



Office of the President

MINISTER RESPONSIBLE FOR INTER-GOVERNMENTAL RELATIONS, MEDIA AND COMMUNICATIONS AND
MINERAL AND ENERGY RESOURCES

JSB Statement by President Hon. Ishmael Toroama, MHR, Wednesday, May 8, 2024.

Honorable Prime Minister and Co-Chair: I wish to firstly thank you for calling this meeting together, since the last JSB we had on the 30th of July last year. The issue on the table is the ratification of the referendum results.

Ratification, as the word is used by the Bougainville Peace Agreement, is the last step in a deal we made with the Government of Papua New Guinea - more than 15 years ago. The BPA states in the Introduction and Outline the following words: “The outcome of the referendum shall be subject to ratification (final decision-making authority) of the National Parliament”.

Mr. Prime Minister, these words are repeated nowhere outside of the BPA; nor were they repeated particularly the new Part 14 of the Constitution that was inserted to implement the BPA.

The only provision in the Constitution was section 342 which talks about a process of consultation between the two Governments over the implementation of the referendum results and the series of steps necessary for the matter to be considered by the Parliament – i.e. the tabling of the referendum results in Parliament; the decision of the Parliament; and lastly the notification of the Bougainville Government of the decision of the Parliament.

Captured by the words in BPA was the deal we made with the Government of Papua New Guinea over the outcome of the referendum; and it was on the basis of this promise by the National Government to bring the matter for ratification in the Parliament that we, the Bougainville leadership, committed ourselves to disarm and join the peace process and achieve our goal of independence through a referendum to be held 15 years in the

future, where our aspiration as fighters for independence would be tested against the resolve of our people over that same future.

Knowing that our goal of independence was to be provided for in the Constitution of Papua New Guinea marked that turning point in the war where I personally made up my mind to join the peace process on the belief that this constitutional pathway would take me my goal as a fighter.

Today, I am here before you not as a fighter but as a political leader.

Sitting with you here, Mr. Prime Minister as the co-chair of the JSB, is but an accident of history. My goal to attain Independence, through a constitutionally guaranteed process, has not left me.

Mr. Prime Minister, this is but a brief introduction to bring home the core message of my speech today: If the Papua New Guinea Parliament does not understand this background it will not understand why its role is confined to a mere blessing of the outcome of the referendum, and nothing else.

That is the brief background to that deal.

JSB Resolution

In our JSB meeting on 30th of July last year we took the ratification issue from our technical teams and mandated our two Ministers responsible to develop the sessional order which we decided would be the appropriate pathway to bring the referendum results to the Parliament.

In that JSB resolution we tasked Mr Makiba and Mr Masatt to develop the sessional order and resolve three key issues relating to that task. These were (1) the required voting majority necessary to support the decision of Parliament; (2) the number of sittings required to deliberate on the matter; and (3) the secret voting option put forward by your side.

Mr. Makiba also placed a draft sessional order in the hand of our Attorney General for our consideration. In a matter of a week we developed our own version of a draft sessional order which was given to Mr Makiba. Although these tasks stem from directly the JSB resolution the two Minister's also understood that there were other matters to attend to.

These included the outcome of the consultations that ended up in the Era Kone Covenant which we subsequently signed following the conclusion of those consultations.

A major requirement of the Era Kone Covenant was for a joint report to guide Parliament once a motion for the endorsement of the result was tabled by Minister Makiba to Parliament.

So these are the outstanding issues that have remained unresolved as between the two Ministers – on top of the unresolved issue of the required voting majority. We believe we are correct in law to recommend for a simple majority since the question to the National Parliament to endorse the referendum result is a simple ordinary motion of Parliament; while the National Government believes that the consequences of a positive decision for the independence of Bougainville necessitates the treatment of the motion for ratification as a bill to amend the Constitution and therefore – by law – in the opinion of the State Solicitor -requires a two-thirds absolute majority in Parliament.

Mr. Prime Minister, if we do not resolve this particular issue here, JSB is now bound to engage a moderator(s) to address this. The purpose of this JSB therefore is to provide that green light for a moderator and to task our officials to prepare the necessary documentation.

Working Moderator

In addition, may I also add ABG's viewpoint on extending the scope of the moderator to deal with not just this outstanding issue but on other issues concerning the implementation of JSB resolutions. Since the beginning of JSB's work, not just as a dispute settlement body but a body to provide oversight to the implementation of JSB resolutions the same issues have appeared time and again on the ABG agenda. The idea of a Working Moderator who is not involved in the business of either governments is the way forward, and I request that JSB endorses the concept and task the officials to develop a TOR for a Working Moderator.

PM Commitments

In one of my previous engagements with you, I made my views to you that your government can take control of the PM Commitments. Now my

government has a firm position to discontinue the Prime Minister's Commitment of K100M per annum to the ABG post 2024 and convert the PM's Commitment in the 2024 national Budget and 2024 ABG Budget into annual RDG for 2024 and Arrears.

Cocoa Levy.

One of matters I want to bring to your attention is the cocoa levy. I have been informed that your state solicitor has provide a advice that Bougainville Agriculture Commodities Regulatory Authority (BACRA) has no legal authority to collect cocoa levy fees on cocoa transship out of Bougainville. Let me remind Mr. Prime Minister that section 296 of the National Constitution, states, that national laws cease to apply in Bougainville once ABG enact its own laws. I find this State Solicitor's advice misleading based on the assumption that we don't have a law.

Mr. Prime Minister, may I come back to the point that I made in my introduction.

There is no point in asking the Parliament to understand the role they have been asked to perform if we – and I mean the JSB comprising of those now seated around this table – do not understand the background to the BPA and the deal we made regarding the outcome of the referendum.

Mr. Prime Minister, you may recall that you asked me this question, in a meeting we had this year at about the same time that mass-looting were taking place in Port Moresby. You asked, and forgive me if I have not rephrased your question properly. You asked whether it was really necessary to get the Parliament to make a formal decision, if the people have already spoken for independence?

Sir, with all due respect, at first hearing that from you, I knew that you have, in fact, hit the nail on its head because the hidden wisdom of your question is the lack of understanding we all have of the role intended by the parties in term of ratification of the outcome of the referendum vote.

It goes to the very difficulties that you are grappling with in terms of the effect of the constitutional framework – in alignment with the BPA provisions – and what that means for the role of Parliament at the end of this process. I would like to lay out in full what I think was our deal with the National Government.

THAT THE GOVERNMENT OF PAPUA NEW GUINEA WILL AMEND THE CONSTITUTION TO ALLOW OUR CHOICE OF INDEPENDENCE TO BE PUT TO THE PEOPLE OF BOUGAINVILLE FOR THEIR FORMAL VOTE THROUGH A REFERENDUM 15 YEARS INTO THE FUTURE; AND THAT PROVIDED THAT THE NATIONAL GOVERNMENT IS ALSO ENTITLED TO PUT ALTERNATIVE CHOICES TO THE PEOPLE, THE GOVERNMENT THROUGH PARLIAMENT WILL BLESS THE OUTCOME OF THE VOTE NO MATTER WHAT THE RESULT WAS. THE FACT OF THE MATTER IS THAT WE DID NOT KNOW WHAT THE REFERENDUM QUESTION IS AND WHAT THE RESULTS WILL BE BUT WE MADE A DEAL TO ACCEPT WHATEVER THE REFERENDUM OUTCOME IS.

Mr Prime Minister, this was the deal we made and consequently it is clear that the rationale for engaging the Parliament to exercise its final decision-making authority was not a statement of the supremacy of the Parliament but the novelty of its supremacy in blessing the work of the Parliament that had approved the amendment and bring about a new constitutional order in Papua New Guinea.

Mr Prime Minister, this is the task we collective have in the true spirit of the Bougainville Peace Agreement and Part 14 of the Constitution – which in the preamble to the Agreement calls for the joint creation of a solution through the framework of the Supreme law of this country.

However, before I go further let me back track a bit in history not into the backwaters of the inspiration of the people for independence but at the formation of the union of peoples for the new nation of Papua New Guinea in 1975, when this Constitution came into effect.

On the eve of independence John Momis, then a Catholic priest, presented a petition to the United Nations in a form of a letter that requested the United Nations to cause the exclusion of Bougainville from the pending union of former territories under the mandate of Australia since 1945 into the new nation of Papua New Guinea. We got no response from the UN on that petition.

On the coming into effect of the Constitution in 1975 we got a form of autonomy under the Constitution of PNG through an ordinary law of the Parliament to resolve the uprising that occurred on Bougainville, which

was resolved through a compromise under the first Bougainville Agreement 1976. This agreement was crafted by some of the world's experts on the matter.

However, we have learned from our experience from this experiment that the National Government did on Bougainville - in terms of a long term or lasting solution for Bougainville. The first lesson is that we will never trust the National Government. Why? Because in a matter of 10 to 15 years the deal was swept away and the so-called "special status" that Bougainville agreement was but a meaningless phrase.

The second lesson we learned was that words are not sufficient; and that a deal – if it is to be deal at all – has to be locked in a double entrenchment mechanism to ensure accountability in the future.

It is from these lessons that the Bougainville Peace Agreement was constructed. It was also from these lessons that Part 14 was developed by the legislative draftsman.

The Uniqueness of the Bougainville Peace Agreement

Mr Prime Minister, I appeal to all good people of PNG to see the cause we have pursued in our quest for independence. All you have to do is read, and re-read the Bougainville Peace Agreement and see how it was woven into the fabric of the Constitution of Papua New Guinea to not only institute a new constitutional order in PNG's political life, but to protect the deals that were made in the Bougainville Peace Agreement - including the deal on the ratification of the outcome of the referendum.

The uniqueness of the BPA is not only about the promises contained in it; but the partnership that was created with the Supreme law of Papua New Guinea. The misinterpretation people give to the role of the Parliament stems directly from the lack and understanding and appreciation of the way the BPA works with the Part 14 of the Constitution.

The Constitution through Part 14 protects the deal that was made over the ratification of the outcome of the referendum through these fundamental principles.

The first is that the intentions of the parties overrides all attempts to legally construct an idea that is being addressed in the implementation of the referendum result.

The second is that Part 14 relates only to Bougainville and it goes without saying that it does not apply to other parts of the country.

The third principle is that the provisions of Part 14 overrides any other parts of the constitution and where there is a conflict between the provisions of part 14 with any other parts of the constitution the provisions of part 14 prevails over other parts of the Constitution.

And the last principle is that of double entrenchment – which simply means that before we change anything in Part 14 of the Constitution – you need our prior approval through the House of Representatives. In simple terms we have a two-key combination master key.

Mr Prime Minister, I wish to repeat my point again. The Parliament cannot be expected to understand the novelty of the deal regarding their role in this process unless those of us around this table understand it absolutely. Two years ago I pleaded with you to let my people go. I did not plead with you to get rid of this non-binding nonsense. It is a western-derived concept has no place in our tradition. Once yumi passim tok, TOK IDAI. All Parliament is asked to do is to give its blessing to a deal made more than 15 years ago. It is not being asked to reject the deal and manufacture a reason to review anything.

Before I conclude let me say a word or two to our Bougainville Members of Parliament. And I say this with all due respect to them as leaders and representatives of our people in Parliament. Our people expect your full support and commitment to their cause. They have done their part; it is now your part. The last thing that we want to hear is that some of you are scheming around and devising options that undermine our cause; and that is not good for your credibility in the eyes of our people.

In conclusion let me say this. I am committed to the independence of Bougainville. I appeal to our good Parliamentarians to understand our cause. And for our good members of Parliament please understand the novelty of the deal we made with the National Government and the blessing we require from your decision. Let the DEAL we made with your predecessors more than 15 years ago come into fruition.

Mr Prime Minister,

ALL THAT IS REQUIRED UNDER THE DEAL IS FOR YOU AND YOUR GOVERNMENT TO BLESS MY PEOPLE WITH YOUR DECISION IN PARLIAMENT AND OUR COUNTRIES WILL BE BLESSED FOREVER.

Ishmael Toroama

President of the Autonomous Bougainville Government