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Second Reading Speech

By President John Momis

***BOUGAINVILLE MINING (TRANSITIONAL ARRANGEMENTS) BILL
2014***

**To the Bougainville House of Representatives, Kubu, Autonomous Region
of Bougainville, 8th August 2014**

Mr. Speaker:

I rise to present the Second Reading Speech in relation to the *Bougainville Mining (Transitional Arrangements) Bill 2014*.

In doing that, I must explain why I will present the speech, and not my colleague, the Minister for Natural Resources, the Hon. Michael Oni. The main reason is that the subject of mining is of such political importance to Bougainville. As a result ever since 2006, when the first ABG President, the late Joseph Kabui requested transfer of mining powers from the National Government, it has been common for the President of the day who has taken primary responsibility for major policy initiatives on mining, both in Cabinet and in this House. That has certainly been the case during the four years of my Presidency.

Of course, it continues to be the case that Minister Oni handles mining issues on a day to day basis. More importantly, as soon as Bougainville's first mining law is passed by this House, it will be Minister Oni who will take political responsibility for the new law as the centre-piece of his portfolio.

Mr. Speaker:

I am very proud indeed to be the President who presents the Bill for the first Bougainville Mining law to this House. As we all know, Bougainville has bitter experience of previous mining laws applicable to Bougainville. This terrible experience began with the Australian colonial Mining Ordinance. CRA began exploration in Bougainville under that law. It continued under the extremely unjust and unfair Mining (Bougainville Copper Agreement) Law 1967, again a law of the Australian colonial government. After PNG Independence in 1975, our sad mining history continued under mining laws of the Independent State of Papua New Guinea after September 1975.

At many points in the 50 years since 1964, Bougainvilleans have objected to the unfair mining laws. Successive colonial and PNG governments failed to listen to. That was a critical factor in the origins of the Bougainville conflict.

So, against that historical background, my Government has been determined to move as quickly as possible to complete the transfer of mining powers from PNG to the ABG. That transfer will be complete only when the ABG has passed its own mining law.

A mining law appropriate to our needs must deal with mining in Bougainville in ways that protects the interests of our people. Mining can only occur if it is done in ways that respect our people's rights, brings as many benefits as possible, and does the least possible amount of damage to our land, environment and culture.

When the first request for transfer of mining powers was made by the late Kabui in 2006, we always knew that we were working towards our own mining law. But it has taken longer to achieve that goal than we all hoped. But it's always been a key goal of my Government. We have worked steadily to achieve it.

Soon after we came to office in mid-2010, I learnt that the Bougainville Mining Department was working on development of our Bougainville mining policy and law. Expert and independent consultants were to be provided under a World Bank funded project. But it took much longer than expected for the consultants to be selected and other arrangements to be made.

Then in 2011 and 2012, I began to become concerned about a number of 'back-door' deals over mining in Bougainville. Outside economic interests, with very dubious or limited track records in the mining industry were entering into arrangements with Bougainville factions and leaders. They were doing this without coming in the front door – that is, they were not consulting with, or getting approval of the ABG. Yet we are the legitimate Bougainville government, mandated by our people.

Together with my Cabinet, I was deeply concerned that the needs and interests of ordinary Bougainvilleans could not be protected when such outside interests came through the back door. They were signing deals with faction leaders, or small and unrepresentative groups of landowners, organised for them by faction leaders. The track records and credibility of the outsiders could not be evaluated by the ABG Mining Department. The outsiders were raising false expectations. Some of the outsiders and their local supporters were also trying to bully the ABG into adopting an ABG policy and mining law which would recognise their unscrupulous back door deals.

So two years ago, in July 2012, I directed the Bougainville Administration to begin work to develop an interim Bougainville mining law. I wanted it to be interim because I knew we were still working towards our new long-term law. I directed the officers to use the existing PNG *Mining Act 1992* as a starting point.

They were also directed to make many changes to the PNG law. One big change was to get rid of the part of the PNG Mining Act that says that only the State owns minerals. The officers were directed to give effect to section 23 of the Bougainville Constitution. That section asks the ABG to do its best to recognise any **existing** customary rights of ownership of minerals whenever it makes policy or law on mining.

The officers were also told to include in the draft law the experience the ABG had been developing since 2009 of establishing associations to represent the interests of landowners of the areas of the mining and other leases associated with the Panguna Mine. They were also told to look at ways of ensuring that as much as possible small-scale mining in Bougainville should be legal.

These were just some of the many changes incorporated into the existing PNG Mining Act. We gradually adapted it to become what we decided to call the *Bougainville Mining (Transitional Arrangements) Bill 2014*.

Drafting instructions for the Bill were considered by BEC in October 2012. The first draft of the Bill was considered and approved by BEC for further development in December 2012. Since then BEC has considered and approved three further drafts of the Bill. The last draft, of May 2014, was approved in June 2014. As a result, the Bill was first tabled in this House earlier this week.

Because of the great importance attached to developing a Bougainville Mining Law my Government, and by the people of Bougainville, my Cabinet has ensured that there has been widespread consultation on the draft Mining Bill. In particular:

- we have consulted our people about both the future of Panguna the Mining Bill through five large and inclusive regional forums, as well as forums for former combatants and women;
- we have had extensive further consultations with many former combatant leaders, including a number of consultations with Mr. Sam Kauona some supporters;
- we have had extensive information and consultation sessions with the executives of the nine associations established to represent the landowners of the leases associated with the Panguna Mine;
- officials have also held information and consultation sessions about the Bill with some of the communities in the landowner association areas;
- yesterday, we held a full day workshop for all members of this House to inform that and consult them about the Bill.

We have learned a great deal through this consultation. We have been helped by many of the views advanced – including some of those from Mr. Kauona.

But in the end, the decisions about finalising the Bill, and adopting it as law, are the responsibility of the legitimate leaders of Bougainville mandated by the people through elections of the ABG. In other words, final decisions rest with us, the members of this House. That is what we are elected for – to make decisions on behalf of our people.

I am aware that there are critics of the Bill who say that there has been no consultation, or not enough consultation, or that the Bill should go to all Bougainvilleans. For example, Mr. Philip Miriori was quoted in yesterday's Post Courier as saying that 'the total population [of Bougainville] was not consulted'. But:

Mr. Speaker:

The unenforceable Bougainville Objectives and Directive Principles in our Constitution do call on the ABG to do its best to consult all people on major new laws, but only "as far as is practicable". So clearly, consulting all people does not mean talking to every single one. I firmly believe that we have done what has been practicable.

Four important points must be made here about what is practicable.

The first is that no Bougainville government in the almost 40 years since the first Bougainville provincial government was established has ever consulted about any law as much as the ABG has consulted about this law.

Second, we have consulted far more than the National Government consults about its laws. Can anyone imagine the National Government holding consultative regional forums as we have done?

Thirdly, the ABG is facing circumstances which create urgency for the passing of the law.

- One issue here is my concern that the National Government may have interests in taking over majority ownership in BCL . As a result, it was essential to pre-empt that action.
- Another issue creating urgency was the growing activity by, and pressure from, the outsiders and their Bougainvillean agents trying to get backdoor access. But of course it is the same people involved in trying to get backdoor access to minerals who are trying to delay the Bill by saying we should consult more. It seems to me that they are selfish people, only interested in their own interests.
- An additional issue urgency issue involves the demand heard in all stages of the widespread public consultation that negotiations for and steps in establishing any future mine in Bougainville, and especially preparations for negotiations on the future of Panguna, should only proceed when Bougainville has its own mining law.

A fourth and final issue about practicability of consultation is that this Bill is intended to be an interim law – a transitional law. The Mining Department has continued to work on our long-term policy and law. The long-term policy document was approved by BEC in June. A first draft of the long-term law should be ready in August. We expect that there will then be several more drafts as we gradually improve it and get it ready for this House to consider.

My Minister for Natural Resources tells me that he expects the final draft to be ready for the House by the end of this year or early next year. During our more recent public consultations, he promised the March Women’s Mining Forum, and a large meeting of former combatant leaders that there would be even more widespread consultation about the draft long-term Bill.

Mr. Speaker:

My Cabinet, my Minister for Natural Resources, and I myself, as President, are all very proud of this our first Bougainville Mining Bill. We are especially proud that our Bill is completely unique in the world in the focus it gives to protecting the interests of the people of Bougainville – that is, those who are Bougainvilleans by custom, and who own land by custom.

Under section 13, for the first time under written law, all of our customary landowners will own the minerals in, on or under their land. Let me emphasise here that owners of non-customary land will not own any minerals found under their land. That means that if minerals are found in land owned by the state, or leased by the state to others, or owned by freehold, the owner of the land will not own the minerals. That will be the case with plantation land, most town land, most if not all church land, and state land. Instead, the ABG will own any such minerals.

Customary owners will have many rights. In particular, they will have a right of veto over the grant of any exploration licence over their land. They have the power to say “no”. We were initially considering also giving owners a right of veto over mining development under a mining licence. But when we thought more closely about that, BEC decided it was not feasible. The reason is that if an explorer spends many millions on exploration approved by landowners, only then to have the landowners veto development, the landowners or the ABG would have to refund the explorer their exploration costs. If we did not promise to do that, we would never be able to attract quality investors.

But the Bill does give landowners many other rights. They include:

- full participation in the Bougainville Mining Development Forum, where ABG, landowners, and other local interests all negotiate with the proposed miner about the conditions for development to be included in the mine development agreement which will go together with a mining licence;
- although landowners don’t have a power of veto, that can raise objections to the development, and if these can’t be resolved in the Forum, there must be mediation;
- landowners also have significant rights to share in mine revenues, including royalties, rents and compensation.

Under the policy for the long-term law approved by BEC in June, landowners will also be entitled to free equity in every major mining project.

Another way the draft Bill protects Bougainvilleans by limiting the number of major mines in Bougainville. Section 5 says there can be no more than two at any one time. This is to protect present-day Bougainville from the cultural and environmental impacts of many mines. Section 5 is also intended to ensure that the interests of future generations of Bougainvilleans are looked after, by making sure some mineral wealth is maintained for them.

The Bill also protects the rights of our people in what it says about small-scale mining. Unlike the PNG law, small-scale mining will be legal not only if you

do it on your own land, but also if you do it on other land with the permission of landowners. The ABG will have power to regulate conditions on health, safety and the environment, the aim here being to protect all our people from the main dangers of small-scale mining when it is not carried out properly.

Mr. Speaker:

Before I move away completely from the issue of customary ownership of minerals under the Bill, I must deal with critics who claim that the Bill breaches section 23 of the Bougainville Constitution. One of those critics, Mr. Mathias Salas, a former banker, even goes so far as to say that if the Bill breaches section 23, it also falls foul of section 206(2) of the Constitution. That provision says that the Constitution is the Supreme Law, and that Acts of this House must be consistent with the Constitution.

Like nearly every complaint by the critics, this complaint is completely untrue. Most people making the complaint are deliberately trying to mislead our people. The criticisms are usually made on what are claimed to be legal and constitutional grounds.

Yet the Mining Bill is a long, complex and technical law. It is written in *tok lawyer*. That is technical language, intended to be precise, so that courts can interpret it easily and with certainty about what is intended. The relationship of the Mining Bill to the Bougainville Constitution raises further issues, this time about a special branch of law, called Constitutional Law.

Yet these critics do not call on the services of experienced, senior, competent legislative drafter, mining lawyers, and constitutional lawyers. Instead they rely on a failed businessman from Australia and Canada, a former enlisted soldier from the Highlands of PNG, a Bougainvillean former banker, a Bougainvillean former PNG army lieutenant - and so on. If they were serious critics, they'd get serious help.

Let's go back to the complaints of the former banker about sections 23 and 206(2) of the Constitution. Section 23 is the one that says when the ABG makes policy or law on mining, it should recognise any **existing** customary ownership rights to minerals. But section 23 is part of a group of 26 sections – that is, sections 13 to 39. They are called the “Bougainville Objectives and Directive Principles”. They are not enforceable in the courts (‘non-justiciable’). That principle is stated clearly in section 11.

The National Goals and Directive Principles set out at the beginning of the PNG Constitution have the same unenforceable status.

The result of section 11 is that even if the Mining Bill did offend against section 23, and did not recognise customary ownership of minerals, that would not be against the Constitution. And section 206(2) is completely and utterly irrelevant, because the Court would recognise that section 11 stops any enforcement of the “Objectives and Directive Principles” – including section 23.

But the whole argument about section 23 is completely irrelevant anyway because the Bill does honour section 23. It clearly does recognise customary ownership of minerals by all customary landowners in Bougainville.

And let’s be clear here: It is not section 23 of the Constitution that gives customary ownership rights over minerals. Instead, those rights are based solely in our unique Bougainville custom. The BEC is firmly of the opinion that customary ownership of minerals is part of our custom. So if this House passes the Bill, we will be honouring the unenforceable section 23 by recognising that custom. If any written law recognises customary ownership, it will not be section 23 of the Constitution – instead, it will be this new Bougainville Mining Law that I will be urging this House to pass.

Mr. Speaker:

The former banker has also advanced one other criticism of the Bill, related to ownership of minerals. And this is one argument about which any banker should be very ashamed.

He says this in a letter published as a paid newspaper advertisement earlier this week. He claims that the Bill breaches section 23 of the Constitution because section 69(2) provides that the holder of a large-scale mining lease owns minerals once they are mined – that is, after they are removed from the ground.

I wonder what Mr. Salas would have said, when he was a banker, if a mining company had come to him requesting him to loan the company a few billion kina for the purposes of digging minerals. If he asked the company about how they would make the profit needed to repay the loan, he would definitely **not** have been happy to hear that the company had no rights to sell the minerals when they were dug up.

It costs huge amounts for a company to set up and operate a mining operation for a low grade copper and gold ore body like that at Panguna. Bougainvillean owners of the minerals do not have the technology, the skills, experience or the funds to do it. So if the landowners agree to exploration and mining going ahead, they then also agree to sell the minerals they own, once they are dug up.

They sell the minerals in exchange for the revenue shares and other benefits that they receive from the mine.

There is clearly no undermining of the principle of customary ownership by section 69(2) of the Bill.

Mr. Speaker:

I do have a confession to make to this House about some damaging complaints related to the Bill. They were made by some senior leaders from Buin who met me yesterday. They complained bitterly – about the critics of the Bill who they said are claiming that I am selling Bougainville.

Mr. Speaker:

What a terrible lie it is to claim I am selling Bougainville. The truth is that the Bill is designed to stop unscrupulous and dishonest outsiders who together with a few weak or dishonest Bougainvilleans are the ones trying to both buy and sell Bougainville.

As the mandated Government, the ABG takes very seriously its responsibility to promote and protect the real interests of Bougainville and its people. As a result, we have no choice but to oppose, and stand up to, the unprincipled, dishonest, greedy and self-interested foreigners who want to attack the ABG and undermine its mandate, destroy the rule of law and end good governance. They want to do this so that they can help themselves to the wealth of Bougainville.

The Bougainvillean partners of the foreigners publish large advertisements attacking the ABG, paid for by the foreigners or by the DSIP money paid by the PNG Member for Central Bougainville to the supposed Bougainville Resources Owners Representation Committee (BRORC). Some of these attacks concern the use of foreign advisers by the ABG.

Those particular attacks show just how unprincipled the Bougainvillean partners of the foreigners are. For of course they are totally reliant on their foreigners, their PNG Highlanders. The arrogance of these outsiders is remarkable. The Highlander had to be ejected from this House on Tuesday for the disrespect he showed by shouting from the gallery. Then as if to top that, the failed Australian Canadian businessman tried to get access to the closed workshop for members of this House held at the Kuri Resort yesterday.

Mr. Speaker:

For once, on the public record, let us be frank and honest about the economic interests of the outsiders and their local partners. It is those economic interests that make them attack the ABG and its work.

Let's start with Mr. Sam Kauona.

For more than ten years now he has been closely linked with Mr. Lindsay Semple. It was Semple who first came to Bougainville with Canadian company Invincible Resources Inc. Later he came with Morumbi. Semple is almost always with his disrespectful Highlander friend, Philip Rali.

Invincible came close to getting an almost complete monopoly over mining in Bougainville through its 70 per cent share in Bogenvill Resources Development Corporation (BRDC). The contracts and the ABG law about BRDC were all drafted by Mr. Semple's lawyers in Canada. (There was no public consultation at all – so much for principles.) In 2008, ABG officers were warned not even to comment on the BRDC Agreement.

Mr. Kauona, Mr. Semple and Mr. Rali have arranged for six small groups of Bougainvilleans to sign MOUs giving Morumbi effectively 55 years exclusive rights over minerals in large parts of Bougainville.

They oppose the draft Bill because that they fear that if it is passed and Panguna re-opens, that they will not be able to explore and mine in the areas covered by the Morumbi MOUs. That's particularly because of the limit to two major mines. So they are desperate to stop the ABG law.

Another of our critics is Mr. Miringtoro.

He works closely with Mr. Kauona, Mr. Semple and Mr. Rali. For some time now Mr. Miringtoro has been trying to get rid of BCL so that he can get another company in its place. A couple of years ago, he was trying to get the ABG to look at a Brazilian company. Since then, he may have moved on to other companies.

Mr. Philip Miriori had an advertisement in a PNG newspaper last week making some claims I've already mentioned. Yesterday he was reported in the Post Courier as repeating his common demand that there be no re-opening of any mining until after Bougainville gets independence.

I am of course, always open to working with Mr. Miriori. But I also must ask him to be honest. He cannot pretend to oppose the ABG on the basis of no mining till after independence when he himself, and his Meekamui Tribal

Government, are deeply involved in mining activities. He is dealing directly with all sorts of outside economic interests.

They include the many Americans involved in Tall J Foundation Ltd. From about 2008 they were trying to do large-scale extraction of gold from the Panguna mine tailings in the Kawerong and Jaba rivers. But landowners stopped them.

But that doesn't seem to have stopped Mr. Miriori from making deals with some of the same Americans from Tall J.

In a Press Release to the Toronto Stock Exchange dated 23 September 2011, a company called Mayen Minerals announced that a company called Cefaco controlled by Thomas Megas (one of the early Tall J figures) had:

“... acquired the assignable rights to exploit the Atamo Property for a period of 70 years and has an established presence on Bougainville. The assignable rights were acquired pursuant to a property deed (the “**Deed**”) dated on or about May, 2010 entered among Cefaco, the registered landowners of the Property, the Meekamui tribal chiefs and the Government of the Independent Nation of Meekamui Bougainville ABG (the “**Independent Meekamui Government**”). Pursuant to the terms of the Deed any minerals extracted from the Property will be retained as to 70% by the property operator (in this case Mayen), 25% to be split between the Independent Meekamui Government and the landowners and 5% to Cefaco. All amounts to be paid to the Independent Meekamui Government will be paid by Mayen to the Independent Meekamui Government in cash or in kind at the option of the Independent Meekamui Government.”

Tall J didn't stop there. Only a few days ago, on 24 July 2014, a press release by a US company, Nevis Capital Corporation said that company “is pleased to announce that they have signed a final agreement” with another US company, Bougainville Development, “to acquire a 50% ownership of Bougainville Development The principal asset of Bougainville [Development] is a wholly owned subsidiary [company], Tall J (PNG) Ltd. of Papua New Guinea, that has the contractual rights with the Papua Government to harvest the timber and to **explore and develop the underlying minerals** on 255,000 acres in Section 1645. Bougainville has a current investment in excess of \$4,000,000 USD in this project. Mr. Stephen Strauss, BD Director, estimates that production should commence within 12-15 months ...” Stephen Strauss is another of the key figures in Tall J.

More recently Mr. Miriori has been dealing with Mr. Wang Zhenyu (or Bill Wang) on scrap metal exports from Panguna. But an agreement of 16 April 2013 between Wang Zhenyu and Zhu Jianchun and Hua Rengen deals with scrap metal and a “gold mining project”. In the last couple of weeks, people from Miriori’s government have been in contact with landowners from the Jaba river-mouth wanting them to sign over to the Meekamui Government and Mr. Wang their rights to the land in the huge delta created at the Jaba river-mouth by the Panguna tailings washed down from the Kawerong River.

Mr. Miriori really needs to come out openly and honestly about his deals with all these foreigners interested in mining.

Mr. Speaker:

Anonymous commentators on PNG blogs such as a PNG Mine Watch often attack the ABG over mining. For example, there were six stories related to Panguna, the ABG, BCL or the Mining Bill on that site yesterday. They have never approached me or any minister in my government for facts. They never talk to the ABG Mining Department. Instead they restrict themselves to statements based mainly on their own narrow conspiracy views.

As a result, their attacks are almost always incredibly short on evidence in support of claims made and very long on innuendo, and conspiracy theories.

Their lack of evidence is perhaps related to what’s clearly the very poor level of knowledge of Bougainville’s current circumstances on the part of those writing the Bougainville stories that appear there.

For example, a few weeks ago the Blog ran a story claiming that information such as I am setting out here was so unusual and difficult to find that it must have come from misuse of research sources funded by Australian Aid. They clearly have no idea that all of that information is readily available on the streets in Bougainville, or by using Google.

If PNG Mine Watch had any interest in evidence rather than innuendo, I could assure them that there has been no misuse of research sources.

Mr. Speaker:

I’ve already disposed of many of the false claims recently made against the Mining Bill and the ABG. But there are others. They’ve been made in newspaper advertisements, journalist’s stories, public meetings and letters. I’ll finish by quickly mentioning a few of them, and disposing of them as well.

There is the claim that the Bill Preserves the BCA.

That is completely untrue. The draft Act states clearly that the BCA ceases to apply in Bougainville. This could not be any clearer.

There is the claim that the Bill “grants all of the known mineral reserves on Bougainville to BCL”.

That also is completely untrue. The draft Act does not grant any minerals to BCL. It does no more than give BCL a right to negotiate with **both** the ABG and Landowners for a mining licence, and only for the area previously covered by the SML. If we cannot negotiate conditions that are satisfactory to the ABG and landowners, then BCL will not receive a mining licence. They will leave. Then the ABG and the landowners will decide what to do next.

As for the claim about all known mineral reserves, there are many others in Bougainville – our small-scale miners are operating in over 35 different places. BCL will not have any rights – not even a right to negotiate – over anything except the area of the old SML. That particular claim is maliciously and deliberately misleading.

BCL is very unhappy with the draft Bill, because it says that the BCA does not apply in Bougainville, it ends the SML, and it ends all the BCL Exploration Licences in Bougainville.

There is the claim that the Bill is not a “transitional law” but a permanent law.

That is completely untrue. As I have already stated, the ABG is definitely still working on the long-term mining law. Public consultation about the draft long-term law will be undertaken later this year. I want to see it passed before the 2015 elections.

There is the claim that the Bill will allow new mines all over Bougainville:

That too is completely untrue. Again, as I have already made clear, the Bill states clearly that there can only be a maximum of two “major mines” operating in Bougainville at any one time.

In this way the ABG is very different from the approach of Mr. Kauona, Mr. Semple and Mr. Rali. They want to move ahead with exploration and mining in the six different areas of Bougainville covered by the Morumbi MOUs. They are afraid that the ABG law will stop them from doing that.

There is the claim that ABG Policy Must Make Landowners Sole Beneficiaries of Panguna.

The ABG wants landowners from mine lease areas to receive a fair share of mine revenues and other benefits. But it is also important to ensure a fair spread of benefits to other areas of Bougainville, including areas where there are no minerals. The ABG has a responsibility to all Bougainvilleans to ensure a fair distribution of revenues.

There is the claim that there is no need for a transitional law.

This is a false claim. The ABG is clear we need a transitional law in place quickly. We need to pre-empt outside control of Panguna. We need to stop back-door deals. We need to prepare for possible Panguna negotiations under a Bougainville Mining Law.

There is the claim that there has been no transparency in the process for developing the Bill.

This is completely untrue. As I have made clear already, the ABG has consulted widely. The seven public Forums could not have been better publicised, more open or more transparent.

Mr. Speaker:

It is crystal clear that the *Bougainville Mining (Transitional Arrangements) Bill 2014* is vital for the future of Bougainville. Not only does it protect Bougainvilleans, but it does so by placing powers of decision directly into their hands. They are the ones that will now have authority to begin to decide about the things that matter most to them.

In addition, this Bill, when it becomes law, marks a major step on the way to highest possible autonomy. It also opens the way to mining revenues for not only landowners, but also the ABG. We will then have much greater capacity to meet the needs of our people, as well as to make greater progress towards autonomy, and our choice about independence.

It is even more crystal clear, Mr. Speaker, that most of the criticisms being made of the Bill are not only false, but also deliberately misleading. They are made solely to advance the economic interests of a tiny group dominated by unprincipled and greedy outsiders.

Mr. Speaker:

It is time this House sets aside the interests of these critics and instead advances the interests of our people by passing this Bill.

I commend the Bill to the House.