

No. 9 of 2006

*Emergency Act 2006.*

**Certified on: 25<sup>th</sup> September 2006**

**AUTONOMOUS REGION OF BOUGAINVILLE.**

**No. 9 of 2006**

***Emergency Act 2006.***

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**AUTONOMOUS REGION OF BOUGAINVILLE.**

**No. 9 of 2006**

**AN ACT**

**entitled**

***Emergency Act 2006,***

Being an Act as required by Section 204 (*management and control of emergencies*) of the *Bougainville Constitution*, to make provision generally for the management and control of emergencies and in particular for the matters specified in that section, and for related purposes.

MADE by the House of Representatives.

**PART I. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision 111.3.C (*qualified rights*) of the *National Constitution*, namely –

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *National Constitution*; and
- (b) the right to freedom of expression conferred by Section 46 of the *National Constitution*; and
- (c) the right to freedom of assembly and association conferred by Section 47 of the *National Constitution*; and
- (d) the right to freedom of employment conferred by Section 48 of the *National Constitution*; and
- (e) the right to privacy conferred by Section 49 of the *National Constitution*; and
- (f) the right to freedom of information conferred by Section 51 of the *National Constitution*; and
- (g) the right to freedom of movement conferred by Section 52 of the *National Constitution*.

is a law that is made for the purpose of giving effect to the public interest in public safety, public order, public welfare and public health.

**2. INTERPRETATION.**

In this Act, unless the contrary intention appears –

“disaster” includes an earthquake, volcanic eruption, storm, tempest, flood, tsunami, 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 occurrence such as oil-spill, industrial action 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;

“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) a disaster; 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;

“emergency area” means the area in respect of which a declaration of a Bougainville emergency has been made;

“Emergency Committee” means an Emergency Committee established under Section 14;

“Emergency Controller” means a person appointed as an Emergency Controller under Section 11;

“emergency law” means an Emergency Act or an Emergency Regulation;

“liquor” means wine, spirits, ale, beer, porter, stout, cider, perry or any liquid containing alcohol ordinarily used or fit for use as a beverage;

“motor vehicle” means any motor car, motor carriage, motor cycle, motor lorry; omnibus, motor tractor, or other vehicle powered wholly or partly by any volatile spirit or by steam, gas, oil, electricity or coconut, or by any means other than by human or animal power and includes a trailer;

“period of declared Bougainville emergency” means any period during which a declaration of a Bougainville emergency under Section 200 (*declaration, etc., of Bougainville emergency*) of the *Bougainville Constitution* 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*) of the *Bougainville Constitution* 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 national emergency is in force in Bougainville by virtue of Section 323 (*declaration of national emergency in Bougainville*) of the *National Constitution* and Part XIX (*Emergency Procedures and Powers*) of the *Bougainville Constitution*;

“public body” means any-

(a) Department or Division; or

(b) Bougainville Government Service; or

(c) authority or instrumentality or other body (corporate or incorporated) established by or under the *Bougainville Constitution* or a Bougainville law.

“vehicle” includes motor vehicle.

### 3. APPLICATION.

(1) Subject to Subsection (2), this Act applies where a declaration of a Bougainville emergency has been made under Section 200 (*declaration, etc., of Bougainville emergency*) of the *Bougainville Constitution* and is still in force.

(2) This Part and Sections 14 and 15 apply where –

(a) a declaration of a Bougainville emergency has been made under Section 200 (*declaration, etc., of Bougainville emergency*) of the *Bougainville Constitution* and is still in force; or

(b) a declaration of a national emergency has been made under Section 228 (*declaration, etc., of national emergency*) of the *National Constitution* in respect of the whole of Papua New Guinea, or in respect of Bougainville

and substantial areas of Papua New Guinea other than Bougainville, or in respect of Bougainville or part of Bougainville and is still in force.

## **PART II. – EMERGENCY MANAGEMENT.**

### ***Division 1. Emergency Controller.***

#### **4. EMERGENCY CONTROLLER.**

Where a declaration of a Bougainville emergency has been made under Section 200 (*declaration, etc, of Bougainville emergency*) of the *Bougainville Constitution*, the Bougainville Executive Council shall, by notice in the Bougainville Gazette, appoint a person or persons, with qualifications or experience appropriate to control the situation giving rise to the emergency, to be the Emergency Controller or Emergency Controllers.

#### **5. DUTIES OF AN EMERGENCY CONTROLLER.**

An Emergency Controller shall –

- (a) carry out any directions given to him by the Bougainville Executive Council; and
- (b) subject to any directions under Paragraph (a), do such things as he considers necessary and within his powers to rectify the situation arising from the disaster; and
- (c) report as required by the Bougainville Executive Council to the Bougainville Executive Council on the management of the disaster; and
- (d) furnish regular reports to and liaise with the Emergency Committee.

#### **6. POWERS OF AN EMERGENCY CONTROLLER.**

(1) An Emergency Controller has power, in accordance with an emergency law or emergency laws to: -

- (a) control the movement of persons, animals, vehicles, goods and things; and
- (b) evacuate persons from one part of the emergency area to another part or to a place outside the emergency area but within Bougainville; and
- (c) requisition animals, vehicles, accommodation, goods and things; and
- (d) maintain and regulate transport of all kinds; and
- (e) regulate or prohibit the use of roads; and
- (f) enter land, buildings and structures, if necessary by force and with assistance; and
- (g) erect buildings or structures, make excavations or do other matters or things on land; and
- (h) authorize persons to enter on and search any premises; and
- (i) order persons to perform labour of such kind and in such manner as he thinks fit; and
- (j) prohibit or restrict the sale and consumption of liquor.

***Division 2. – Emergency Laws.***

**7. EMERGENCY ACTS.**

(1) Before or during a period of declared Bougainville Emergency the House of Representatives may make Acts (to be known as “Emergency Acts”) to make provisions for dealing with the emergency, and with matters arising out of it.

(2) An Emergency Act shall be expressed to be an Emergency Act.

(3) Except to the extent necessary to bring it into effective operation at the time when it otherwise comes into operation, an Emergency Act made before the commencement of a period of declared Bougainville emergency shall not come into operation until the commencement of the period.

(4) An Emergency Act applies only in respect of the emergency area.

**8. EMERGENCY REGULATIONS.**

(1) Subject to this part, at any time before the end of the period of 24 hours after the House of Representatives first meets after the commencement of a period of declared Bougainville emergency, the Bougainville Executive Council may make laws (to be known as “Emergency Regulations”) to make provision for dealing with the emergency concerned and with matters arising out of it, and to the extent that the nature of the emergency or its requirements necessitate the making of the provisions before the House of Representatives can reasonably consider the matter.

- (2) An Emergency Regulation shall be forwarded immediately to-
- (a) the Speaker for presentation to the House of Representatives; and
  - (b) an Emergency Committee for the purpose of enabling the Committee to perform its functions under Section 14.

(3) Unless earlier extended by a decision of the House of Representatives, an Emergency Regulation expires at the end of the period of 28 days after the making of the declaration of the Bougainville emergency, or at the end of the period of 14 days after the House of Representatives first meets after the commencement of the declared Bougainville emergency, whichever first happens.

(4) An Emergency Regulation applies only in the emergency area.

**9. CONTENT, OPERATIONS, ETC., OF EMERGENCY LAWS.**

(1) Subject to this Part, an emergency law may make provisions for the peace, order and good government of Bougainville to the extent reasonably required for achieving its purpose.

(2) Subject to Subsections (3) and (4), an emergency law may alter, wholly or partly, and absolutely or subject to conditions, any provisions of Division III.3 (*basic rights*) of the *National Constitution* to the extent

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 regards for the rights and dignity of mankind.

- (3) An emergency law may not alter-
  - (a) Section 35 (*right to life*), or
  - (b) Section 36 (*freedom from inhuman treatment*), or
  - (c) Section 45 (*freedom from conscience, thought and religion*), or
  - (d) Section 50 (*right to vote and stand for public office*), or
  - (e) Section 55 (*equality of citizens*), or
  - (f) Section 56 (*other rights and privileges of citizens*)

of the *National Constitution*.

- (4) In addition, an Emergency Regulation may not alter-
  - (a) Section 46 (*freedom of expression*), or
  - (b) Section 47 (*freedom of assembly and association*), or
  - (c) Section 49 (*right and privacy*), or
  - (d) Section 51 (*right to freedom of information*),

of the *National Constitution*, and may not provide for a sentence of imprisonment exceeding nine months.

(5) In the case of an inconsistency between a valid emergency law and any other law, the law made later prevails.

#### **10. REVOCATION, ETC., OF EMERGENCY LAWS.**

- (1) An Emergency Act may be altered-
  - (a) by an Act of the House of Representatives, or
  - (b) in an urgent case, where to do so would not be contrary to the positive intention expressed by a resolution of the House of Representatives dealing with the particular emergency, by an Emergency Regulation.
- (2) An Emergency Regulation may be altered at any time by-
  - (a) the Bougainville Executive Council; or
  - (b) an Emergency Act; or
  - (c) a decision of the House of Representatives.

#### **11. AUTOMATIC TERMINATION OF EMERGENCY LAWS, ETC.,**

(1) Subject to Section 12, an emergency law, unless extended under Section 8(3) or earlier repealed, shall be deemed to be repealed immediately after the end of the day on which the period of declared Bougainville emergency ends.

(2) Where an Emergency Regulation took effect and is then deemed to be repealed under Subsection (1), the repeal of that Emergency Regulation shall revive the previous law from the date of that repeal as if the repealed Emergency Regulation had not been made.



**12. EXTENSION OF EMERGENCY ACTS.**

To the effect that its extension is necessary to deal with the result of the period of declared Bougainville emergency and is reasonably justified in a society having a proper regard for the rights and dignity of mankind, the operation of an Emergency Act may be extended from time to time after the end of the period of declared Bougainville emergency, by decision of the House of Representatives by an absolute majority vote, for a period or periods each not exceeding two months.

*Division 3. – House of Representatives Supervision and Control*

**13. HOUSE OF REPRESENTATIVES CONTROL.**

The House of Representatives shall exert control over an emergency in accordance with Section 203 (*House of Representatives control*) of the *Bougainville Constitution*.

**14. EMERGENCY COMMITTEE.**

(1) At the first meeting of the House of Representatives following the declaration of an emergency referred to in Section 199 (*declaration of emergencies generally*) of the *Bougainville Constitution*, the House shall appoint an Emergency Committee consisting of five Members of the House, one of whom shall be appointed Chairman of the Committee.

(2) No Minister shall be a member of an Emergency Committee.

(3) The functions of an Emergency Committee, in respect of a period of declared Bougainville emergency, are -

- (a) to monitor, on behalf of the House of Representatives, the management of the emergency and the need for and operation of the emergency legislation; and
- (b) to report to the House of Representatives on the management of the emergency and the need for and operation of the emergency legislation; and
- (c) to present to the House of Representatives a statement as to whether the declared Bougainville emergency should continue.

(4) The functions of an Emergency Committee, in respect of a period of declared national emergency, are -

- (a) to monitor, on behalf of the House of Representatives, the need for and operation of the emergency legislation; and
- (b) in order to enable the Autonomous Bougainville Government to co-operate with the National Government in the management of the national emergency, insofar as relating to Bougainville, as required by Section 323(3) of the *National Constitution*, to report to the House of Representatives on the management of the National emergency and on the operation of the emergency legislation and on whether the national emergency should continue in respect of Bougainville.

**15. PRIORITY OF EMERGENCY BUSINESS IN THE HOUSE OF REPRESENTATIVES.**

During a period of declared Bougainville emergency and while any emergency law is in force, first priority shall, subject to any express provision of the *Bougainville Constitution* to the contrary, be given in the House of Representatives to any question, notice, motion or other process relating to the emergency or to an emergency law.

**PART III. – MISCELLANEOUS.**

**16. OFFENCES.**

A person who –

- (a) fails or refuses to comply with an order or instructions given by an Emergency Controller, in the exercise of his powers under this Act; or
- (b) hinders or obstructs a person in the performance of his duties under this Act,


is guilty of an offence.

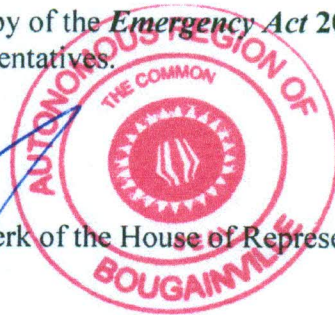
Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year, or both.

**17. REGULATIONS**

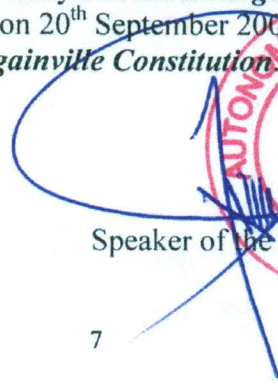
The Bougainville Executive Council may make regulations, not inconsistent with the Act, prescribing all matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

I hereby certify that the foregoing is a fair copy of the *Emergency Act 2006* which has been made by the House of Representatives.

  
Acting Clerk of the House of Representatives.



I, NICHOLAS PENIAI, hereby certify that the *Emergency Act 2006* was made by the House of Representatives on 20<sup>th</sup> September 2006 by an absolute majority vote in accordance with the *Bougainville Constitution*.

  
Speaker of the House of Representatives.

