the presiding officer that he is so illiterate that he is unable to vote without assistance, the presiding officer shall take action in accordance with Subsection (1)(a) to (e) (inclusive) and shall, in the presence of a person appointed by the voter for the purpose if the voter so desires, or in the absence of any such appointment, the poll clerk –

- (a) mark and fold the ballot papers for the voter; and
- (b) enclose the ballot papers in the envelope bearing the declaration of the voter, securely fasten the envelope and deposit it in the ballot box.

**100. DEALING WITH VOTERS, ETC., UNDER THIS DIVISION.**

(1) The presiding officer shall, upon receiving ballot papers from a person voting under this Division, in the presence of the voter and of such scrutineers as are present and without unfolding the ballot papers, enclose them in an envelope bearing the declaration of the voter under Section 99 and addressed to the Returning Officer, and shall securely fasten the envelope and deposit it in the ballot box.

(2) An Assistant Returning Officer who is authorized under these electoral provisions to open the ballot box shall, without opening the envelope, transmit it to the Returning Officer.

(3) Where the claim of a person to vote under this Division is refused, the presiding officer shall make a note in writing of the fact of the claim and the reasons for the refusal, and the presiding officer and a poll clerk shall sign the note in the presence of such scrutineers as are present, who may also sign the note.

#### ***Division 4. – Miscellaneous.***

##### **101. SPOILT BALLOT PAPER.**

If a voter, before depositing his ballot papers in the ballot box, satisfies the presiding officer that he has spoilt the ballot papers or any one or more of them by mistake or accident, he may, on giving up each spoilt ballot paper receive from the presiding officer a new ballot paper for each one spoilt, and the presiding officer shall there and then cancel each spoilt ballot paper, write the word “Spoilt” across the face of it, place it in an envelope endorsed with the word “Spoilt” and forward it to the Returning Officer after the polling.

##### **102. ADJOURNMENT OF POLLING ON ACCOUNT OF RIOT.**

(1) The presiding officer may adjourn the polling from day to day where the polling is interrupted or obstructed by riot or open violence.

(2) If from any cause a polling booth at a polling place is not open on any day during the period for taking the poll at that polling place, the presiding officer may adjourn the polling for a period not exceeding seven days but in no event beyond the end of the polling period, and shall forthwith give public notice of the adjournment.

(3) Where for any reason the polling is adjourned at a polling place, those electors only –

(a) who are enrolled for the constituency for which the polling place is prescribed; or

(b) who are otherwise entitled to vote as electors for the constituency, and have not already voted, are entitled to vote at the adjourned polling at that polling place.

(4) Nothing in this section shall be deemed to affect the provisions of Division 1.

#### **PART XIV. – THE SCRUTINY.**

##### ***Division 1. – Preliminary.***

##### **103. SCRUTINY.**

The result of the polling shall be ascertained by scrutiny.

##### **104. COUNTING CENTRES.**

The scrutiny shall be conducted at such places, to be known as “counting centres”, as are appointed by the Returning Officer for the purpose.

**105. OFFICERS TO CONDUCT SCRUTINY.**

The scrutiny at a counting centre shall be conducted by the Returning Officer or, in the absence of the Returning Officer from that counting centre, by an Assistant Returning Officer.

**106. SCRUTINEERS AT SCRUTINY.**

(1) A candidate may appoint scrutineers to represent him at the scrutiny.

(2) Except as provided by Subsection (3), a candidate is not entitled to be represented at the scrutiny at a counting centre by more than one scrutineer.

(3) The officer who is to conduct, or is conducting, the scrutiny at a counting centre may, subject to any directions given to him from time to time by the Manager or the Returning Officer for the constituency in which the counting centre is situated, permit each candidate to be represented at the scrutiny at that counting centre by scrutineers not exceeding such number as that first-mentioned officer determines.

(4) The appointment of a scrutineer under this section to represent a candidate at a counting centre –

- (a) shall be made by notice in writing signed by the candidate, given or sent to the officer who is to conduct, or who is conducting, the scrutiny at the counting centre; and
- (b) shall specify the name and address of the scrutineer.

**107. CONDUCT OF SCRUTINY.**

The scrutiny shall be conducted as follows: –

- (a) it shall commence as soon as practicable after the end of the polling period;
- (b) any scrutineers duly appointed under Section 106 and any persons approved by the officer conducting the scrutiny, may be present;
- (c) all the proceedings at the scrutiny shall be open to the inspection of the scrutineers;
- (d) the scrutiny may be adjourned from time to time as necessary until the counting of the votes is complete.

**108. ACTION ON OBJECTION TO BALLOT PAPERS.**

(1) If a scrutineer objects to a ballot paper as being informal, the officer conducting the scrutiny shall mark the ballot paper “Admitted” or “Rejected”, according to his decision to admit or reject the ballot paper.

(2) Nothing in this section prevents the officer conducting the scrutiny from rejecting a ballot paper as being informal although it is not objected to.

**109. INFORMAL BALLOT PAPERS.**

(1) Subject to this section and to Divisions 3 and 4, a ballot paper is informal where –

- (a) it is not authenticated with the initials of the presiding officer or by an official mark as approved by the Manager; or
- (b) subject to Subsections (2), (3) and (4), it has no vote indicated on it or it does not indicate the voter’s intention; or

(c) it has on it any mark or writing (not authorized by these electoral provisions to be put on it) by which, in the opinion of the officer conducting the scrutiny, the voter can be identified.

(2) Subsection (1) (c) does not apply to a mark or writing placed on a ballot paper by an officer, notwithstanding that the placing of the mark or writing on the ballot paper is a contravention of these electoral provisions.

(3) Subject to Divisions 3 and 4, a ballot paper shall not be informal for any reason other than a reason specified in this section.

(4) Notwithstanding the provisions of this section and of Section 96, where the Returning Officer is satisfied that any mark made on a ballot paper clearly indicates the intention of the voter and the candidate for whom he has given his vote, the Returning Officer shall not determine that the vote is informal merely because the mark is not an "X".

***Division 2. – Provision Relating to the Scrutiny of Ordinary Votes.***

**110. SCRUTINY OF ORDINARY VOTES IN ELECTIONS.**

(1) The scrutiny shall, subject to the provisions of Divisions 3 and 4, be conducted in accordance with the succeeding provisions of this section.

(2) The electoral officer conducting the scrutiny shall, in the presence of a presiding officer, poll clerk or an officer and of such authorized scrutineers as choose to attend and any other person approved by the Returning Officer –

- (a) open all ballot boxes received from polling places within the constituency; and
- (b) reject all informal ballot papers, and arrange the unrejected ballot papers under the names of the respective candidates by placing in a separate parcel all those on which a vote is indicated for the same candidate; and
- (c) count the votes given for each candidate on all unrejected ballot papers; and
- (d) make out and sign a statement (which may be counter-signed by the presiding officer, poll clerk or officer present and, if they so desire, by such scrutineers as are present) setting out the number of votes given for each candidate, and the number of informal ballot papers; and
- (e) place in a separate parcel all the ballot papers which have been rejected as informal; and
- (f) where an Assistant Returning Officer conducts the scrutiny, transmit the following information, in some expeditious manner to the Returning Officer: –
  - (i) the number of votes given for each candidate; and
  - (ii) the total number of ballot papers rejected as informal; and
- (g) seal up the parcels and endorse on each parcel a description of the contents of it, and permit any scrutineers present, if they so desire, to counter-sign the endorsement; and
- (h) where an Assistant Returning Officer conducts the scrutiny, transmit the parcels to the Returning Officer with the least possible delay, together with the statement referred to in Paragraph (d).

***Division 3. – Provisions Relation to the Scrutiny of Votes under Division XIII. 3.***

**111. CONDUCT OF SCRUTINY.**

The scrutiny of votes under Division XIII.3. (*special provisions in certain cases*) shall be conducted by the Returning Officer and shall commence as soon as practicable after the end of the polling period for a constituency in the presence of an Assistant Returning Officer or an officer and such scrutineers as choose to attend.

**112. ACTION ON RECEIPT OF BALLOT PAPERS UNDER DIVISION XIII.3.**

The Returning Officer shall produce unopened all envelopes containing ballot papers used for voting under Division XIII.3, and shall, before opening an envelope or allowing any other person to do so, examine the declaration of the voter and, if it is in order, shall deal with the ballot paper in accordance with this Division, and make such correction (if any) to the Roll as is necessary.

**113. PRELIMINARY SCRUTINY OF VOTES CAST UNDER DIVISION XIII.3.**

(1) The Returning Officer shall, in relation to envelopes containing ballot papers used for voting under Division XIII.3 –

- (a) place in one parcel the envelopes bearing the declarations of persons who he is satisfied are entitled to vote in respect of the constituency, accept for further scrutiny the ballot papers contained in the envelopes and in respect of envelopes under Section 98, make notation on a certified copy of the Roll used by him for the purposes of the scrutiny against the names of the persons voting that those persons have been permitted to vote under Section 98; and
- (b) place in another parcel the envelopes bearing the declarations of persons who he is satisfied are not entitled to vote in respect of the constituency, or whose declarations are not signed and attested, fasten and seal the parcel, endorse thereon the words “Division 3 voters’ ballot papers rejected at the preliminary scrutiny” and add the name of the constituency, his signature and the date; and
- (c) place the envelopes containing the ballot papers accepted for further scrutiny before him on a table in such a manner that the face only of each envelope bearing the address of the Returning Officer is visible; and
- (d) number each envelope consecutively from one upwards in the top right-hand corner until all of the envelopes have been dealt with; and
- (e) without further examining the declaration of a voter, or permitting any other person to do so, withdraw from the envelope each ballot paper contained in it, and, without inspecting or unfolding the ballot paper or allowing any other person to do so, place on it a number corresponding with that placed on the envelope from which the ballot paper has been withdrawn, and deposit the folded ballot paper in a locked ballot box for further scrutiny; and
- (f) place the envelopes in a parcel, endorsed with the words “Envelopes bearing Division 3 voters’ declarations from which ballot papers have been withdrawn for further scrutiny”, fasten the parcel and add the name of the constituency, his signature and the date.

(2) A Division XIII.3 voter's ballot paper shall not be rejected at the preliminary scrutiny by reason only of the fact that the presiding officer has omitted to attest the declaration of the elector.

**114. FURTHER SCRUTINY.**

At the further scrutiny, the officer conducting the scrutiny shall, as soon as practicable after the preliminary scrutiny under Section 113, open the ballot box referred to in Section 113(1)(e), examine the Division XIII.3 voters' ballot papers contained in the ballot box, and follow the steps set out in Section 110(2)(b), (c), (d), (e) and (g).

**115. INFORMAL BALLOT PAPERS UNDER DIVISION XIII.3.**

In addition to the matters specified in Section 109, a Division XIII.3 voter's ballot paper is informal if it is not contained in an envelope bearing the declaration of the elector.

**116. PARCELLING OF BALLOT PAPERS.**

The officer conducting the scrutiny shall place in separate parcels –

- (a) all Division XIII.3 voters' ballot papers allowed or admitted as formal; and
- (b) all Division XIII.3 voters' ballot papers disallowed or rejected as informal,

and shall fasten and seal each parcel, and endorse on it particulars of the contents of it and the name of the constituency, and add his signature and the date.

**117. OPENING OF SEALED PARCELS OF BALLOT PAPERS.**

The sealed parcels of Division XIII.3 voters' ballot papers may only be opened –

- (a) for the purposes of an authorized re-count; or
- (b) by direction of the Tribunal.

**118. OPENING OF SEALED PARCELS OF DECLARATIONS.**

The sealed parcels of Division XIII.3 voters' declarations may only be opened by direction of the Tribunal.

**119. PRESERVATION OF BALLOT PAPERS AND DECLARATIONS.**

Subject to any action referred to in Section 117 or 118, the Returning Officer shall preserve the sealed parcels of –

- (a) Division XIII.3 voters' ballot papers allowed or admitted to the scrutiny; and
- (b) Division XIII.3 voters' ballot papers disallowed or rejected at the scrutiny; and
- (c) envelopes bearing Division XIII.3 voters' declarations from which ballot papers have been withdrawn for further scrutiny; and
- (d) envelopes bearing Division XIII.3 voters' declarations and containing ballot papers rejected at the preliminary scrutiny,

until their destruction has been authorized by the Manager.

**120. MODE OF DETERMINING THE RESULT OF THE SCRUTINY.**

(1) The result of an election shall be determined by scrutiny in the following manner: –

- (a) the Returning Officer should ascertain the total number of votes given for each candidate;

- (b) the candidate who has received the largest number of votes is elected;
  - (c) if two or more candidates have equally received the largest number of votes, the Returning Officer shall decide by drawing lots who shall be elected.
- (2) The procedure for drawing lots under Subsection (1)(c) is as follows: –
- (a) the Returning Officer shall immediately after the conclusion of the counting and before all persons present, make out in respect of each of the candidates having an equal number of votes a slip bearing the name of the candidate as shown on the ballot paper, enclose the respective slips in separate blank envelopes of exact similarity and deposit the envelopes in a locked ballot box;
  - (b) the Returning Officer shall then thoroughly shake and rotate the ballot box and shall permit any other person present, if he so desires, to do the same;
  - (c) the ballot box should be opened and an officer shall take out and open one of the envelopes;
  - (d) the candidate whose name appears on the slip enclosed in the envelope taken from the ballot box is elected.

**121. FURTHER PROVISIONS RELATING TO SCRUTINY.**

The officer conducting the scrutiny shall, in respect of ballot papers scrutinized by him

–

- (a) place in a separate parcel all the ballot papers which have been rejected as informal; and
- (b) place in a separate parcel all the unrejected ballot papers; and
- (c) seal up the parcels and endorse on each parcel a description of its contents, and permit any scrutineers present, if they so desire, to countersign the endorsement.

***Division 4. – Re-count.***

**122. RE-COUNT.**

(1) At any time before the declaration of the result of an election, the Returning Officer may, if he thinks fit, on the request of a candidate setting forth the reasons for the request or of his own motion, and shall if so directed by the Manager, re-count the ballot papers contained in a parcel.

(2) The officer conducting a re-count has the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance and admission or disallowance and rejection of any ballot paper.

**123. RESERVATION OF DISPUTED BALLOT PAPERS.**

(1) The officer conducting a re-count may, and at the request of a scrutineer shall, reserve any ballot paper for the decision of the Manager.

(2) The Manager shall decide whether a ballot paper reserved for his decision under this section is to be allowed and admitted or disallowed and rejected.

(3) In the event of the validity of the election being disputed, the Tribunal may consider any ballot papers which were reserved for the decision of the Manager, but shall not order a further re-count of the whole or part of the ballot papers in connection with the election unless it is satisfied that the re-count is justified.

#### **124. CONDUCT OF RE-COUNT.**

(1) Before proceeding to re-count any ballot papers, the Returning Officer shall send to each candidate notice of the time and place of the re-count.

(2) The Returning Officer shall, at the time and place fixed for the re-count, in the presence of the scrutineer or scrutineers in attendance and of an officer, open every sealed parcel of ballot papers to be re-counted and count the votes in it.

(3) Each parcel of ballot papers to be re-counted shall be opened separately without destroying or rendering illegible any endorsement on the parcel, and every care shall be taken to prevent the ballot papers in the parcel from being mixed with the ballot papers in any other parcel.

(4) After a parcel has been opened and the votes in it counted, the Returning Officer shall replace the ballot papers in their original cover, which he shall reseal, refasten and then place in a new cover which he shall also seal and fasten and endorse with the fact and date of the re-count, and the Returning Officer and such persons authorized to be present at the re-count as choose to do so shall sign the endorsement.

(5) When any ballot papers at a re-count are reserved for the decision of the Manager, the Returning Officer shall, in the presence of the scrutineer or scrutineers in attendance –

- (a) place the ballot papers in a properly fastened and sealed parcel bearing his signature and the signature or signatures of the scrutineer or scrutineers, together with an endorsement setting out the number of ballot papers contained in the parcel, the name of the constituency and the date; and
- (b) place the parcel in a fastened and sealed outer cover fully addressed to the Manager, and transport the parcel to the Manager by hand or otherwise deliver it.

(6) On receipt of a parcel referred to in Subsection (5), the Manager shall, in the presence of an officer and, if a candidate so desires, of a person appointed by the candidate, open the parcel and scrutinize the ballot papers, and shall mark each ballot paper “Admitted” or “Rejected”, according to his decision to admit or reject the ballot paper.

(7) When the Manager has given his decision on the ballot papers reserved for his decision, he shall restore them to their original cover, refasten and reseal the cover, and endorse on it –

- (a) the number of ballot papers contained in the cover; and
- (b) a statement that the ballot papers have been the subject of decision by him; and
- (c) the signature of the Manager and the date,

and shall request the persons in whose presence he scrutinized the ballot papers to add their signatures, and shall then place the parcel in a new cover, which he shall cause to be fastened, sealed and returned by hand or otherwise delivered to the Returning Officer.

(8) The Manager shall advise the Returning Officer, in writing, as to the number of ballot papers admitted or rejected by him, and the decision of the Manager shall be accepted by the Returning Officer in completing his re-count of the ballot papers.

(9) The receipt of every parcel of ballot papers shall be acknowledged in writing by the Manager and the Returning Officer respectively.

## **PART XV. – INTERPRETERS.**

### **125. INTERPRETERS.**

(1) Notwithstanding the provisions of these electoral provisions, for the purposes of, and at any stage of, the proceedings at the polling or at the scrutiny, a person may, with the approval of the presiding officer or the officer conducting the scrutiny, as the case requires, make use of the services of a person as an interpreter.

(2) A candidate shall not be an interpreter, and a scrutineer shall not be an interpreter except for another scrutineer.

### **126. DUTY OF INTERPRETERS.**

(1) An interpreter referred to in Section 125 shall –

- (a) to the best of his ability, correctly interpret any matter which he is required to interpret; and
- (b) comply with any directions given by the presiding officer or the officer conducting the scrutiny, as the case may be; and
- (c) refrain from disclosing any knowledge of the vote of an elector for or to whom he interprets.

(2) An interpreter shall not influence, or attempt to influence, in any way, the vote of an elector for or to whom he interprets, and shall not disclose any knowledge of the vote of the elector.

(3) An interpreter who fails to comply with Subsection (1)(a), (b) or (c) or Subsection (2), is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

## **PART XVI. – THE RETURN OF THE WRITS.**

### **127. RETURN OF WRITS.**

(1) The Returning Officer shall, as soon as conveniently may be after the result of an election has been ascertained –

- (a) at the place of nomination, publicly declare the result of the election and the name of the candidate elected; and

- (b) by endorsement under his hand certify on the writ the name of the candidate elected, and return the writ to the Manager.

(2) Where the Returning Officer cannot complete his inquiries into the facts set out in the declarations received by him under Section 98 without unduly delaying the declaration of the poll, and he is satisfied that the votes recorded on the ballot papers could not possibly affect the result of the election, he may, subject to the concurrence of the Manager, declare the result of the election and return the writ without awaiting the receipt of the ballot papers or the completion of inquiries, as the case may be.

#### **128. CORRECTION OF ERRORS.**

Any delay, error or omission in the printing, preparation, issue, transmission or return of any Roll, writ, ballot paper or certified list of voters may be remedied, removed, rectified and supplied by the Manager, by notice published in the Interim Bougainville Gazette, specifying the matter dealt with and providing for the course to be followed, and that course shall be valid and sufficient.

#### **129. EXTENSION OF TIME.**

(1) Subject to Subsections (2) and (3), within one month before or at any time during the polling period for an election in a constituency or portion of a constituency, the Manager may, where he is of the opinion that it is necessary to do so, provide for –

- (a) extending the time –
  - (i) for holding the election; or
  - (ii) for returning the writ; or
- (b) meeting any difficulty which might otherwise interfere with the due course of the election,

and provision so made shall be valid and sufficient.

(2) Where an extension of time granted under Subsection (1) does not apply to all constituencies in which elections are being conducted at the same time –

- (a) the last day of the polling period shall not be more than two weeks after the date originally fixed as the last day; and
- (b) the date fixed for the return of the writ shall not be more than two weeks after the date originally fixed for its return.

(3) In the case of an extension of time under Subsection (1), public notice of the extension shall be immediately given in the constituency or the portion of the constituency for which the election is to be held.

### **PART XVII. – OFFENCES.**

#### **130. ILLEGAL PRACTICES.**

(1) Subject to Subsection (2), the following are illegal practices at elections: –

- (a) publishing an electoral advertisement, handbill or pamphlet or issuing an electoral notice (other than the announcement by advertisement in a newspaper of the holding of a meeting) without the name and address of the person authorizing the publication or issue being printed at the foot of it;
- (b) printing or publishing a printed electoral advertisement, handbill or pamphlet (other than an advertisement in a newspaper) without the name and place of business of the printer being printed at the foot of it;

- (c) printing, publishing or distributing an electoral advertisement, notice, handbill, pamphlet or card containing a representation of a ballot paper or a representation apparently intended to represent a ballot paper, and having on it any directions intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his vote;
- (d) printing, publishing or distributing an electoral advertisement, notice, handbill, pamphlet or card containing an untrue or incorrect statement intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his vote;
- (e) wilfully informing an elector during the polling period that he is not enrolled or entitled to be enrolled for a particular constituency or is not entitled to vote, when as a fact he is enrolled or entitled to be enrolled, for that constituency or is entitled to vote, as the case may be.

(2) Nothing in Subsection (1)(c) or (d) prevents the printing, publishing or distributing of a card, not otherwise illegal, which contains instructions on how to vote for a particular candidate, so long as those instructions are not intended or likely to mislead an elector in or in relation to the casting of his vote.

(3) A person guilty of an illegal practice under this section is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

### **131. HEADING TO ELECTORAL ADVERTISEMENT.**

(1) The proprietor of a newspaper shall cause the word “advertisement” to be printed as a headline, in letters not smaller than 10 point or long primer, to each article or paragraph in his newspaper containing electoral matter, the insertion of which is or is to be paid for or for which a reward or compensation or promise of reward or compensation is, or is to be, made.

(2) A proprietor of a newspaper, who fails to comply with Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K200.00

(3) In Subsection (1), “electoral matter” includes all matter intended or calculated to affect the result of the election, and a report of the speech of a candidate if the report is, or is to be, paid for.

### **132. ARTICLES TO BE SIGNED.**

(1) On and after the date of issue and before the return of a writ for the election of a member, every article, report, letter or other matter commenting upon a candidate or political party, printed and published in a newspaper, circular, pamphlet or dodger shall be signed by the author, giving his true name and address at the end of the article, report, letter or other matter, or where part only of the article, report, letter or matter appears in any issue of a newspaper, circular, pamphlet or dodger, at the end of that part.

(2) The author of an article, report, letter or other matter commenting upon a candidate or political party, printed and published in a newspaper, circular, pamphlet or dodger, who fails to comply with Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(3) A newspaper editor or proprietor who permits, in a newspaper which he edits or owns, the publication of an unsigned article, report, letter or other matter commenting upon a candidate or political party, after the issue and before the return of any writ for the election of a member, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

- (4) This section does not apply to the publication in a newspaper of –
- (a) a leading article; or
  - (b) an article in a newspaper which consists solely of a report of a meeting and does not contain any comment (other than comment made by a speaker at the meeting) upon a candidate or political party.

### **133. MATTER BROADCAST.**

(1) On and after the date of issue and before the return of a writ for the election of a member, a person who broadcasts or televises or permits to be broadcast or televised, from a broadcasting station or television station an announcement, statement or other matter commenting upon a candidate or political party, unless that announcement, statement or other matter includes the true name and address of the author of it, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) Where an announcement, statement or other matter is broadcast or televised in contravention of Subsection (1), the person who supplied the announcement, statement or other matter to the broadcasting station or television station for broadcasting or televising is, unless he proves that the true name and address of the author were included in the announcement, statement or other matter so supplied, guilty of an offence.

Penalty: A fine not exceeding K200.00.

(3) This section does not apply to the inclusion in a summary of news of a report of a meeting which contains no comment (other than comment made by a speaker at the meeting) upon a candidate or political party.

(4) For the purposes of this section, “broadcasting station” means a station broadcasting messages by means of wireless telegraphy or any form of telecommunications.

### **134. DISPLAY OF CERTAIN ELECTORAL POSTERS PROHIBITED.**

(1) Subject to this section, a person who writes, draws or depicts electoral matters directly on a roadway, footpath, building, vehicle, vessel, hoarding or place (whether it is or is not a public place or in a public place, and whether on land or water or in the air), is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) The application of Subsection (1) extends in relation to an election although the writ for that election has not been issued.

- (3) Nothing in this section prohibits –

- (a) the posting up, exhibiting, writing, drawing or depicting of a sign on or at the office or committee room of a candidate or political party indicating only that the office or room is the office or committee room of the candidate or party, and specifying the name of the candidate or the name of the party concerned; or
  - (b) the projection, by means of a cinematograph or other similar apparatus, of electoral matter onto a screen in a public theatre, hall or premises used for public entertainment.
- (4) In this section –  
“electoral matter” means any matter intended or calculated to affect the result of an election;  
“electoral poster” means any material whatsoever on which electoral matter is written, drawn or depicted.

### **135. REMOVAL OF PROHIBITED ELECTORAL POSTER.**

- (1) A member of the Police Force may, and shall, if so directed by the Manager or by a Returning Officer –
- (a) remove an electoral poster which appears to have been posted up or to be exhibited in contravention of Section 134; or
  - (b) obliterate electoral matter which appears to have been written, drawn or depicted in contravention of that section.

(2) A person who obstructs or hinders a member of the Police Force in the exercise or attempted exercise of any power or in the discharge or attempted discharge of any duty, conferred or imposed upon that member of the Police Force under this section, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

### **136. INJUNCTIONS.**

For the purpose of ensuring compliance with Section 134, the National Court may, upon the application of an officer, grant an injunction –

- (a) restraining an apprehended contravention of that section; or
- (b) directing the removal of an electoral poster posted up or exhibited in contravention of that section, or the obliteration of electoral matter written, drawn or depicted in contravention of that section,

and may make an order incidental or supplementary to an order under this section, including an order as to costs.

### **137. CARDS IN POLLING BOOTHS.**

(1) A person, who exhibits or leaves in a polling booth a card or paper having on it a direction or instruction as to how an elector should vote or as to the method of voting, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) This section does not apply to official instructions exhibited by electoral officers at the direction of the Manager at a polling booth.

### **138. UNTRUE STATEMENTS IN ELECTORAL PAPER, ETC.**

(1) A person who makes an untrue statement in an electoral paper, or in answer to a question under these electoral provisions or in information supplied to an officer for the purposes of the preparation, maintenance or revision of a Roll, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) In Subsection (1), “electoral paper” includes an approved form.

### **139. SIGNATURE TO ELECTORAL PAPER.**

(1) Every electoral paper which by these electoral provisions has to be signed by a person, shall be signed by that person with his personal signature and in the case of the Manager by the personal signature of the Manager.

(2) Where a person who is unable to sign his name in writing makes his mark as his signature to an electoral paper, the mark shall be deemed to be his personal signature, if it is identifiable as such and is made in the presence of a witness who signs the electoral paper as a witness to the signature.

(3) A person who makes the signature of any other person on an electoral paper is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(4) In this section, “electoral paper” includes an approved form.

### **140. WITNESSING ELECTORAL PAPERS.**

(1) A person who –

- (a) signs his name as witness on a blank electoral paper; or
- (b) signs his name as witness on an electoral paper which has been wholly or partly filled in unless it has been signed by the person intended to sign it; or
- (c) signs his name as witness on an electoral paper unless he has seen the person whose signature he purports to witness sign it; or
- (d) writes on an electoral paper as his own name-
  - (i) the name of another person; or
  - (ii) any name not being his own name,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) In Subsection (1), “electoral paper” includes an approved form.

### **141. MAKING MARKS ON BALLOT PAPERS.**

Except where expressly authorized by or under these electoral provisions, a person (other than the elector to whom the ballot paper has been lawfully issued), who makes a mark or writing on the ballot paper of an elector, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

### **142. ELECTORAL OFFENCES.**

The matters specified in Column 1 of the Table in this section are electoral offences punishable in accordance with the provision in Column 2 of that Table opposite the statement of the offence in Column 1.

Column 1. – Offences	Column 2. – Punishments.
1. Voting more than once in any one category at the election.	A fine not exceeding K200.00 or imprisonment for a term not exceeding three months.
2. Wagering on the result of an election.	A fine not exceeding K200.00.
3. Wilfully defacing, mutilating, destroying or removing a notice, list or other document affixed by a Returning Officer or by his authority.	A fine not exceeding K20.00.
4. Knowingly making a false statement in a claim, application, return or declaration or in answer to a question put under these electoral provisions.	Imprisonment for a term not exceeding six months.
5. Distributing an advertisement, handbill or pamphlet published in contravention of Section 130.	A fine not exceeding K200.00 or imprisonment for a term not exceeding one month.
6. Any contravention of these electoral provisions for which no other punishment is provided.	A fine not exceeding K200.00.
7. Falsely personating a person to secure a ballot paper to which the personator is not entitled, or personating any other person for the purposes of voting.	Imprisonment for a term not exceeding six months.
8. Fraudulently destroying or defacing a nomination paper or ballot paper.	Imprisonment for a term not exceeding six months.
9. Fraudulently putting a ballot paper or other paper into a ballot box.	Imprisonment for a term not exceeding six months.
10. Fraudulently taking a ballot paper out of a polling booth.	Imprisonment for a term not exceeding six months.
11. Taking a ballot paper out of a polling booth.	A fine not exceeding K200.00.
12. Forging or uttering knowing it to be forged, a nomination paper or ballot paper.	Imprisonment for a term not exceeding six months.
13. In a polling booth during the polling, misconducting himself, or failing to obey	A fine not exceeding K200.00 or imprisonment for a term not exceeding one

the lawful directions of the presiding officer.	month.
14. Supplying ballot papers without authority.	Imprisonment for a term not exceeding six months.
15. Unlawfully destroying, taking, opening or otherwise interfering with ballot boxes or ballot papers.	Imprisonment for a term not exceeding six months.
16. Removing or attempting to remove, cover or disguise the indelible ink applied under Section 92.	Imprisonment for a term not exceeding six months.

### **143. PROHIBITION OF CANVASSING NEAR POLLING BOOTH.**

(1) A person who, during the polling period and on all days to which the polling is adjourned, at an entrance of or within a polling booth, or within 7 m of an entrance of a polling booth –

- (a) canvasses for votes; or
- (b) solicits the vote of an elector; or
- (c) induces an elector not to vote for a particular candidate; or
- (d) induces an elector not to vote at the election; or
- (e) exhibits a notice or sign (other than an official notice) relating to the election,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) Where –

- (a) a building used as a polling booth is situated in grounds within an enclosure; and
- (b) the presiding officer at the polling booth causes to be displayed throughout the polling at each entrance to those grounds a notice signed by him stating that those grounds are part of the polling booth,

those grounds shall, for the purposes of Subsection (1), be deemed to be part of a polling booth.

### **144. BADGES OR EMBLEMS IN POLLING BOOTHS.**

An officer or scrutineer who wears or displays in a polling booth during the polling period a badge or emblem of a candidate or political party is guilty of an offence.

Penalty: A fine not exceeding K200.00.

### **145. FAILURE TO TRANSMIT CLAIMS.**

A person who accepts a claim for enrolment or transfer of enrolment for transmission to a Returning Officer and who fails to transmit the claim to the Returning Officer, forthwith, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**146. FORGING OR UTTERING ELECTORAL PAPERS.**

(1) A person who –  
(a) forges an electoral paper; or  
(b) utters a forged electoral paper, knowing it to be forged,  
is guilty of an offence.

Penalty: Imprisonment for a term not exceeding six months.

(2) In Subsection (1), “electoral paper” includes an approved form.

**147. EMPLOYERS TO ALLOW EMPLOYEES LEAVE OF ABSENCE TO VOTE.**

(1) If an employee who is an elector notifies his employer that he desires leave of absence to enable him to vote at an election, the employer shall, if the absence desired is necessary to enable the employee to vote at the election, allow him leave of absence without any penalty or disproportionate deduction of pay for such reasonable period as is necessary to enable the employee to vote at the election.

(2) An employer, who fails to comply with Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(3) An employee who obtains leave of absence under this section under pretence that he intends to vote at the election but without the *bona fide* intention of doing so, is guilty of an offence.

Penalty: A fine not exceeding K200.00

(4) This section does not apply to an elector whose absence may cause danger or substantial loss in respect of the employment in which he is engaged.

**148. PROTECTION OF THE OFFICIAL MARK.**

(1) A person who, without lawful authority (proof of which is on him) –  
(a) makes an official mark on or in a paper; or  
(b) has in his possession a paper bearing an official mark; or  
(c) makes use of or has in his possession an instrument capable of making on or in a paper an official mark,  
is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) A person who, without lawful authority (proof of which is on him) makes on or in a ballot paper, or on or in a paper purporting to be a ballot paper, an official mark, shall be deemed to have forged an electoral paper and is punishable accordingly.

(3) All paper bearing an official mark, and all instruments capable of making on or in paper an official mark, made or used by, or in the possession of, a person without lawful authority (proof of which authority is on him) are forfeited to the Manager and may without warrant be seized by any member of the Police Force and destroyed or dealt with as prescribed.

(4) In this section, “official mark” means a prescribed mark to be placed or made on or in an electoral paper, and includes a mark so nearly resembling an official mark as to be likely to deceive.

**149. DISORDERLY BEHAVIOUR AT MEETING.**

(1) This section applies to any lawful public political meeting held in relation to an election between the date of the issue of the writ for the election and the date of the return of the writ.

(2) A person who, at a public meeting to which this section applies, acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is held, is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding one month.

(3) The Chairman of a public meeting to which this section applies may direct any member of the Police Force to remove from the room, building or place in which the meeting is being held a person who, in the opinion of the Chairman, is preventing the transaction of the business for which the meeting is held, and thereupon the member of the Police Force may take such steps as are necessary for the removal of the person from the room, building or place.

(4) A person –  
(a) who has been removed from a room or building in accordance with a direction given under Subsection (3); or  
(b) whose removal from a room, building or place has been directed under Subsection (3) and who has left that room, building or place,  
and who, without the authority of the Chairman (proof of which authority is on that person) returns to that room or building while the meeting is in progress, is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding one month.

(5) A member of the Police Force may arrest without warrant a person who commits an offence against Subsection (4).

**150. NEGLECT TO INITIAL BALLOT PAPER, ETC.**

An officer who, contrary to his duty, fails to initial a ballot paper, correctly to mark a certified list of voters, or properly to attest a declaration, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**151. OFFENDER MAY BE REMOVED FROM POLLING BOOTH.**

(1) A person who, in a polling booth during the polling, misconducts himself, or fails to obey the lawful direction of the presiding officer, may be removed from the polling booth by a member of the Police Force or by a person authorized by the presiding officer.

(2) A person who has been removed from a polling booth by direction of the presiding officer under Subsection (1) and who re-enters the polling booth without the

permission of the presiding officer is guilty of a further electoral offence, punishable on conviction by twice the penalty prescribed by Section 142 for the original offence.

**152. DEFAMATION OF CANDIDATE.**

(1) Subject to Subsection (2), a person who makes or publishes a false and defamatory statement in relation to the personal character or conduct of a candidate, is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

(2) It is a defence to a prosecution for an offence against Subsection (1), if the defendant proves that he had reasonable grounds for believing and did in fact believe the statement made or published by him to be true.

(3) A person who makes a false and defamatory statement in relation to the personal character or conduct of a candidate in contravention of this section may be restrained by injunction, at the suit of the candidate aggrieved, from repeating the statement or any similar false and defamatory statement.

**153. PUBLICATION OF MATTER REGARDING CANDIDATES.**

(1) Subject to this section, where in any matter announced or published by a person, or caused by a person to be announced or published, on behalf of an association, league, organization or other body of persons, it is, without the authority of the candidate (proof of which authority is on that person) –

- (a) claimed or suggested that a candidate in an election is associated with, or supports the policy or activities of, that association, league, organization or other body of persons; or
- (b) expressly or impliedly advocated or suggested that that candidate is the candidate for which a vote should be given,

that person is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding three months.

(2) Where any matter, the announcement or publication of which by a person without the written authority of a candidate would be an offence against Subsection (1) on the part of that person, is announced or published by or on behalf of, or with the support of, an association, league, organization or other body of persons, every person who was an officer of that association, league, organization or other body at the time of that announcement or publication shall be deemed to be guilty of an offence against that subsection.

(3) For the purposes of this section, where any matter purports expressly or impliedly to be announced or published by or on behalf of, or in the interests or with the support of, an association, league, organization or other body of persons the matter shall, in the absence of proof to the contrary, be deemed to be announced or published by or on behalf of, or with the support of, as the case may be, that association, league, organization or other body of persons.

(4) Nothing in the preceding provisions of this section applies to or in relation to an announcement or publication made or authorized by a registered political party or by a

registered branch of a political party respecting a candidate who, by public announcement, has declared his intention to be a candidate on behalf of or in the interests of that party.

**154. LIABILITY FOR INDIRECT ACTS.**

Every person is liable for an illegal practice or an offence against this Part committed directly or indirectly by himself, or by any other person on his behalf and with his knowledge or authority.

**PART XVIII. – DISPUTED ELECTIONS, RETURNS, ETC.**

**155. METHOD OF DISPUTING RETURNS.**

The validity of an election or return under these electoral provisions, may be disputed by petition addressed to the National Court and not otherwise.

**156. EXERCISE OF JURISDICTION OF NATIONAL COURT.**

The jurisdiction of the National Court in relation to any matter under this Part may be exercised by a Judge of the National Court.

**157. REQUISITES OF PETITION.**

A petition shall –

- (a) set out the facts relied on to invalidate the election or return; and
- (b) specify the relief to which the petitioner claims to be entitled; and
- (c) be signed by a candidate at the election in dispute or by a person who was qualified to vote at the election or by the Manager; and
- (d) be attested by two witnesses whose occupations and addresses are stated; and
- (e) be filed in the Registry of the National Court at Buka , or elsewhere as directed by the National Court, within one month after the declaration of the result of the election in accordance with Section 127(1)(a).

**158. DEPOSIT AS SECURITY FOR COSTS.**

At the time of filing the petition the petitioner shall deposit with the National Court the sum of K2,000.00 as security for costs.

**159. NO PROCEEDINGS UNLESS REQUISITES COMPLIED WITH.**

Proceedings shall not be had on a petition unless the requirements of Sections 157 and 158 are complied with.

**160. RIGHT OF MANAGER TO BE REPRESENTED.**

The Manager may, by leave of the National Court, enter an appearance in any proceedings in which the validity of an election or return is disputed, and be represented and heard in the proceedings, and in that case shall be deemed to be a party respondent to the petition.

**161. POWERS OF NATIONAL COURT.**

(1) In relation to any matter under this Part, the National Court shall sit as an open court and may, amongst other things –

- (a) adjourn; and
- (b) compel the attendance of witnesses and the production of documents; and
- (c) grant to a party to a petition leave to inspect, in the presence of the Returning Officer, the Rolls and other documents (except ballot papers)

- used at or in connection with an election and take, in the presence of the Returning Officer, extracts from those Rolls and documents; and
- (d) order a recount of ballot papers in a constituency; and
  - (e) examine witnesses on oath; and
  - (f) declare that a person who was returned as elected was not duly elected; and
  - (g) declare a candidate duly elected who was not returned as elected; and
  - (h) declare an election absolutely void; and
  - (i) dismiss or uphold a petition in whole or in part; and
  - (j) award costs; and
  - (k) punish contempt of its authority by fine or imprisonment.

(2) The National Court may exercise all or any of its powers under this section on such grounds as the National Court in its discretion thinks just and sufficient.

(3) Without limiting the powers conferred by this section, the power of the National Court to declare that a person who was returned as elected was not duly elected, or to declare an election absolutely void, may be exercised on the ground that illegal practices were committed in connection with the election.

#### **162. PRODUCTION OF PAPERS OR DOCUMENTS, ETC.**

- (1) Without limiting the powers conferred by Section 161 –
- (a) when it is proved that a ballot paper issued under Section 98 has, in an election, been marked by a person who was not entitled to vote at the election, the National Court may require the production of any other papers or documents relating to the ballot papers issued under that section; and
  - (b) the National Court may reject a ballot paper.

(2) The production from proper custody of a ballot paper purporting to have been used in an election and bearing an official number, and of other papers or documents referred to in Subsection (1)(a) bearing an official number corresponding to the official number on the ballot paper, is *prima facie* evidence that the person who marked the ballot paper was the person who made the declaration.

(3) In Subsection (2), “official number” means a number purporting to have been placed on the ballot paper under these electoral provisions.

#### **163. INQUIRIES BY NATIONAL COURT.**

The National Court shall inquire whether or not the petition is duly signed, and so far as Rolls and voting are concerned may inquire into the identity of persons and whether their votes were improperly admitted or rejected, assuming the Roll to be correct, but the National Court shall not inquire into the correctness of a Roll.

#### **164. VOIDING ELECTION FOR ILLEGAL PRACTICES.**

(1) If the National Court finds that a candidate has committed or has attempted to commit bribery or undue influence, his election, if he is the successful candidate, shall be declared void.

(2) A finding by the National Court under Subsection (1) does not bar or prejudice a prosecution for an illegal practice.

(3) The National Court shall not declare that a person returned as elected was not duly elected, or declare an election void –

- (a) on the ground of an illegal practice committed by a person other than the candidate and without the candidate's knowledge or authority; or
- (b) on the ground of an illegal practice other than bribery or undue influence or attempted bribery or undue influence,

unless the National Court is satisfied that the result of the election was likely to be affected, and that it is just that the candidate should be declared not to be duly elected or that the election should be declared void.

**165. NATIONAL COURT TO REPORT CASE OF ILLEGAL PRACTICE.**

Where the Chairman finds that a person has committed an illegal practice, the Registrar of the National Court shall promptly report the finding to the President, the Speaker and the Manager, who shall, where appropriate, report the matter to the Police.

**166. NATURAL JUSTICE TO BE OBSERVED.**

The National Court shall be guided by the substantial merits and good conscience of each case without regard to legal forms or technicalities, or whether the evidence before it is in accordance with the law of evidence or not, and shall comply with the principles of natural justice.

**167. IMMATERIAL ERRORS NOT TO VITIATE ELECTION.**

(1) Subject to Subsection (2), an election shall not be avoided on account of a delay in the declaration of nominations, the polling, the declaration of the poll or the return of the writ, or on account of the absence or an error of, or an omission by, an officer which did not affect the result of the election.

(2) Where an elector was, on account of the absence or an error of, or an omission by, an officer, prevented from voting in an election, the National Court shall not for the purpose of determining whether the absence or error of, or the omission by, the officer did or did not affect the result of the election, admit evidence of the way in which the elector intended to vote in the election.

**168. EVIDENCE THAT PERSON NOT PERMITTED TO VOTE.**

On the trial of a petition, the National Court shall not admit the evidence of a witness that he was not permitted to vote in an election during the hours of polling in the polling period unless the witness satisfies the National Court –

- (a) that he claimed to vote in the election, under that provision of these electoral provisions under which he was entitled or might be permitted to vote; and
- (b) that he complied with the requirements of these electoral provisions relating to voting by electors in so far as he was permitted to do so.

**169. DECISION TO BE FINAL.**

A decision of the National Court is final and conclusive and without appeal, and shall not be questioned in any way.

**170. COPIES OF PETITION AND ORDER OF NATIONAL COURT TO BE SENT TO THE PRESIDENT AND THE SPEAKER.**

The National Court shall promptly after the filing of a petition forward to the President and to the Speaker a copy of the petition, and after the trial of the petition shall promptly forward to the President and to the Speaker a copy of the order of the National Court.

**171. COUNSEL OR SOLICITOR.**

(1) A party to a petition shall not, except by consent of all parties or leave of the National Court, be represented by counsel or solicitor.

(2) In no case shall more than one counsel appear on behalf of a party.

**172. COSTS.**

The National Court may award costs against an unsuccessful party to a petition.

**173. DEPOSITS APPLICABLE FOR COSTS.**

If costs are awarded to a party against the petitioner, the deposit lodged under Section 158 is applicable in payment of the sum ordered, but otherwise the deposit shall be paid to the petitioner.

**174. OTHER COSTS.**

All other costs awarded by the Tribunal, including any balance above the deposit payable by the petitioner, are recoverable as if the order of the Tribunal were a judgement of the National Court, and the order, certified by the Tribunal, may be entered as a judgement of the Tribunal and enforced accordingly.

**175. EFFECT OF DECISIONS.**

Effect shall be given to a decision of the Tribunal as follows:—

- (a) if a person returned is declared not to have been duly elected, he shall cease to be a member or the President, as the case may be; and
- (b) if a person not returned is declared to have been duly elected, he may take his seat accordingly; and
- (c) if an election is declared absolutely void a new election shall be held.

**176. DEFINITION OF “PETITION”.**

In this Part, “petition” means a petition disputing an election or return.

**PART XIX. – MISCELLANEOUS.**

**177. COUNCIL OF ELDERS RULES ON ADVERTISING, ETC.,**

Any rule of a Council of Elders dealing with advertising, publishing of matter or any similar matter that –

- (a) discriminates or may discriminate against any candidate or class of candidates at an election; or
- (b) gives preference or may give preference to one candidate over another candidate in an election; or
- (c) gives preference or may give preference to one interim registered political party over another interim registered political party; or
- (d) allows a Council of Elders to do any of the matters specified in Paragraphs (a), (b) or (c),

is, to the extent that it discriminates, may discriminate, gives preference, may give preference, or allows a Council of Elders to discriminate or give preference, void.

**178. INSTITUTION OF PROCEEDINGS FOR OFFENCES.**

(1) The Manager shall, where the Public Prosecutor so advises, institute legal proceedings against a person committing an offence against these electoral provisions.

(2) Nothing in Subsection (1) affects the rights of any person to institute proceedings in respect of an offence against these electoral provisions.

**179. CERTIFICATE EVIDENCE.**

On a prosecution under these electoral provisions, the certificate of the Manager or the Returning Officer that an election referred to in the certificate was duly held and that the person named in the certificate was a candidate at the election is evidence of the matters stated.

**180. ELECTORAL MATTER MAY BE SENT BY ELECTRONIC MEANS.**

(1) In all cases where it is impracticable to communicate any electoral matter by post or otherwise without occasioning undue delay, any electronic advice communicated in the ordinary course shall suffice for all the purposes of these electoral provisions as if the matter sent electronically had been communicated in the manner prescribed by these electoral provisions.

(2) Subject to Subsection (3), where, after the result of an election has been declared, the Returning Officer has certified by electronic communication addressed to the Manager –

- (a) that by reason of distance, or the infrequency of, or any interruption to, the postal services, the writ for the election, endorsed by the Returning Officer with the name of the candidate elected, cannot reach the Manager within 21 days; and
- (b) the name of the candidate elected,

the Manager may endorse upon a copy of the writ a certified copy of the electronic communication received by him, and the copy so endorsed shall have the same force and effect as if it were the original writ duly endorsed by the Returning Officer.

(3) If, upon the return of an original writ, any inconsistency is found to exist between the original writ and the copy of the writ endorsed under Subsection (2) as to the name of the candidate elected, the copy shall thereupon cease to have any force or effect, and action shall be taken in accordance with the endorsement on the original writ.

**181. AVERMENTS DEEMED TO BE PROVED.**

In a prosecution in a Court of summary jurisdiction in respect of a contravention of the provisions of these electoral provisions relating to compulsory enrolment, instituted by an officer or by a person acting under the direction of an officer, the averments of the prosecutor contained in the information of complaint shall be deemed to be proved in the absence of evidence to the contrary.

**182. DEFENDANT MAY BE CALLED UPON TO GIVE EVIDENCE.**

Where a person has secured enrolment in pursuance of an electoral claim, or has made a claim for enrolment or transfer of enrolment, and proceedings arise in a Court of competent jurisdiction in respect of the claim for enrolment or transfer of enrolment, the person may be

called upon to give evidence upon oath to the Court as to the truth of the statements contained in the claim for enrolment or transfer of enrolment.

**183. PRODUCTION OF CLAIMS FOR ENROLMENT, ETC.,**

(1) A person who is, or has been, an officer shall not, except for the purposes of these electoral provisions, be required –

- (a) to produce in Court, or give evidence of, a claim for enrolment or transfer of enrolment under these electoral provisions; or
- (b) to divulge or communicate to a Court any matter or thing in relation to a claim for enrolment or transfer of enrolment under these electoral provisions, being a matter or thing that has come under his notice in the performance of his duties or functions under these electoral provisions.

(2) In this section, “officer” includes any person performing duties, or exercising powers or functions, under or in relation to these electoral provisions.

**184. PRESERVATION OF BALLOT PAPERS.**

(1) At the end of the polling period, the presiding officer at each polling place shall –

- (a) place the certified list of voters for the polling place used in the polling place in a sealed parcel; and
- (b) endorse on the parcel a description of its contents; and
- (c) transmit the parcel to the Returning Officer with the least possible delay.

(2) Subject to Subsection (3), all ballot papers, certified lists of voters and declarations used at or in connection with an election shall be preserved until the election can no longer be questioned, when they shall be destroyed.

(3) Ballot papers, certified lists of voters and declarations referred to in Subsection (2) shall be preserved for a period of at least six months after the date of the declaration of the poll.









**ENDORSEMENT OF THE CONSTITUTION OF THE AUTONOMOUS REGION OF  
BOUGAINVILLE (ADOPTED BY THE BOUGAINVILLE CONSITUENT  
ASSEMBLY ON THE 12 NOVEMBER 2004)**

**I, PAULIAS MATANE, G.C.M.G., K.St.J., Governor General, by virtue of the powers conferred by Section 285(4) of the National Constitution, and all other powers me enabling, acting with, and in accordance with, the advice of the National Executive Council, hereby ENDORSE the Constitution of the Autonomous Region of Bougainville (adopted by the Bougainville Constituent Assembly on 12 November 2004) (being the Bougainville Constitution for the purposes of Part XIV of the National Constitution).**

**DATE this day of 2004**

**GOVERNOR-GENERAL**

**CERTIFICATE.**

**I, JOHN MOMIS, Chairman of the Bougainville Constituent Assembly, hereby CERTIFY that the foregoing is a fair copy of the Constitution of the Autonomous Region of Bougainville adopted by the Bougainville Constituent Assembly at Buin on 12 November 2004.**

**CHAIRMAN,**

**BOUGAINVILLE CONSTITUENT ASSEMBLY.**