

**CONSTITUTION OF THE AUTONOMOUS REGION OF
BOUGAINVILLE – PROVISIONS RELEVANT TO THE
REFERENDUM**

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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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,

is a Bougainvillean.

(2) 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.

(3) 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.

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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;
- (a) the motion under Paragraph (a) must be passed by a three-quarters absolute majority vote;
- (b) 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) shall not be moved in the House of Representatives unless written notice of the motion has been -

- (a) delivered to the Speaker; and
- (b) intimated 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).

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

Division I. - Amendment of Part XIV (Bougainville Government and Bougainville Referendum) of the National Constitution, etc.,

217. REQUIREMENT 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 requirement for amendment of a relevant National Constitutional Law is 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 provision 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 216(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, consult, within a reasonable time, 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.

(6) The House of Representatives may, by an absolute majority vote, decide that the consultation referred to in Subsections (4) and (5) is not required in respect of a matter considered by it, in its absolute discretion, to be non-controversial.

(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 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.

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;
 - (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.

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 192 (*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
- (a) representatives of the traditional chiefs and other traditional leaders at district level; and
- (b) 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 65 (*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 number of members of the House of Representatives voting for and against the proposal,

and the certificate is, in the absence of proof of 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.