

Date Printed: 01/14/2009

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JTS Box Number: IFES\_29

Tab Number: 15

Document Title: PAPUA NEW GUINEA: CONSTITUTIONAL LAWS  
AND DOCUMENTS

Document Date:

Document Country: PNG

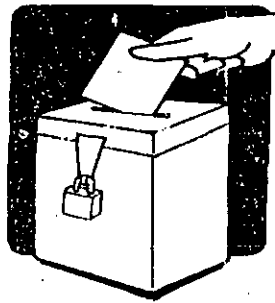
Document Language: ENG

IFES ID: CON00137



\* 9 8 3 F 7 F C 6 - B 8 6 3 - 4 D 0 9 - B 5 F E - E 1 9 1 5 A 1 3 C D 4 F \*

**PAPUA NEW GUINEA  
ELECTORAL COMMISSION**



*Constitutional Laws  
and  
Documents*

**F Clifton White Resource Center  
International Foundation for Election Systems**

# INDEPENDENT STATE OF PAPUA NEW GUINEA.

## CHAPTER NO. 1.

### *Constitutional Laws and Documents.*

#### GENERAL ANNOTATION.

Principally, this Chapter consists of the National Constitution as originally adopted and the National Organic Laws that were in force on 1 January 1976, the effective date. These are included in accordance with Section 9A of the *Revision of the Laws Act 1973* (inserted by the *Revised Edition of the Laws Act 1976*) but, since they do not form part of the Revised Laws proper, they are not subject to editorial revision. However, in appropriate cases footnotes have been added, pointing out errors that have apparently occurred: this is particularly true of cross references to the Constitution in Organic Laws, many of which were based on the numbering of the draft Constitution considered by the Constituent Assembly and not on the numbering of the Constitution as finally adopted.

In addition, in accordance with Section 10(1) of the Revision of the Laws Act, as amended, certain other material that seemed useful, or likely to disappear, be overlooked or not be readily available, has been included, as listed in the table of contents. This material, too, does not form part of the Revised Laws.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Constitutional Laws and Documents.*

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of

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

CONSTITUTION  
of  
THE INDEPENDENT STATE OF PAPUA NEW GUINEA.

PREAMBLE.

*Adoption of Constitution.*

WE, THE PEOPLE OF PAPUA NEW GUINEA—

- united in one nation
- pay homage to the memory of our ancestors—the source of our strength and origin of our combined heritage
- acknowledge the worthy customs and traditional wisdoms of our people—which have come down to us from generation to generation
- pledge ourselves to guard and pass on to those who come after us our noble traditions and the Christian principles that are ours now.

By authority of our inherent right as ancient, free and independent peoples

WE, THE PEOPLE, do now establish this sovereign nation and declare ourselves, under the guiding hand of God, to be the Independent State of Papua New Guinea.

AND WE ASSERT, by virtue of that authority

- that all power belongs to the people—acting through their duly elected representatives
- that respect for the dignity of the individual and community interdependence are basic principles of our society
- that we guard with our lives our national identity, integrity and self respect
- that we reject violence and seek consensus as a means of solving our common problems
- that our national wealth, won by honest, hard work be<sup>1</sup> equitably shared by all

WE DO NOW THEREFORE DECLARE

that we, having resolved to enact a Constitution for the Independent State of Papua New Guinea

AND ACTING through our Constituent Assembly on 15 August 1975

HEREBY ESTABLISH, ADOPT and GIVE TO OURSELVES this Constitution to come into effect on Independence Day, that is 16 September 1975.

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<sup>1</sup> *Semble*, "ought to be" was intended.

IN SO DOING WE, THE PEOPLE OF PAPUA NEW GUINEA, SET BEFORE OURSELVES THESE NATIONAL GOALS AND DIRECTIVE PRINCIPLES THAT UNDERLIE OUR CONSTITUTION :—

*National Goals and Directive Principles.*

WE HEREBY PROCLAIM the following aims as our National Goals, and direct all persons and bodies, corporate and unincorporate, to be guided by these our declared Directives in pursuing and achieving our aims :—

1. Integral human development.

*We declare our first goal to be for every person to be dynamically involved in the process of freeing himself or herself from every form of domination or oppression so that each man or woman will have the opportunity to develop as a whole person in relationship with others.*

WE ACCORDINGLY CALL FOR—

- (1) everyone to be involved in our endeavours to achieve integral human development of the whole person for every person and to seek fulfilment through his or her contribution to the common good; and
- (2) education to be based on mutual respect and dialogue, and to promote awareness of our human potential and motivation to achieve our National Goals through self-reliant effort; and
- (3) all forms of beneficial creativity, including sciences and cultures, to be actively encouraged; and
- (4) improvement in the level of nutrition and the standard of public health to enable our people to attain self fulfilment; and
- (5) the family unit to be recognized as the fundamental basis of our society, and for every step to be taken to promote the moral, cultural, economic and social standing of the Melanesian family; and
- (6) development to take place primarily through the use of Papua New Guinean forms of social and political organization.

2. Equality and participation.

*We declare our second goal to be for all citizens to have an equal opportunity to participate in, and benefit from, the development of our country.*

WE ACCORDINGLY CALL FOR—

- (1) an equal opportunity for every citizen to take part in the political, economic, social, religious and cultural life of the country; and
- (2) the creation of political structures that will enable effective, meaningful participation by our people in that life, and in view of the rich cultural and ethnic diversity of our people for those structures to provide for substantial decentralization of all forms of government activity; and
- (3) every effort to be made to achieve an equitable distribution of incomes and other benefits of development among individuals and throughout the various parts of the country; and

- (4) equalization of services in all parts of the country, and for every citizen to have equal access to legal processes and all services, governmental and otherwise, that are required for the fulfilment of his or her real needs and aspirations; and
- (5) equal participation by women citizens in all political, economic, social and religious activities; and
- (6) the maximization of the number of citizens participating in every aspect of development; and
- (7) active steps to be taken to facilitate the organization and legal recognition of all groups engaging in development activities; and
- (8) means to be provided to ensure that any citizen can exercise his personal creativity and enterprise in pursuit of fulfilment that is consistent with the common good, and for no citizen to be deprived of this opportunity because of the predominant position of another; and
- (9) every citizen to be able to participate, either directly or through a representative, in the consideration of any matter affecting his interests or the interests of his community; and
- (10) all persons and governmental bodies of Papua New Guinea to ensure that, as far as possible, political and official bodies are so composed as to be broadly representative of citizens from the various areas of the country; and
- (11) all persons and governmental bodies to endeavour to achieve universal literacy in *Pisin*, *Hiri Motu* or English, and in "*tok ples*" or "*ita eda tano gado*"; and
- (12) recognition of the principles that a complete relationship in marriage rests on equality of rights and duties of the partners, and that responsible parenthood is based on that equality.

### 3. National sovereignty and self-reliance.

*We declare our third goal to be for Papua New Guinea to be politically and economically independent, and our economy basically self-reliant.*

#### WE ACCORDINGLY CALL FOR—

- (1) our leaders to be committed to these National Goals and Directive Principles, to ensure that their freedom to make decisions is not restricted by obligations to or relationship<sup>1</sup> with others, and to make all of their decisions in the national interest; and
- (2) all governmental bodies to base their planning for political, economic and social development on these Goals and Principles; and
- (3) internal interdependence and solidarity among citizens, and between provinces, to be actively promoted; and
- (4) citizens and governmental bodies to have control of the bulk of economic enterprise and production; and
- (5) strict control of foreign investment capital and wise assessment of foreign ideas and values so that these will be subordinate to the goal of national sovereignty and self-reliance, and *in particular* for the entry of foreign capital

<sup>1</sup> *Seemle*, "relationships" was intended.

to be geared to internal social and economic policies and to the integrity of the Nation and the People; and

- (6) the State to take effective measures to control and actively participate in the national economy, and *in particular* to control major enterprises engaged in the exploitation of natural resources; and
- (7) economic development to take place primarily by the use of skills and resources available in the country either from citizens or the State and not in dependence on imported skills and resources; and
- (8) the constant recognition of our sovereignty, which must not be undermined by dependence on foreign assistance of any sort, and *in particular* for no investment, military or foreign-aid agreement or understanding to be entered into that imperils our self-reliance and self-respect, or our commitment to these National Goals and Directive Principles, or that may lead to substantial dependence upon or influence by any country, investor, lender or donor.

#### 4. Natural resources and environment.

*We declare our fourth goal to be for Papua New Guinea's natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.*

#### WE ACCORDINGLY CALL FOR—

- (1) wise use to be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land, and in the air, in the interests of our development and in trust for future generations; and
- (2) the conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic, and historical qualities; and
- (3) all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees.

#### 5. Papua New Guinean ways.

*We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization.*

#### WE ACCORDINGLY CALL FOR—

- (1) a fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinean forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these<sup>1</sup> institutions to the needs and attitudes of the People; and
- (2) particular emphasis in our economic development to be placed on small-scale artisan, service and business activity; and
- (3) recognition that the cultural, commercial and ethnic diversity of our people is a positive strength, and for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including language, in all their richness and variety, as well as for a willingness to apply these<sup>1</sup> ways dynamically and creatively for the tasks of development; and

<sup>1</sup> *Smaller*, "those" was intended.

- (4) traditional villages and communities to remain as viable units of Papua New Guinean society, and for active steps to be taken to improve their cultural, social, economic and ethical quality.

*Basic Rights.*

WE HEREBY ACKNOWLEDGE that, subject to any restrictions imposed by law on non-citizens, all persons in our country are entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever their race, tribe, places<sup>1</sup> of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the legitimate public interest, to each of the following :—

- (a) life, liberty, security of the person and the protection of the law; and
- (b) the right to take part in political activities; and
- (c) freedom from inhuman treatment and forced labour; and
- (d) freedom of conscience, of expression, of information and of assembly and association; and
- (e) freedom of employment and freedom of movement; and
- (f) protection for the privacy of their homes and other property and from unjust deprivation of property,

and have accordingly included in this Constitution provisions designed to afford protection to those rights and freedoms, subject to such limitations on that protection as are contained in those provisions, being limitations primarily designed to ensure that the enjoyment of the acknowledged rights and freedoms by an individual does not prejudice the rights and freedoms of others or the legitimate public interest.

*Basic Social Obligations.*

WE HEREBY DECLARE that all persons in our country have the following basic obligations to themselves and their descendants, to each other, and to the Nation :—

- (a) to respect, and to act in the spirit of, this Constitution; and
- (b) to recognize that they can fully develop their capabilities and advance their true interests only by active participation in the development of the national community as a whole; and
- (c) to exercise the rights guaranteed or conferred by this Constitution, and to use the opportunities made available to them under it to participate fully in the government of the Nation; and
- (d) to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations; and
- (e) to work according to their talents in socially useful employment, and if necessary to create for themselves legitimate opportunities for such employment; and
- (f) to respect the rights and freedoms of others, and to co-operate fully with others in the interests of interdependence and solidarity; and

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<sup>1</sup> *Sembla*, "place" was intended.

- (g) to contribute, as required by law, according to their means to the revenues required for the advancement of the Nation and the purposes of Papua New Guinea; and
- (b) in the case of parents, to support, assist and educate their children (whether born in or out of wedlock), and in particular to give them a true understanding of their basic rights and obligations and of the National Goals and Directive Principles; and
- (i) in the case of the<sup>1</sup> children, to respect their parents.

IN ADDITION, WE HEREBY DECLARE that all citizens have an obligation to themselves and their descendants, to each other and to the Nation to use profits from economic activities in the advancement of our country and our people, and that the law may impose a similar obligation on non-citizens carrying on economic activities in or from our country.

#### PART I.—INTRODUCTORY.

##### *Division 1.—The Nation.*

#### 1. The Independent State of Papua New Guinea.

(1) Papua New Guinea is a sovereign, independent State by the name of the Independent State of Papua New Guinea.

(2) The name of the Independent State of Papua New Guinea and its variants shall be protected by an Act of the Parliament.

#### 2. The area of Papua New Guinea.

(1) The area of Papua New Guinea consists of the area that, immediately before Independence Day, constituted what was then known as Papua New Guinea, together with all internal waters and the territorial sea and underlying lands, and, subject to disclaimer by resolution of the Parliament at or before the end of its next meeting, includes such neighbouring waters and such lands underlying any such waters, and such additional lands and waters, as are declared by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, to be part of that area.

(2) The sovereignty of Papua New Guinea over its territory, and over the natural resources of its territory, is and shall remain absolute, subject only to such obligations as international law as are freely accepted by Papua New Guinea in accordance with this Constitution.

#### 3. National symbols.

(1) Acts of the Parliament may make provision for and in respect of—

- (a) a National Flag; and
- (b) a National Emblem; and
- (c) a National Motto; and
- (d) a National Seal; and
- (e) a National Anthem.

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<sup>1</sup> *Smble*, "the" should be omitted.

(2) Until such time as other provision is made in accordance with Subsection (1), the National Flag, National Emblem and National Seal are those that were in use immediately before Independence Day.

#### 4. National Capital District.

(1) There shall be a National Capital District.

(2) The Seat of Government shall be in the National Capital District.

(3) The boundaries of the National Capital District shall be as defined by an Organic Law.

(4) An Organic Law or an Act of the Parliament shall make provision in respect of the government of the National Capital District.

(5) In calculating the number of provincial electorates in accordance with Section 125 (*electorates*), the National Capital District shall be taken into account as if it were a province.

#### 5. Provinces.

(1) An Organic Law may declare, or make provision in respect of the declaration of, part<sup>1</sup> of the country as provinces.

(2) An Organic Law may provide for, or make provision in respect of, the creation of new provinces by the amalgamation or division of existing provinces or for the variation of the boundaries of a province.

#### 6. Declaration of Loyalty.

Where a law requires a Declaration of Loyalty to be made, it shall be made in the following form:—

"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 the Independent State of Papua New Guinea and its People and to the Constitution of Papua New Guinea adopted by the Constituent Assembly on 15 August 1975, as altered from time to time in accordance with its provisions, and promise that I will uphold the Constitution and the laws of Papua New Guinea."

#### 7. Oath of Allegiance.

Where a law requires an Oath of Allegiance or Affirmation of Allegiance to be made, it shall be made in the following form:—

##### *Oath of Allegiance.*

I, \_\_\_\_\_, do swear that I will well and truly serve and bear true allegiance to Her Majesty Queen Elizabeth II. Her heirs and successors according to law.

SO HELP ME GOD!

##### *Affirmation of Allegiance.*

I, \_\_\_\_\_, do promise and affirm that I will well and truly serve Her Majesty Queen Elizabeth II. Her heirs and successors according to law."

<sup>1</sup> *Semble*, "parts" was intended.

*Division 2.—Interpretation.*

8. Principles of interpretation.

For the purpose of the interpretation of this Constitution and the Organic Laws, the provisions of Schedule 1 (*Rules for Shortening and Interpretation of the Constitutional Laws*) applies<sup>1</sup> and, subject to that Schedule, the underlying law applies.

PART II.—THE NATIONAL LEGAL SYSTEM.

*Division 1.—The Laws of Papua New Guinea.*

9. The laws.

The laws of Papua New Guinea consist of—

- (a) this Constitution; and
- (b) the Organic Laws; and
- (c) the Acts of the Parliament; and
- (d) Emergency Regulations; and
- (e) laws made under or adopted by or under this Constitution or any of those laws, including subordinate legislative enactments made under this Constitution or any of those laws; and
- (f) the underlying law,

and none other.

10. Construction of written laws.

All written laws (other than this Constitution) shall be read and construed subject to—

- (a) in any case—this Constitution; and
- (b) in the case of Acts of the Parliament—any relevant Organic Laws; and
- (c) in the case of adopted laws or subordinate legislative enactments—the Organic Laws and the laws by or under which they were enacted or made,

and so as not to exceed the authority to make<sup>2</sup> them properly given, to the intent that where any such law would, but for this section, have been in excess of the authority so given it shall nevertheless be a valid law to the extent to which it is not in excess of that authority.

*Division 2.—Constitutional Laws.*

Subdivision A.—Supreme Law.

11. Constitution, etc., as Supreme Law.

(1) This Constitution and the Organic Laws are the Supreme Law of Papua New Guinea, and, subject to Section 10 (*construction of written laws*) all acts (whether legislative, executive or judicial) that are inconsistent with them are, to the extent of the inconsistency, invalid and ineffective.

(2) The provisions of this Constitution and of the Organic Laws are self-executing to the fullest extent that their respective natures and subject-matters permit.

<sup>1</sup> *Seemly*, "apply" was intended.

<sup>2</sup> *Seemly*, "or adopt" was omitted.

12. Organic Laws.

(1) For the purposes of this Constitution, an Organic Law is a law made by the Parliament that is—

- (a) for or in respect of a matter provision for which by way of an Organic Law is expressly authorized by this Constitution; and
- (b) not inconsistent with this Constitution; and
- (c) expressed to be an Organic Law.

(2) An Organic Law may be altered only by another Organic Law, or by an alteration to this Constitution.

(3) Nothing in this section prevents an Organic Law from—

- (a) making any provision that might be made by an Act of the Parliament; or
- (b) requiring any provision to be made by an Act of the Parliament that might otherwise be so made,

but any such provision may be altered by the same majority that is required for any other Act of the Parliament.

Subdivision B.—Constitutional Alteration and Organic Laws.

13. Alterations of the Constitution.

This Constitution may be altered only by law<sup>1</sup> made by the Parliament that—

- (a) is expressed to be a law to alter this Constitution; and
- (b) is made and certified in accordance with Section 14 (*making of alterations to the Constitution and Organic Laws*).

14. Making of alterations to the Constitution and Organic Laws.

(1) Subject to Sections 12(3) (*Organic Laws*) and 15 (*urgent alterations*), a proposed law to alter this Constitution, or a proposed Organic Law, must be supported on a division in accordance with the Standing Orders of the Parliament by the prescribed majority of votes determined in accordance with Section 17 (*"prescribed majority of votes"*) expressed on at least two occasions after opportunity for debate on the merits.

(2) Subject to Section 15 (*urgent alterations*), the opportunities for debate referred to in Subsection (1) must have been—

- (a) during different meetings of the Parliament; and
- (b) separated in time by at least two months,

and the proposed law must be published by the Speaker in full in the National Gazette, and circulated, in accordance with the Standing Orders of the Parliament, to all members of the Parliament not less than one month before it is formally introduced into the Parliament.

(3) Amendments to a proposed law to amend this Constitution or a proposed Organic Law shall not be moved unless they have been circulated to members of the Parliament before the end of the meeting of the Parliament at which the first opportunity for debate referred to in Subsection (1) occurs.

(4) Subject to Subsection (6), in his certificate given under Section 110 (*certification as to making of laws*), the Speaker must certify that the requirements of Subsections (1), (2) and (3) or Section 15 (*urgent alterations*), as the case may be, have been complied with.

<sup>1</sup> *Semble, "a law" was intended.*

(5) The certificate referred to in Subsection (4) shall state—

- (a) the date on which each vote was taken; and
- (b) in relation to each vote—
  - (i) the number of seats in the Parliament at the time; and
  - (ii) the respective numbers of members of the Parliament voting for and against the proposal, and where the requirements of Subsection (2) were waived under Section 15 (*urgent alterations*) for and against the motion for the waiver,

and is, in the absence of proof to the contrary, conclusive evidence of the matter so stated.

(6) Unless the Parliament decides otherwise in any particular case, Subsection (1) does not apply where the Speaker, after consultation with the Chief Justice or a Judge nominated by the Chief Justice for the purpose, certifies that the proposed law—

- (a) does not affect the substance of any 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 this Constitution or of any other law,

and such a law may be made in the same way as Acts of the Parliament.

(7) The Supreme Court may, on the application of any person made within four weeks after the date of a certificate under Subsection (6) or such further time as a Judge, on application made within that period, considers reasonable in the particular circumstances, disallow the certificate, but otherwise the certificate is conclusive.

#### 15. Urgent alterations.

(1) The provisions of this section cease to have effect at the first moment of the fourth anniversary of Independence Day.

(2) Subject to Subsection (5), the requirements of Section 14(2) (*making of alterations to the Constitution and Organic Laws*) may be waived, on the ground of urgency, by the Parliament by a division in accordance with the Standing Orders of the Parliament by a two-thirds absolute majority vote.

(3) The requirements of Section 14(2) (*making of alterations to the Constitution and Organic Laws*) shall not be waived under Subsection (2) unless—

- (a) at least four days' notice of the intention in accordance with the Standing Orders of the Parliament to invoke Subsection (2) has been given; and
- (b) the proposed law has been circulated, in accordance with the Standing Orders of the Parliament, to all members of the Parliament and published in full by the Speaker in the National Gazette at least four days before the motion to invoke Subsection (2) is moved; and
- (c) the opportunities for debate referred to in Section 14(1) (*making of alterations to the Constitution and Organic Laws*) have been separated in time by at least two weeks, but not necessarily during different meetings of the Parliament.

(4) Amendments to a proposed law to amend this Constitution or a proposed Organic Law to which this section applies shall not be moved unless they have been circulated to members of the Parliament before the end of the first debate on the matter.

(5) This section does not apply to proposed laws to alter the following provisions of this Constitution, or Organic Laws made for the purposes of any such provision :—

- (a) this section;
- (b) the Preamble;
- (c) Division II.2. (*Constitutional Laws*);
- (d) Division III.1. (*National Goals and Directive Principles*);
- (e) Division III.2. (*leadership code*);
- (f) Division III.3. (*basic rights*);
- (g) Division III.5. (*basic social obligations*);
- (h) Part IV. (*citizenship*);
- (i) Division VI.2. (*the National Parliament*);
- (j) Division VI.3. (*special instances of the legislative powers*);
- (k) Division VI.5. (*the administration of justice*);
- (ka) Part VIA. (*provincial government and local level government*);
- (l) Division VII.2. (*the Public Services Commission*);
- (m) Division VII.4. (*special provisions in relation to the Police Force*);
- (n) Division VII.5. (*special provisions in relation to the Defence Force*);
- (o) Part VIII. (*supervision and control*);
- (p) Part IX. (*constitutional office-holders and constitutional institutions*);
- (q) Part X. (*emergency powers*).

(Amended by Constitutional Amendment No. 3.)

#### 16. Indirect alterations.

(1) No Constitutional Law takes effect so as to affect the operation of any provision of such a law in force immediately before the commencement of the first-mentioned law unless it was made in the manner and form required for the alteration of that provision.

(2) For the avoidance of doubt, it is hereby declared that Subsection (1) extends to Schedule 1 (*Rules for Shortening and Interpretation of the Constitutional Laws*) in its application to any provision of this Constitution.

#### 17. "Prescribed majority of votes".

(1) Subject to this section, in relation to a proposed law to alter any provision of this Constitution the prescribed majority of votes for the purposes of Section 14 (*making of alterations to the Constitution and Organic Laws*) is the majority of votes prescribed by this Constitution in relation to that provision, or if no majority is prescribed a two-thirds absolute majority vote.

(2) For the purposes of Subsection (1) the prescribed majority of votes for this subsection, Sections 3, 6, 8, 20, 21, 23, 24, 26 to 31 (inclusive), 63, 68, 69, 73, 77 to 98 (inclusive), 101, 103, 104, 110, 117, 138, 139, 150, 156, 165, 167, 171, 184 to 187 (inclusive), 206, 248 to 252 (inclusive), 264 to 268 (inclusive), Sch. 1.21, Sch. 2.1 to Sch. 2.14 (inclusive), Schedules 3, 4 and 5 is an absolute majority.

(3) For the purposes of Subsection (1) the prescribed majority of votes for this subsection, Sections 35, 36, 50, 57, 105, 106, 109, 113, 125, 126, 155, 157, 160, 163, 217, 235, 239, 243, 244, 245 and 269 is a three-quarters absolute majority.

(4) Subject to this section, for the purpose of a proposed law to add a new provision to this Constitution the prescribed majority of votes is the same as the prescribed majority of votes that would be required to alter that provision if it was already enacted.

(5) Subject to Section 12(3) (*Organic Law*), in relation to a proposed Organic Law the prescribed majority of votes is—

(a) in the case of a proposed Organic Law to alter a provision of an Organic Law—the same as the majority that would be required for the making of the provision proposed to be altered; and

(b) in any other case—

(i) the majority of votes (not being less than an absolute majority) prescribed by this Constitution for the making of the Organic Law; and

(ii) if no majority is prescribed, a two-thirds absolute majority.

(6) Where, by virtue of the operation of the preceding provisions of this section, there are different prescribed majorities in relation to different provisions of a proposed law, the prescribed majority of votes in relation to the law as a whole is the greatest of those majorities.

(7) Nothing in this section prevents different majorities being prescribed in respect of different aspects or subject-matters of a provision.

(8) No Organic Law may require a majority of votes for the alteration of a provision of an Organic Law greater than that by which the first-mentioned law was made.

(9) Notwithstanding anything in this section, until 16 September 1980—

(a) for the purpose of a proposed law to add a new provision to this Constitution, the prescribed majority of votes is an absolute majority; and

(b) for the purpose of making an Organic Law for which there was provision in this Constitution when adopted the prescribed majority of votes is an absolute majority.

#### Subdivision C.—Constitutional Interpretation.

#### 18. Original interpretative jurisdiction of the Supreme Court.

(1) Subject to this Constitution, the Supreme Court has original jurisdiction, to the exclusion of other courts, as to any question relating to the interpretation or application of any provision of a Constitutional Law.

(2) Subject to this Constitution, where any question relating to the interpretation or application of any provision of a Constitutional Law arises in any court or tribunal, other than the Supreme Court, the court or tribunal shall, unless the question is trivial, vexatious or irrelevant, refer the matter to the Supreme Court, and take whatever other action (including the adjournment of proceedings) is appropriate.

#### 19. Special references to the Supreme Court.

(1) Subject to Subsection (4), the Supreme 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 a Constitutional Law, including (but without limiting the generality of that expression) any question as to the validity of a law or proposed law.

(2) An opinion given under Subsection (1) has the same binding effect as any other decision of the Supreme Court.

(3) The following authorities only are entitled to make application under Subsection (1):—

(a) the Parliament; and

- (b) the Head of State, acting with, and in accordance with, the advice of the National Executive Council; and
- (c) the Law Officers of Papua New Guinea; and
- (d) the Law Reform Commission; and
- (e) the Ombudsman Commission; and
- (ea) a provincial assembly or a local-level government; and
- (eb) a provincial executive; and
- (ec) a body established by a Constitutional Law or an Act of the Parliament specifically for the settlement of disputes between the National Government and Provincial Governments or Local-Level Governments, or between Provincial Governments, or between Provincial Governments and Local-Level Governments, and
- (f) the Speaker, in accordance with Section 137(3) (*Acts of Indemnity*).

(Amended by Constitutional Amendment No. 3 & Amendment No 16 of 1995).

(4) Subject to any Act of the Parliament, the Rules of Court of the Supreme Court may make provision in respect of matters relating to the jurisdiction of the Supreme Court under this section, and in particular as to—

- (a) the form and contents of questions to be decided by the Court; and
- (b) the provision of counsel adequate to enable full argument before the Court of any question; and
- (c) cases and circumstances in which the Court may decline to give an opinion.

(5) In this section, "proposed law" means a law that has been formally placed before the relevant law-making body.

### *Division 3.—Adoption, Reception and Development of Certain Laws.*

## 20. Underlying law and pre-Independence statutes.

(1) An Act of Parliament<sup>1</sup> shall—

- (a) declare the underlying law of Papua New Guinea; and
- (b) provide for the development of the underlying law of Papua New Guinea.

(2) Until such time as an Act of Parliament<sup>1</sup> provides otherwise—

- (a) the underlying law of Papua New Guinea shall be as prescribed in Schedule 2 (*adoption, etc., of certain laws*); and
- (b) the manner of development of the underlying law shall be as prescribed by Schedule 2 (*adoption, etc., of certain laws*).

(3) Certain pre-Independence statutes are adopted<sup>2</sup> and shall be adopted, as Acts of Parliament<sup>1</sup> and subordinate enactments<sup>2</sup> of Papua New Guinea, as prescribed by Schedule 2 (*adoption, etc., of certain laws*).

<sup>1</sup>Seem, "Act of the Parliament" was intended—compare the definition "Act of the Parliament" in Section Sch. 1.2(1).

<sup>2</sup>Seem, "subordinate legislative enactments" was intended—compare Section Sch. 2.6(2) and the definition "subordinate legislative enactment" in Section Sch. 1.2(1).

21. Purpose of Schedule 2.

(1) The purpose of Schedule 2 (*adoption, etc., of certain laws*) and of the Act of the Parliament referred to in Section 20<sup>1</sup> (*underlying law and pre-Independence statutes*) is to assist in the development of our<sup>2</sup> indigenous jurisprudence, adapted to the changing circumstances of Papua New Guinea.

(2) For the purpose set out in Subsection (1), a Law Reform Commission shall be established in accordance with Schedule 2 (*adoption, etc., of certain laws*), and certain special responsibilities are imposed by that Schedule on the National Judicial System (and in particular on the Supreme Court and the National Court) and on the Law Reform Commission.

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<sup>1</sup>The precise reference is to Section 20(1).  
<sup>2</sup>*Semble*, "an" was intended.

## Division 4.—General.

## 22. Enforcement of the Constitution.

The provisions of this Constitution that recognize rights of individuals (including corporations and associations) as well as those that confer powers or impose duties on public authorities, shall not be left without effect because of the lack of supporting machinery or procedural laws, but the lack shall, as far as practicable, be supplied by the National Court in the light of the National Goals and Directive Principles, and by way of analogy from other laws, general principles of justice and generally-accepted doctrine.

## 23. Sanctions.

(1) Where any provision of a Constitutional Law prohibits or restricts an act, or imposes a duty, then unless a Constitutional Law or an Act of the Parliament provides for the enforcement of that provision the National Court may—

- (a) impose a sentence of imprisonment for a period not exceeding 10 years or a fine not exceeding K10 000.00; or
- (b) in the absence of any other equally effective remedy under the laws of Papua New Guinea, order the making of compensation by a person (including a governmental body) who is in default,

or both, for a breach of the prohibition, restriction or duty, and may make such further order in the circumstances as it thinks proper.

(2) Where a provision of a Constitutional Law prohibits or restricts an act or imposes a duty, the National Court may, if it thinks it proper to do so, make any order that it thinks proper for preventing or remedying a breach of the prohibition, restriction or duty, and Subsection (1) applies to a failure to comply with the order as if it were a breach of a provision of this Constitution.

(3) Where the National Court considers it proper to do so, it may include in an order under Subsection (2) an anticipatory order under Subsection (1).

## 24. Use of certain materials as aids to interpretation.

(1) The official records of debates and of votes and proceedings—

- (a) in the pre-Independence House of Assembly on the report of the Constitutional Planning Committee; and
- (b) in the Constituent Assembly on the draft of this Constitution,

together with that report and any other documents or papers tabled for the purposes of or in connexion with those debates, may be used, so far as they are relevant, as aids to interpretation where any question relating to the interpretation or application of any provision of a Constitutional Law arises.

(2) An Act of the Parliament may make provision for the manner of proof of the records and documents referred to in Subsection (1).

(3) In Subsection (1), "the report of the Constitutional Planning Committee" means the Final Report of the pre-Independence Constitutional Planning Committee dated 13 August 1974 and presented to the pre-Independence House of Assembly on 16 August 1974.

~~21. Purpose of Schedule 2.~~

~~(1) The purpose of Schedule 2 (adoption, etc., of certain laws) and of the Act of the Parliament referred to in Section 20<sup>3</sup> (underlying law and pre-Independence statutes) is to assist~~

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<sup>3</sup>The precise reference is to Section 20(1).

PART III.—BASIC PRINCIPLES OF GOVERNMENT.

Division 1.—National Goals and Directive Principles.

25. Implementation of the National Goals and Directive Principles.

(1) Except to the extent provided in Subsections (3) and (4), the National Goals and Directive Principles are non-justiciable.

(2) Nevertheless, it is the duty of all governmental bodies to apply and give effect to them as far as lies within their respective powers.

(3) Where any law, or any power conferred by any law (whether the power be of a legislative, judicial, executive, administrative or other kind), can reasonably be understood, applied, exercised or enforced, without failing to give effect to the intention of the Parliament or to this Constitution, in such a way as to give effect to the National Goals and Directive Principles, or at least not to derogate them, it is to be understood, applied or exercised, and shall be enforced, in that way.

(4) Subsection (1) does not apply to the jurisdiction of the Ombudsman Commission or of any other body prescribed for the purposes of Division III.2 (*leadership code*), which shall take the National Goals and Directive Principles fully into account in all cases as appropriate.

Division 2.—Leadership Code.

26. Application of Division 2.

(1) The provisions of this Division apply to and in relation to—

- (a) the Prime Minister, the Deputy Prime Minister and the other Ministers; and
- (b) the Leader and Deputy Leader of the Opposition; and
- (c) all other members of the Parliament; and
- (d) members of provincial assemblies and local-level governments; and
- (e) all constitutional office-holders within the meaning of Section 221 (*definitions*); and
- (f) all heads of Departments of the National Public Service; and
- (g) all heads of or members of the boards or other controlling bodies of statutory authorities; and
- (h) the Commissioner of Police; and
- (i) the Commander of the Defence Force; and
- (j) all ambassadors and other senior diplomatic and consular officials prescribed by an Organic Law or an Act of the Parliament; and
- (k) the public trustee; and
- (l) the personal staff of the Governor-General, the Ministers and the Leader and Deputy Leader of the Opposition; and
- (m) executive officers of registered political parties as defined by Section 128 ("*registered political party*"); and
- (n) persons holding such public offices as are declared under Subsection (3) to be offices to and in relation to which this Division applies.

(2) This Division applies to and in relation to a person referred to in Subsection (1) 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.

(3) An Organic Law or An Act of the Parliament may declare any public office (including an office in a provincial government or a local level government body) to be an office to and in relation to which this Division applies.

(4) In the event of doubt as to whether a person is a person to whom this Division applies, the decision of the Ombudsman Commission is final.

(Amended by Constitutional Amendment No. 16 of 1996)

## 27. Responsibilities of office.

(1) A person to whom this Division applies has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons, as not—

- (a) to 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
- (b) to demean his office or position; or
- (c) to allow his public or official integrity, or his personal integrity, to be called into question; or
- (d) to endanger or diminish respect for and confidence in the integrity of government in Papua New Guinea.

(2) In particular, a person to whom this Division 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 Subsection (1).

(3) It is the further duty of a person to whom this Division 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 usage), 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 publicly disassociate himself 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.

(4) The Ombudsman Commission or other authority prescribed for the purpose under Section 28 (*further provisions*) may, subject to this Division and to any Organic Law made for the purposes of this Division, give directions, either generally or in a particular case, to ensure the attainment of the objects of this section.

(5) A person to whom this Division 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 (4) or otherwise fails to carry out the obligations imposed by Subsections (1), (2) and (3),

is guilty of misconduct in office.

28. Further provisions.

(1) For the purposes of this Division, an Organic Law—

- (a) may give to the Ombudsman Commission or some other authority any powers that are necessary or convenient for attaining the objects of this Division and of the Organic Law; and
- (b) shall make provision for the disclosure to the Ombudsman Commission or some other authority of the personal and business incomes and financial affairs of persons to whom this Division applies, and of their families and associates, and in particular of interests in contracts with governmental bodies and of directorships and similar offices held by them (including powers to nominate directors, trustees or agents, or similar officers); and
- (c) shall empower the Ombudsman Commission or some other authority to require a person to whom this Division applies to dispose of, or place under the control of the public trustee, any assets or income where this seems to be desirable for attaining the objects of this Division; and
- (d) may prescribe specific acts that constitute misconduct in office; and
- (e) may create offences (including offences by persons to whom this Division applies and offences by other persons); and
- (f) shall provide for the investigation by the Ombudsman Commission or some other authority of cases of alleged or suspected misconduct in office, and confer on the Commission or authority any powers that are necessary or convenient for that purpose; and
- (g)<sup>1</sup> shall establish independent tribunals that—
  - (i) shall investigate and determine any cases of alleged or suspected misconduct in office referred to them in accordance with the Organic Law; and
  - (ii) are required to recommend to the appropriate authority to dismiss from any office or position or, within limits fixed by law, otherwise make a recommendation to penalize a person found guilty of misconduct in office, unless they find both a lack of serious culpability and that public policy and the public good does not require dismissal; and
- (h) may make any other provision that is necessary or convenient for attaining the objects of this Division.

(2) In the case of—

- (a) those persons referred to in Section 26(1) (a), (b), (c) and (d) (*application of Division 2*); and
- (b) any other person holding an elective office that is declared under Section 26(1)(n) (*application of Division 2*) to be an office to which this Division applies,

the independent tribunal referred to in Subsection (1)(g) shall make any recommendation under Subsection (1)(g)(ii) to the Head of State, who shall act in accordance with the advice of the independent tribunal.

<sup>1</sup> As to Paragraph (g) and its relationship with the *Organic Law on the Responsibilities of Leadership*, and also its wording in general, see the judgement of the Supreme Court in *The State and The Independent Tribunal Established under Section 27(7) of the Organic Law on the Duties and Responsibilities of Leadership 1973: ex parte Muri Saitaka* (unreported Supreme Court judgement SC107 on 3 November 1976).

(3) In the case of—

- (a) those persons referred to in Section 26(1) (*application of Division 2*) other than those specified in Subsection (2); and
- (b) any other person holding an appointed office that is declared under Section 26(1)(n) (*application of Division 2*) to be an office to which this Division applies,

the independent tribunal referred to in Subsection (1)(g) shall make any recommendation under Subsection (1)(g)(ii) to the appropriate appointing authority which shall act in accordance with the advice of the independent tribunal.

(4) An Organic Law may provide for the suspension from office of a person to whom this Division applies pending the investigation of any case of alleged or suspected misconduct in office by him.

(5) Proceedings under Subsection (1)(g) are not judicial proceedings but are subject to the principles of 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 that paragraph.

#### 29. Prosecution of misconduct in office.

(1) Where the Ombudsman Commission or other authority referred to in Section 28(1)(f) (*further provisions*) is satisfied that there is a *prima facie* case that a person has been guilty of misconduct in office, it shall refer the matter to the Public Prosecutor for prosecution before a tribunal established under Section 28(1)(g) (*further provisions*).

(2) If the Public Prosecutor fails to prosecute the matter within a reasonable period, the Commission may prosecute it in his stead.

#### 30. Other authority.

Where another authority is prescribed under Section 28 (*further provisions*) that authority—

- (a) shall be composed of a person or persons who are declared under Section 221(1) (*definitions*)<sup>1</sup> to be a constitutional office-holder<sup>2</sup>; and
- (b) is not subject to direction or control by any person or authority.

#### 31. Disqualifications on dismissal.

(1) A person who has been dismissed from office under this Division for misconduct in office is not eligible—

- (a) to<sup>3</sup> election to any elective public office; or
- (b) for appointment as Head of State<sup>4</sup> or as a nominated member of the Parliament; or

<sup>1</sup> The reference is inaccurate, as it should be a reference to declaration under Paragraph (i) of the definition "constitutional office-holder" in Section 221.

<sup>2</sup> *Seemly*, "or office-holders" was omitted.

<sup>3</sup> *Seemly*, "for" was intended.

<sup>4</sup> *Seemly*, this should read "Governor-General" instead of "Head of State", there being no question of eligibility for appointment as Queen and Head of State.

(c) for appointment to a provincial legislature or provincial executive (including the office of head of a provincial executive), or to a local-level government body, for a period of three years after the date of his dismissal.

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(2) In the event of doubt as to whether an office or position is an office or position to which Subsection (1) (a), (b) or (c) applies, the decision of the Ombudsman Commission is final.

*Division 3.—Basic Rights.*

*Subdivision A.—Introductory.*

**32. Right to freedom.**

(1) Freedom based on law consists in the least amount of restriction on the activities of individuals that is consistent with the maintenance and development of Papua New Guinea and of society in accordance with this Constitution and, in particular, with the National Goals and Directive Principles and the Basic Social Obligations.

(2) Every person has the right to freedom based on law, and accordingly has a legal right to do anything that—

(a) does not injure or interfere with the rights and freedoms of others; and

(b) is not prohibited by law,

and no person—

(c) is obliged to do anything that is not required by law; and

(d) may be prevented from doing anything that complies with the provisions of paragraphs (a) and (b).

(3) This section is not intended to reflect on the extra-legal existence, nature or effect of social, civic, family or religious obligations, or other obligations of an extra-legal nature, or to prevent such obligations being given effect to by law.

**33. Other rights and freedoms, etc.**

Nothing in this Division derogates the rights and freedoms of the individual under any other law and, in particular, an Organic Law or an Act of the Parliament may provide further guarantees of rights and freedoms and may further restrict the limitations that may be placed on, or on the exercise of, any right or freedom (including the limitations that may be imposed under Section 38 (*general qualifications on qualified rights*)).

**34. Application of Division 3.**

Subject to this Constitution, each provision of this Division applies, as far as may be—

(a) as between individuals as well as between governmental bodies and individuals; and

(b) to and in relation to corporations and associations (other than governmental bodies) in the same way as it applies to and in relation to individuals,

except where, or to the extent that, the contrary intention appears in this Constitution.

## Subdivision B.—Fundamental Rights.

## 35. Right to life.

(1) No person shall be deprived of his life intentionally except—

(a) in execution of a sentence of a court following his conviction of an offence for which the penalty of death is prescribed by law; or

(b) as the result of the use of force to such an extent as is reasonable in the circumstances of the case and is permitted by any other law—

(i) for the defence of any person from violence; or

(ii) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(iii) for the purpose of suppressing a riot, an insurrection or a mutiny; or

(iv) in order to prevent him from committing an offence; or

(v) for the purpose of suppressing piracy or terrorism or similar acts; or

(c) as the result of a lawful act of war.

(2) Nothing in Subsection (1)(b) relieves any person from any liability at law in respect of the killing of another.

## 36. Freedom from inhuman treatment.

(1) No person shall be submitted to torture (whether physical or mental), or to treatment or punishment that is cruel or otherwise inhuman, or is inconsistent with respect for the inherent dignity of the human person.

(2) The killing of a person in circumstances in which Section 35(1)(a) (*right to life*)<sup>1</sup> does not, of itself, contravene Subsection (1), although the manner or the circumstances of the killing may contravene it.

## 37. Protection of the law.

(1) Every person has the right to the full protection of the law, and the succeeding provisions of this section are intended to ensure that that right is fully available, especially to persons in custody or charged with offences.

(2) Except, subject to any Act of the Parliament to the contrary, in the case of the offence commonly known as contempt of court, nobody may be convicted of an offence that is not defined by, and the penalty for which is not prescribed by, a written law.

(3) A person charged with an offence shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time, by an independent and impartial court.

(4) A person charged with an offence—

(a) shall be presumed innocent until proved guilty according to law, but a law may place upon a person charged with an offence the burden of proving particular facts which are, or would with the exercise of reasonable care be, peculiarly within his knowledge; and

(b) shall be informed promptly in a language which he understands, and in detail, of the nature of the offence with which he is charged; and

(c) shall be given adequate time and facilities for the preparation of his defence; and

<sup>1</sup> *Sentence*, "applies" was omitted.

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- (d) shall be permitted to have without payment the assistance of an interpreter if he cannot understand or speak the language used at the trial of the charge; and
- (e) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice, or if he is a person entitled to legal aid, by the Public Solicitor or another legal representative assigned to him in accordance with law; and
- (f) shall be afforded facilities to examine in person or by his legal representative the witnesses called before the court by the prosecution, and to obtain the attendance and carry out the examination of witnesses and to testify before the court on his own behalf, on the same conditions as those applying to witnesses called by the prosecution.

(5) Except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court orders him to be removed and the trial to proceed in his absence, but provision may be made by law for a charge that a person has committed an offence the maximum penalty for which does not include imprisonment, (except in default of payment of a fine), to be heard summarily in his absence if it is established that he has been duly served with a summons in respect of the alleged offence.

(6) Nothing in Subsection (4)(f) invalidates a law which imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of a person charged with an offence are to be paid their expenses out of public funds.

(7) No person shall be convicted of an offence on account of any act that did not, at the time when it took place, constitute an offence, and no penalty shall be imposed for an offence that is more severe in degree or description than the maximum penalty that might have been imposed for the offence at the time when it was committed.

(8) No person who shows that he has been tried by a competent court for an offence and has been convicted or acquitted shall again be tried for that offence or for any other offence of which he could have been convicted at the trial for that offence, except upon the order of a superior court made in the course of appeal or review proceedings relating to the conviction or acquittal.

(9) No person shall be tried for an offence for which he has been pardoned.

(10) No person shall be compelled in the trial of an offence to be a witness against himself.

(11) A determination of the existence or extent of a civil right or obligation shall not be made except by an independent and impartial court or other authority prescribed by law or agreed upon by the parties, and proceedings for such a determination shall be fairly heard within a reasonable time.

(12) Except with the agreement of the parties, or by order of the court in the interests of national security, proceedings in any jurisdiction of a court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(13) Nothing in Subsection (12) prevents a court or other authority from excluding from the hearing of the proceedings before it persons, other than the parties and their legal representatives, to such an extent as the court or other authority—

(a) is by law empowered to do and considers necessary or expedient in the interests of public welfare or in circumstances where publicity would prejudice the interests of justice, the welfare of persons under voting age or the protection of the private lives of persons concerned in the proceedings; or

(b) is by law empowered or required to do in the interests of defence, public safety or public order.

(14) In the event that the trial of a person is not commenced within four months of the date on which he was committed for trial, a detailed report concerning the case shall be made by the Chief Justice to the Minister responsible for the National Legal Administration<sup>1</sup>.

(15) Every person convicted of an offence is entitled to have his conviction and sentence reviewed by a higher court or tribunal according to law.

(16) No person shall be deprived by law of a right of appeal against his conviction or sentence by any court that existed at the time of the conviction or sentence, as the case may be.

(17) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(18) Accused persons shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

(19) Persons under voting age who are in custody in connexion with an offence or alleged offence shall be separated from other persons in custody and be accorded treatment appropriate to their age.

(20) An offender shall not be transferred to an area away from that in which his relatives reside except for reasons of security or other good cause and, if such a transfer is made, the reason for so doing shall be endorsed on the file of the offender.

(21) Nothing in this section—

(a) derogates Division III.4 (*principles of natural justice*); or

(b) affects the powers and procedures of village courts.

(22) Notwithstanding Subsection 21(b) the powers and procedures of village courts shall be exercised in accordance with the principles of natural justice.

<sup>1</sup> *Semble*, "the Minister responsible for the National Justice Administration"—compare Section 154, which was altered by the National Constituent Assembly to "National Justice Administration" from "National Legal Administration".

Subdivision C.—Qualified Rights.

*General.*

38. General qualifications on qualified rights. ✓

(1) For the purposes of this Subdivision, a law that complies with the requirements of this section is a law that is made and certified in accordance with Subsection (2), and that—

(a) regulates or restricts the exercise of a right or freedom referred to in this Subdivision to the extent that the regulation or restriction is necessary—

(i) taking account of the National Goals and Directive Principles and the Basic Social Obligations, for the purpose of giving effect to the public interest in—

- (A) defence; or
- (B) public safety; or
- (C) public order; or
- (D) public welfare; or
- (E) public health (including animal and plant health); or
- (F) the protection of children and persons under disability (whether legal or practical); or
- (G) the development of under-privileged or less advanced groups or areas; or

(ii) in order to protect the exercise of the rights and freedoms of others; or

(b) makes reasonable provision for cases where 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 respect<sup>1</sup> for the rights and dignity of mankind.

(2) For the purposes of Subsection (1), a law must—

- (a) be expressed to be a law that is made for that purpose; and
- (b) specify the right or freedom that it regulates or restricts; and
- (c) be made, and certified by the Speaker in his certificate under Section 110 (*certification as to making of laws*) to have been made, by an absolute majority.

(3) The burden of showing that a law is a law that complies with the requirements of Subsection (1) is on the party relying on its validity.

39. "Reasonably justifiable in a democratic society", etc.

(1) The question, whether a law or act 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 obtaining at the time when the decision on the question is made.

(2) A law shall not be declared not to be reasonably justifiable in a society<sup>2</sup> having a proper regard for the rights and dignity of mankind except by the Supreme Court or the National Court, or any other court prescribed for the purpose by or under an Act of the Parliament, and unless the court is satisfied that the law was never so justifiable such a declaration operates as a repeal of the law as at the date of the declaration.

<sup>1</sup> *Seemle*, "regard" was intended—*compare* the expressions used elsewhere in this Subdivision.

<sup>2</sup> *Seemle*, "democratic society" was intended—*compare* the footnote to Section 38(1).

(3) For the purposes of determining whether or not any law, matter or thing is reasonably justified<sup>1</sup> 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 generally, and especially the National Goals and Directive 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 freedoms; and
- (d) the European Convention for the Protection of Human Rights and Fundamental Freedoms and the 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 of 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 the country; and
- (g) laws, practices and judicial decisions and opinions in other countries; and
- (h) the Final Report of the pre-Independence Constitutional Planning Committee dated 13 August 1974 and presented to the pre-Independence House of Assembly on 16 August 1974, as affected by decisions of that House on the report and by decisions of the Constituent Assembly on the draft of this Constitution; and
- (i) declarations by the International Commission of Jurists and other similar organizations; and
- (j) any other material that the court considers relevant.

#### 40. Validity of emergency laws.

Nothing in this Part invalidates an emergency law as defined in Part X (*emergency powers*), but nevertheless so far as is consistent with their purposes and terms all such laws shall be interpreted and applied so as not to affect or derogate a right or freedom referred to in this Division 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.

#### 41. Proscribed acts.

(1) Notwithstanding anything to the contrary in any other provision of any law, any act that is done under a valid law but in the particular case—

- (a) is harsh or oppressive; or
- (b) is not warranted by, or is disproportionate to, the requirements of the particular circumstances or of the particular case; or

<sup>1</sup> *Semble*, "justifiable" was intended—compare the footnote to Section 38(1).

- (c) is otherwise not, in the particular circumstances, reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind,

is an unlawful act.

(2) The burden of showing that Subsection (1)(a), (b) or (c) applies in respect of an act is on the party alleging it, and may be discharged on the balance of probabilities.

(3) Nothing in this section affects the operation of any other law under which an act may be held to be unlawful or invalid.

### *Rights of All Persons.*

#### 42. Liberty of the person.

(1) No person shall be deprived of his personal liberty except—

- (a) in consequence of his unfitness to plead to a criminal charge; or
- (b) in the execution of the sentence or order of a court in respect of an offence of which he has been found guilty, or in the execution of the order of a court of record punishing him for contempt of itself or another court or tribunal; or
- (c) by reason of his failure to comply with the order of a court made to secure the fulfilment of an obligation (other than a contractual obligation) imposed upon him by law; or
- (d) upon reasonable suspicion of his having committed, or being about to commit, an offence; or
- (e) for the purpose of bringing him before a court in execution of the order of a court; or
- (f) for the purpose of preventing the introduction or spread of a disease or suspected disease, whether of humans, animals or plants, or for normal purposes of quarantine; or
- (g) for the purpose of preventing the unlawful entry of a person into Papua New Guinea, or for the purpose of effecting the expulsion, extradition or other lawful removal of a person from Papua New Guinea, or the taking of proceedings for any of those purposes; or

"(h) in the case of a person who is, or is reasonably suspected of being of unsound mind, or addicted to drugs or alcohol, or a vagrant, for the purposes of —

- (i) his care or treatment or the protection of the community, under an order of a court; or
- (ii) taking prompt legal proceedings to obtain an order of a court of a type referred to in Subparagraph (i);"; and

"(j) in the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare under the order of a court or with the consent of his guardian."; and

(2) A person who is arrested or detained—

- (a) shall be informed promptly, in a language that he understands, of the reasons for his arrest or detention and of any charge against him; and
- (b) shall be permitted whenever practicable to communicate without delay and in private with a member of his family or a personal friend, and with a lawyer of his choice (including the Public Solicitor if he is entitled to legal aid); and

<sup>1</sup> *Seemle*, "or addicted to drugs or alcohol" was intended to form part of the introductory words to Paragraph (b).

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- (c) shall be given adequate opportunity to give instructions to a lawyer of his choice in the place in which he is detained,

and shall be informed immediately on his arrest or detention of his rights under this subsection.

- (3) A person who is arrested or detained—

- (a) for the purpose of being brought before a court in the execution of an order of a court; or  
(b) upon reasonable suspicion of his having committed, or being about to commit, an offence,

shall, unless he is released, be brought without delay before a court or a judicial officer and, in a case referred to in paragraph (b), shall not be further held in custody in connexion with the offence except by order of a court or judicial officer.

(4) The necessity or desirability of interrogating the person concerned or other persons, or any administrative requirement or convenience, is not a good ground for failing to comply with Subsection (3), but exigencies of travel which in the circumstances are reasonable may, without derogating any other protection available to the person concerned, be such a ground.

(5) Where complaint is made to the National Court or a Judge that a person is unlawfully or unreasonably detained—

- (a) the National Court or a Judge shall inquire into the complaint and order the person concerned to be brought before it or him; and  
(b) unless the Court or Judge is satisfied that the detention is lawful, and in the case of a person being detained on remand pending his trial does not constitute an unreasonable detention having regard, in particular, to its length, the Court or a Judge shall order his release either unconditionally or subject to such conditions as the Court or Judge thinks fit.

(6) A person arrested or detained for an offence (other than treason or wilful murder as defined by an Act of the Parliament) is entitled to bail at all times from arrest or detention to<sup>1</sup> acquittal or conviction unless the interests of justice otherwise require.

- (7) Where a person to whom Subsection (6) applies is refused bail—

- (a) the court or person refusing bail shall, on request by the person concerned or his representative, state in writing the reason for the refusal; and  
(b) the person or his representative may apply to the Supreme Court or the National Court in a summary manner for his release.

(8) Subject to any other law, nothing in this section applies in respect of any reasonable act of the parent or guardian of a child, or a person into whose care a child has been committed, in the course of the education, discipline or upbringing of the child.

(9) Subject to any Constitutional Law or Act of the Parliament, nothing in this section applies in respect of a person who is in custody under the law of another country—

- (a) while in transit through the country; or  
(b) as permitted by or under an Act of the Parliament made for the purposes of Section 206 (*visiting forces*).

<sup>1</sup> *Semble*, "until" was intended.

## 43. Freedom from forced labour.

- (1) No person shall be required to perform forced labour.
- (2) In Subsection (1), "forced labour" does not include—
  - (a) labour required by the sentence or order of a court; or
  - (b) labour required of a person while in lawful custody, being labour that, although not required by the sentence or order of a court, is necessary for the hygiene of, or for the maintenance of, the place in which he is in custody; or
  - (c) in the case of a person in custody for the purpose of his care, treatment, rehabilitation or welfare, labour reasonably required for that purpose; or
  - (d) labour required of a member of a disciplined force in pursuance of his duties as such a member; or
  - (e) subject to the approval of any local government body for the area in which he is required to work, labour reasonably required as part of reasonable and normal communal or other civic duties; or
  - (f) labour of a reasonable amount and kind (including in the case of compulsory military service, labour required as an alternative to such service in the case of a person who has conscientious objections to military service) that is required in the national interest by an Organic Law that complies with Section 38 (*general qualifications on qualified rights*).

## 44. Freedom from arbitrary search and entry.

No person shall be subjected to the search of his person or property or to entry of his premises, except to the extent that the exercise of that right is regulated or restricted by a law—

- (a) that makes reasonable provision for a search or entry—
  - (i) under an order made by a court; or
  - (ii) under a warrant for a search issued by a court or judicial officer on reasonable grounds, supported by oath or affirmation, particularly describing the purpose of the search; or
  - (iii) that authorizes a public officer or government agent of Papua New Guinea or an officer of a body corporate established by law for a public purpose to enter, where necessary, on the premises of a person in order to inspect those premises or anything in or on them in relation to any rate or tax or in order to carry out work connected with any property that is lawfully in or on those premises and belongs to the Government or any such body corporate; or<sup>1</sup>
  - (iv) that authorizes the inspection of goods, premises, vehicles, ships or aircraft to ensure compliance with lawful requirements as to the entry of persons or importation of goods into Papua New Guinea or departure of persons or exportation of goods from Papua New Guinea or as to standards of safe construction, public safety, public health, permitted use or similar matters, or to secure compliance with the terms of a licence to engage in manufacture or trade; or<sup>1</sup>

<sup>1</sup> *Semble*, Subparagraphs (iii) and (iv) were intended to be separate paragraphs, with Paragraph (a) comprising the present Subparagraphs (i), (ii), (v) and (vi).

(v) for the purpose of inspecting or taking copies of documents relating to—

(A) the conduct of a business, trade, profession or industry in accordance with a law regulating the conduct of that business, trade, profession or industry; or

(B) the affairs of a company in accordance with a law relating to companies; or

(vi) for the purpose of inspecting goods or inspecting or taking copies of documents, in connexion with the collection, or the enforcement of payment of taxes or under a law prohibiting or restricting the importation of goods into Papua New Guinea or the exportation of goods from Papua New Guinea; or

(b) that complies with Section 38 (*general qualifications on qualified rights*).

#### 45. Freedom of conscience, thought and religion.

(1) Every person has the right to freedom of conscience, thought and religion and the practice of his religion and beliefs, including freedom to manifest and propagate his religion and beliefs in such a way as not to interfere with the freedom of others, except to the extent that the exercise of that right is regulated or restricted by a law that complies with Section 38 (*general qualifications on qualified rights*).

(2) No person shall be compelled to receive religious instruction or to take part in a religious ceremony or observance, but this does not apply to the giving of religious instruction to a child with the consent of his parent or guardian or to the inclusion in a course of study of secular instruction concerning any religion or belief.

(3) No person is entitled to intervene unsolicited into the religious affairs of a person of a different belief, or to attempt to force his or any religion (or irreligion) on another, by harassment or otherwise.

(4) No person may be compelled to take an oath that is contrary to his religion or belief, or to take an oath in a manner or form that is contrary to his religion or belief.

(5) A reference in this section to religion includes a reference to the traditional religious beliefs and customs of the peoples of Papua New Guinea.

#### 46. Freedom of expression.

(1) Every person has the right to freedom of expression and publication, except to the extent that the exercise of that right is regulated or restricted by a law—

(a) that imposes reasonable restrictions on public office-holders; or

(b) that imposes restrictions on non-citizens; or

(c) that complies with Section 38 (*general qualifications on qualified rights*).

(2) In Subsection (1), "freedom of expression and publication" includes—

(a) freedom to hold opinions, to receive ideas and information and to communicate ideas and information, whether to the public generally or to a person or class of persons; and

(b) freedom of the press and other mass communications<sup>1</sup> media.

<sup>1</sup> *Seemly*, "mass-communication" was intended.

(3) Notwithstanding anything in this section, an Act of the Parliament may make reasonable provision for securing reasonable access to mass communications<sup>1</sup> media for interested persons and associations—

- (a) for the communication of ideas and information; and
- (b) to allow rebuttal of false or misleading statements concerning their acts, ideas or beliefs,

and generally for enabling and encouraging freedom of expression.

#### 47. Freedom of assembly and association.

Every person has the right peacefully to assemble and associate and to form or belong to, or not to belong to, political parties, industrial organizations or other associations, except to the extent that the exercise of that right is regulated or restricted by a law—

- (a) that makes reasonable provision in respect of the registration of all or any associations; or
- (b) that imposes reasonable restrictions on public office-holders; or
- (c) that imposes restrictions on non-citizens; or
- (d) that complies with Section 38 (*general qualifications on qualified rights*).

#### 48. Freedom of employment.

(1) Every person has the right to freedom of choice of employment in any calling for which he has the qualifications (if any) lawfully required, except to the extent that that freedom is regulated or restricted voluntarily or by a law that complies with Section 38 (*general qualifications on qualified rights*), or a law that imposes restrictions on non-citizens.

(2) Subsection (1) does not prohibit reasonable action or provision for the encouragement of persons to join industrial organizations or for requiring membership of an industrial organization for any purpose.

#### 49. Right to privacy.

Every person has the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects, except to the extent that the exercise of that right is regulated or restricted by a law that complies with Section 38 (*general qualifications on qualified rights*).

#### *Special Rights of Citizens.*

#### **50. Right to vote and stand for public office.**

(1) Subject to the express limitations imposed by this Constitution, every citizen who is of full capacity and has reached voting age, other than a person who—

- (a) is under sentence of death or imprisonment for a period of more than nine months; or
- (b) has been convicted, within the period of three years next preceding the first day of the polling period for the election concerned, of an offence relating to

<sup>1</sup> *Semble*, "mass-communication" was intended.

elections that is prescribed by an Organic Law or an Act of the Parliament for the purposes of this paragraph,

has the right, and shall be given a reasonable opportunity—

- (c) to take part in the conduct of public affairs, either directly or through freely chosen representatives; and
- (d) to vote for, and to be elected to, elective public office at genuine, periodic, free elections; and
- (e) to hold public office and to exercise public functions.

(2) The exercise of those rights may be regulated by a law that is reasonably justifiable for the purpose in a democratic society that has a proper regard<sup>1</sup> for the rights and dignity of mankind.

#### 51. Right to freedom of information.

(1) Every citizen has the right of reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society<sup>2</sup> in respect of—

- (a) matters relating to national security, defence or international relations of Papua New Guinea (including Papua New Guinea's relations with the Government of any other country or with any international organization); or
- (b) records of meetings and decisions of the National Executive Council and of such executive bodies and elected governmental authorities as are prescribed by Organic Law or Act of the Parliament; or
- (c) trade secrets, and privileged or confidential commercial or financial information obtained from a person or body; or
- (d) parliamentary papers<sup>3</sup> the subject of parliamentary privilege; or
- (e) reports, official registers and memoranda prepared by governmental authorities or authorities established by government, prior to completion; or
- (f) papers relating to lawful official activities for investigation and prosecution of crime; or
- (g) the prevention, investigation and prosecution of crime; or
- (h) the maintenance of personal privacy and security of the person; or
- (i) matters contained in or related to reports prepared by, on behalf of or for the use of a governmental authority responsible for the regulation or supervision of financial institutions; or
- (j) geological or geophysical information and data concerning wells and ore bodies.

(2) A law that complies with Section 38 (*general qualifications on qualified rights*) may regulate or restrict the right guaranteed by this section.

(3) Provision shall be made by law to establish procedures by which citizens may obtain ready access to official information.

<sup>1</sup> *Seemle*, "having a proper regard" was intended—compare the footnote to Section 38(1).

<sup>2</sup> *Seemle*, the expression "having a proper regard for the rights and dignity of mankind" was intended—compare the footnote to Section 38(1).

<sup>3</sup> *Seemle*, "that etc" was omitted.

(4) This section does not authorize—

- (a) withholding information or limiting the availability of records to the public except in accordance with its provisions; or
- (b) withholding information from the Parliament.

## 52. Right to freedom of movement.

(1) Subject to Subsection (3), no citizen may be deprived of the right to move freely throughout the country, to reside in any part of the country and to enter and leave the country, except in consequence of a law that provides for deprivation of personal liberty in accordance with Section 42 (*liberty of the person*).

(2) No citizen shall be expelled or deported from the country except by virtue of an order of a court made under a law in respect of the extradition of offenders, or alleged offenders, against the law of some other place.

(3) A law that complies with Section 38 (*general qualifications on qualified rights*) may regulate or restrict the exercise of the right referred to in Subsection (1), and in particular may regulate or restrict the freedom of movement of persons convicted of offences and of members of a disciplined force.

## 53. Protection from unjust deprivation of property.

(1) Subject to Section 54 (*special provision in relation to certain lands*) and except as permitted by this section, possession may not be compulsorily taken of any property, and no interest in or right over property may be compulsorily acquired, except in accordance with an Organic Law or an Act of the Parliament, and unless—

(a) the property is required for—

(i) a public purpose; or

(ii) a reason that is reasonably justified in a democratic society that has a proper regard<sup>1</sup> for the rights and dignity of mankind,

that is so declared and so described, for the purposes of this section, in an Organic Law or an Act of the Parliament; and

(b) the necessity for the taking of possession or acquisition for the attainment of that purpose or for that reason is such as to afford reasonable justification for the causing of any resultant hardship to any person affected.

(2) Subject to this section, just compensation must be made on just terms by the expropriating authority, giving full weight to the National Goals and Directive Principles and having due regard to the national interest and to the expression of that interest by the Parliament, as well as to the person affected.

(3) For the purposes of Subsection (2), compensation shall not be deemed not to be just and on just terms solely by reason of a fair provision for deferred payment, payment by instalments or compensation otherwise than in cash.

(4) In this section, a reference to the taking of possession of property, or the acquisition of an interest in or right over property, includes a reference to—

(a) the forfeiture; or

<sup>1</sup> *Seemle*, "reasonably justifiable in a democratic society having a proper regard" was intended—compare footnote to Section 38(1).

- (b) the extinction or determination (otherwise than by way of a reasonable provision for the limitation of actions or a reasonable law in the nature of prescription or adverse possession),

of any right or interest in property.

(5) Nothing in the preceding provisions of this section prevents—

- (a) the taking of possession of property, or the acquisition of an interest in or right over property, that is authorized by any other provision of this Constitution; or

(b) any taking of possession or acquisition—

- (i) in consequence of an offence or attempted offence against, or a breach or attempted breach of, or other failure to comply with a law; or
- (ii) in satisfaction of a debt or civil obligation; or
- (iii) subject to Subsection (6), where the property is or may be required as evidence in proceedings or possible proceedings before a court or tribunal,

in accordance with a law that is reasonably justifiable in a democratic society that has a proper regard<sup>1</sup> for the rights and dignity of mankind; or

- (c) any taking of possession or acquisition that was an incident of the grant or acceptance of, or of any interest in or right over, that property or any other property by the holder or any of his predecessors in title; or

(d) any taking of possession or acquisition that is in accordance with custom; or

(e) any taking of possession or acquisition of ownerless or abandoned property (other than customary land); or

(f) any restriction on the use of or on dealing with property or any interest in or right over any property that is reasonably necessary for the preservation of the environment or of the national cultural inheritance.

(6) Subsection (5)(b)(iii) does not authorize the retention of any property after the end of the period for which its retention is reasonably required for the purpose referred to in that paragraph.

(7) Nothing in the preceding provisions of this section applies to or in relation to the property of any person who is not a citizen and the power to compulsorily take possession of, or to acquire an interest in, or right over, the property of any such person shall be as provided for by an Act of the Parliament.

#### 54. Special provision in relation to certain lands.

Nothing in Section 37 (*protection of the law*) or 53 (*protection from unjust deprivation of property*) invalidates a law that is reasonably justifiable in a democratic society that has a proper regard for human rights<sup>2</sup> and that provides—

(a) for the recognition of the claimed title of Papua New Guinea to land where—

- (i) there is a genuine dispute as to whether the land was acquired validly or at all from the customary owners before Independence Day; and
- (ii) if the land were acquired compulsorily the acquisition would comply with Section 53(1) (*protection from unjust deprivation of property*); or

<sup>1</sup> *Seemle*, "having a proper regard" was intended—compare footnote to Section 38(1).

<sup>2</sup> *Seemle*, "having a proper regard for the rights and dignity of mankind" was intended—compare footnote to Section 38(1).

- (b) for the settlement by extra-judicial means of disputes as to the ownership of customary land that appear not to be capable of being reasonably settled in practice by judicial means; or
- (c) for the prohibition or regulation of the holding of certain interests in, or in relation to, some or all land by non-citizens.

**55. Equality of citizens.**

(1) Subject to this Constitution, all citizens have the same rights, privileges, obligations and duties irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex.

(2) Subsection (1) does not prevent the making of laws for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged or less advanced groups or residents of less advanced areas.

(3) Subsection (1) does not affect the operation of a pre-Independence law.

**56. Other rights and privileges of citizens.**

(1) Only citizens may—

- (a) vote in elections for, or hold, elective public offices; or
- (b) acquire freehold land.

(2) An Act of the Parliament may—

- (a) define the offices that are to be regarded as elective public offices; and
- (b) define the forms of ownership that are to be regarded as freehold; and
- (c) define the corporations that are to be regarded as citizens,

for the purposes of Subsection (1).

(3) An Act of the Parliament may make further provision for rights and privileges to be reserved for citizens.

**Subdivision D.—Enforcement.**

**57. Enforcement of guaranteed rights and freedoms.**

(1) A right or freedom referred to in this Division shall be protected by, and is enforceable in, the Supreme Court or the National Court or any other court prescribed for the purpose by an Act of the Parliament, either on its own initiative or on application by any person who has an interest in its protection and 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 Papua New Guinea; and
- (b) any other persons prescribed for the purpose by an Act of the Parliament; and
- (c) any other persons 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 the rights and freedoms referred to in this Division, 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 purposes 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).

(4) Any court, tribunal or authority may, on its own initiative or at the request of a person referred to in Subsection (1), adjourn, or otherwise delay a decision in, any proceedings before it in order to allow a question concerning the effect or application of this Division 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 a 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 derogation of, their jurisdiction and powers under any other provision of this Constitution.

#### 58. Compensation.

(1) This section is in addition to, and not in derogation of, Section 57 (*enforcement of guaranteed rights and freedoms*).

(2) A person whose rights or freedoms declared or protected by this Division are infringed (including any infringement caused by a derogation of the restrictions specified in Part X.5 (*internment*)) on the use of emergency powers in relation to internment 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 any person who committed, or was responsible for, the infringement.

(4) Where the infringement was committed by a governmental body, damages may be awarded either—

- (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 against both, in which last case the court may apportion the damages between them.

(5) Damages shall not be awarded against a person who was responsible to a governmental body in respect of the action giving rise to the infringement if—

- (a) the action was an action made unlawful only by Section 41(1) (*proscribed acts*); and

(b) the action taken was genuinely believed by that person to be required by law, but the burden of proof of the belief referred to in paragraph (b) is on the party alleging it.

#### Division 4.—Principles of Natural Justice.

#### 59. Principles of natural justice.

(1) Subject to this Constitution and to any statute, the principles of natural justice are the rules of the underlying 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.

60. Development of principles.

In the development of the rules of the underlying law in accordance with Sch.2<sup>1</sup> (*adoption, etc., of certain laws*) particular attention shall be given to the development of a system of principles of natural justice and of administrative law specifically designed for Papua New Guinea, taking special account of the National Goals and Directive Principles and of the Basic Social Obligations, and also of typically Papua New Guinean procedures and forms of organization.

61. Basic rights and freedoms.

For the avoidance of doubt, it is hereby declared that nothing in the preceding provisions of this Division derogates any of the rights and freedoms provided for by Division 3 (*basic rights*).

62. Decisions in "deliberate judgement".

(1) Where a law provides or allows for an act to be done in the "deliberate judgement" of a person, body or authority, the principles of natural justice apply only to the extent that the exercise of judgement must not be biased, arbitrary or capricious.

(2) Except—

(a) to the extent provided for by Subsection (1); and

(b) in accordance with Section 155(5) (*the National Judicial System*); and

(c) as provided by a Constitutional Law or an Act of the Parliament,

an act to which Subsection (1) applies is, to the extent to which it is done in the deliberate judgement of the person concerned, non-justiciable.

*Division 5.—Basic Social Obligations.*

63. Enforcement of the Basic Social Obligations.

(1) Except to the extent provided in Subsections (3) and (4), the Basic Social Obligations are non-justiciable.

(2) Nevertheless, it is the duty of all governmental bodies to encourage compliance with them as far as lies within their respective powers.

(3) Where any law, or any power conferred or duty imposed by any law (whether the power or duty be of a legislative, judicial, executive, administrative or other kind), can reasonably be understood, applied, exercised, complied with or enforced, without failing to give effect to the intention of the Parliament or to this Constitution, in such a way as to enforce or encourage compliance with the Basic Social Obligations, or at least not to derogate them, it is to be understood, applied, exercised, complied with or enforced in that way.

(4) Subsection (1) does not apply in the exercise of the jurisdiction of the Ombudsman Commission or other body prescribed for the purposes of Division III.2 (*leadership code*), which shall take the Basic Social Obligations fully into account in all cases as appropriate.

<sup>1</sup> *Semble*, "Schedule 2" was intended.

PART IV.—CITIZENSHIP.

*Division 1.—Introductory.*

64. Dual citizenship. ✓

(1) Notwithstanding the succeeding provisions of this Part but subject to Subsection (2), no person who has a real foreign citizenship may be or become a citizen, and the provisions of this Part shall be read subject to that prohibition.

(2) Subsection (1) does not apply to a person who has not yet reached the age of 19 years, provided that, before he reaches that age and in such manner as is prescribed by or under an Act of the Parliament, he renounces his other citizenship and makes the Declaration of Loyalty.

(3) A person who has a real foreign citizenship and fails to comply with Subsection (2) ceases to be a citizen of Papua New Guinea when he reaches the age of 19 years.

(4) For the purposes of this section, a person who—

(a) was, immediately before Independence Day, an Australian citizen or an Australian Protected Person by virtue of—

(i) birth in the former Territory of Papua; or

(ii) birth in the former Territory of New Guinea and registration under Section 11 of the *Australian Citizenship Act 1948-1975* of Australia;

and

(b) was never granted a right (whether revocable or not) to permanent residence in Australia,

has no real foreign citizenship.

*Division 2.—Acquisition of Citizenship.*

65. Automatic citizenship on Independence Day.

(1) A person born in the country before Independence Day who has two grand-parents who were born in the country or an adjacent area is a citizen.

(2) A person born outside the country before Independence Day who has two grand-parents born in the country is a citizen as from Independence Day if—

(a) within one year after Independence Day or such longer period as the Minister responsible for citizenship matters allows in a particular case, application is made by him or on his behalf for registration as a citizen; and

(b) he renounces any other citizenship and makes the Declaration of Loyalty—

(i) if he has not reached the age of 19 years—in accordance with Section 64(2) (*dual citizenship*); or

(ii) if he has reached the age of 19 years—at or before the time when the application is made.

(3) In Subsection (1), "adjacent area" means an area that immediately before Independence Day constituted—

(a) the Solomon Islands; or

(b) the Province of the Republic of Indonesia known as Irian Jaya<sup>1</sup>; or

<sup>1</sup> *I.e.*, "Irian Jaya".

(c) the islands in Torres Straits annexed to the then Colony of Queensland under Letters Patent of the United Kingdom of Great Britain and Ireland bearing date the 10th day of October in the forty-second year of the reign of Her Majesty Queen Victoria (that is, 1878),  
not forming on Independence Day part of the area of Papua New Guinea.

(4) Subsections (1) and (2) do not apply to a person who—

- (a) has a right (whether revocable or not) to permanent residence in Australia; or
- (b) is a naturalized Australian citizen; or
- (c) is registered as an Australian citizen under Section 11 of the *Australian Citizenship Act 1948-1975* of Australia; or
- (d) is a citizen of a country other than Australia,

unless that person renounces his right to residence in Australia or his status as a citizen of Australia or of another country in accordance with Subsection (5).

(5) A person to whom Subsection (4) applies may, within the period of two months after Independence Day and in such manner as may be prescribed by or under an Act of the Parliament, renounce his right to permanent residence in Australia or his status as an Australian citizen or as a citizen of another country and make the Declaration of Loyalty.

(6) Where in his opinion it is just to do so, the Minister responsible for citizenship matters may in his deliberate judgement (but subject to Division 4 (*Citizenship Advisory Committee*)), extend the period of two months referred to in Subsection (4)<sup>1</sup>, but unless the Minister is satisfied that the applicant—

- (a) assumed in error that he was a citizen; or
- (b) did not know that he was not a citizen; or
- (c) had no reasonable opportunity or not enough time to determine his status,

the period may not be extended beyond a further two months.

#### 66. Citizenship by descent.

(1) A person who—

- (a) is born in the country on or after Independence Day; and
- (b) had one parent who was a citizen or who, if he had survived to Independence Day, would have been or would have been entitled to become, such a citizen,

is a citizen.

(2) A person—

- (a) who is born outside the country on or after Independence Day; and
- (b) who had one parent who was a citizen or who, if he had survived to Independence Day, would have been, or would have been entitled to become, such a citizen; and
- (c) whose birth is registered as prescribed by or under an Act of the Parliament made for the purposes of this subsection,

is a citizen.

<sup>1</sup> The correct reference is to Subsection (5).

## 67. Citizenship by naturalization.

(1) A person who has resided continuously in the country for at least eight years may apply to the Minister responsible for citizenship matters to be naturalized as a citizen, and the Minister may, if he is satisfied as to the matters referred to in Subsection (2), in his deliberate judgement (but subject to Division 4 (*Citizenship Advisory Committee*)), grant or refuse the application.

(2) To be eligible for naturalization, a person must—

- (a) be of good character; and
- (b) intend to reside permanently in the country; and
- (c) unless prevented by physical or mental disability, speak and understand *Pisin* or *Hiri Motu*, or a vernacular of the country, sufficiently for normal conversational purposes; and
- (d) have a respect for the customs and cultures of the country; and
- (e) be unlikely to be or become a charge on public funds; and
- (f) have a reasonable knowledge and understanding of the rights, privileges, responsibilities and duties of citizenship; and
- (g) renounce, in such manner as is prescribed by or under an Act of the Parliament, any other citizenship and make the Declaration of Loyalty.

(3) If an applicant for naturalization so requests, any child of the applicant who is under voting age at the time when the applicant is naturalized becomes a citizen by naturalization on the naturalization of the applicant.

## 68. Special provisions relating to naturalization.

(1) A person who is eligible to become a citizen under Section 67(1) (*citizenship by naturalization*) and holds an executive office by virtue of being a member of an elective body shall cease to hold that office at the expiration of a period of two months after Independence Day unless within that time he makes application under that section to be naturalized and that application is granted.

(2) Without limiting the matters that may be taken into account in deciding on the application for naturalization, under Section 67 (*citizenship by naturalization*) the following matters shall be taken into account in deciding on an application that is made during the first eight years after Independence Day :—

- (a) if the applicant is a person to whom Section 65(4) (*automatic citizenship on Independence Day*) applies, whether he acquired the right of permanent residence in Australia or became an Australian citizen otherwise than by reason of a voluntary act (other than marriage) on his part; and
- (b) whether the applicant has at any time accepted pay and conditions of employment that were not in general applicable—
  - (i) before Independence Day, to persons who qualify or would, if they had survived to that day, have qualified for citizenship under Section 65 (*automatic citizenship on Independence Day*); or
  - (ii) after Independence Day, to citizens; and
- (c) whether the major part of the investment and business interests of the applicant are and have been in the country; and
- (d) whether the applicant is or has been married to a citizen or to a person who, if he had survived to Independence Day, would have been, or would have

been entitled to become, a citizen, and the nature of the family ties of the applicant; and

- (e) the length and nature of the residence of the applicant in the country; and
- (f) any performance by the applicant of services beneficial to Papua New Guinea or its people; and
- (g) any sacrifices made by the applicant in the interests of Papua New Guinea or its people; and
- (h) the applicant's knowledge of *Pisin* or *Hiri Motu* or of a vernacular of the country; and
- (i) whether or not the application of the applicant includes the children (if any) under voting age of the applicant; and
- (j) any references given as to the good character and suitability for citizenship of the applicant; and
- (k) the place of birth and the parentage of the applicant.

(3) Notwithstanding anything in a Constitutional law<sup>1</sup>, a benefit, right or privilege, directly or indirectly, conferred upon "Papua New Guineans" or "natives" or "local persons" or "non-overseas persons" or "citizens" (where that term is to take effect after the making of a law relating to citizenship) by any pre-Independence law shall continue to be enjoyed only by persons who became citizens of Papua New Guinea under Section 65 (*automatic citizenship on Independence Day*) but only—

- (a) for a period of ten years after Independence Day; or
- (b) until an Act of the Parliament takes away that benefit, right or privilege,

whichever first occurs.

(4) Notwithstanding anything in a Constitutional Law, during the<sup>2</sup> five years after Independence Day only persons who become citizens of Papua New Guinea under Section 65 (*automatic citizenship on Independence Day*) shall have the rights conferred by Section 53 (*protection from unjust deprivation of property*) except that during this<sup>3</sup> period the rights of a person who becomes a citizen otherwise than under Section 65 (*automatic citizenship on Independence Day*) in respect of his property shall not be less than those accorded by law to non-citizens.

(5) Notwithstanding anything in a Constitutional Law, but subject to Subsection (6), an Act of the Parliament made in the period of ten years after Independence Day may confer a benefit, right or privilege on persons who became citizens of Papua New Guinea under Section 65 (*automatic citizenship on Independence Day*).

(6) An Act of the Parliament referred to in Subsection (5)—

- (a) shall not derogate the rights conferred by Sections 32 to 58 (*basic rights*) except the rights conferred by Section 55 (*equality of citizens*); and
- (b) shall be for the purpose of giving advantage or assistance to persons who become citizens of Papua New Guinea under Section 65 (*automatic citizenship on Independence Day*).

<sup>1</sup> *Semble*, "Law" was intended.

<sup>2</sup> *Semble*, "period of" was omitted.

<sup>3</sup> *Semble*, "that" was intended.

**69. Application for naturalization.**

(1) Subject to Subsection (2), an application for naturalization under Section 67 (*citizenship by naturalization*) must be made—

- (a) in the case of a person who has resided continuously in the country for eight years or more before Independence Day—within two months after Independence Day; and
- (b) in the case of any other person—within two months after the completion by him of eight years continuous residence in the country.

(2) Where in his opinion it is just to do so, the Minister responsible for citizenship matters may in his deliberate judgement, (but subject to Division 4 (*Citizenship Advisory Committee*)) extend the periods referred to in Subsection (1) where he is satisfied that—

- (a) the person was unaware of the provisions of Subsection (1); or
- (b) there are special circumstances.

*Division 3.—Loss and Regaining of Citizenship.***70. Automatic loss of citizenship.**

(1) A citizen who has reached voting age and is of full capacity who—

- (a) obtains the nationality or citizenship of another country by a voluntary act (other than marriage); or
- (b) exercises a right that is exclusive to nationals or citizens of another country, unless the Minister responsible for citizenship matters is satisfied that the right was exercised inadvertently; or
- (c) takes an oath or makes a declaration or affirmation of allegiance to another country or to the Sovereign or Head of State of another country; or
- (d) does, agrees to or adopts any act (other than marriage) by which he becomes a national or citizen of another country; or
- (e) enters or serves in the armed forces of another country, except with the express approval of the Head of State, acting with, and in accordance with, the advice of the National Executive Council; or
- (f) except as permitted by an Act of the Parliament, votes in a national, provincial, state or local election, or accepts elective office, of another country; or
- (g) subject to Subsection (3), travels under the protection of a passport or purported passport of another country in which he is described as a citizen or national of that country,

loses his citizenship.

(2) A person who is found by a court to have obtained citizenship by a false representation, fraud or concealment of a material fact on his part loses his citizenship, unless the Minister responsible for citizenship matters is satisfied that the offence was of a minor nature and that revelation of the true fact would not have affected the grant of naturalization.

(3) Subsection (1)(g) does not apply to—

- (a) a person who is absent from the country on Independence Day, who continues to travel under the protection of a passport of another country, but only until—
  - (i) the expiration of the then-current period of validity of the passport; or
  - (ii) his return to the country,
 whichever first happens; or
- (b) a person travelling under the protection of the passport of a parent or guardian; or
- (c) a person travelling under the protection of a passport of another country with the approval of the Minister responsible for citizenship matters.

71. Acts done under compulsion of law.

The preceding provisions of this Division do not apply to any act done under compulsion of law of another country.

72. Renunciation of citizenship.

(1) Subject to Subsections (2) and (3), a citizen who has reached voting age and is of full capacity may renounce his citizenship in such manner and on such conditions as are prescribed by or under an Act of the Parliament.

(2) A person may not renounce his citizenship unless—

- (a) he already holds some other nationality or citizenship; or
- (b) the renunciation is for the purpose of his obtaining some other nationality or citizenship.

(3) During a time of war, citizenship may not be renounced without the prior consent of the Minister responsible for citizenship matters.

73. Regaining citizenship.

(1) Subject to Subsection (2), citizenship once lost can be regained—

- (a) in the case of citizenship by virtue of Section 65 (*automatic citizenship on Independence Day*) or 66 (*citizenship by descent*)—only after five years' continuous residence in the country after the loss of citizenship, and in the deliberate judgement (but subject to Division 4 (*Citizenship Advisory Committee*)) of the Minister responsible for citizenship matters; and
- (b) in the case of citizenship by naturalization—only in accordance with the law relating to naturalization, for which purpose any period of residence in the country before the loss of citizenship shall be disregarded.

(2) Where a person—

- (a) was a citizen by virtue of Section 65 (*automatic citizenship on Independence Day*) or 66 (*citizenship by descent*); and
- (b) married, before, on or after Independence Day, a person who was a national or citizen of another country; and

(c) became, on or during the marriage, a national or citizen of the country of which his spouse was at that time a national or citizen, and the marriage has permanently broken up, the reference in Subsection (1)(a) to a period of five years shall be read as a reference to a period of three years commencing—

(d) if the person was, at the time when the marriage broke up, resident in the country—on the date on which it broke up; or

(e) if the person was at that time resident outside the country—on his return to reside in the country.

#### 74. Loss and regaining of citizenship by certain children.

(1) Where—

(a) a parent of a child loses his citizenship; and

(b) the Minister is satisfied on application on behalf of the child that it is for the welfare of the child to do so,

the Minister responsible for citizenship matters may, by order, deprive the child of his citizenship.

(2) A person aggrieved by an order under Subsection (1) may appeal to the National Court.

(3) An Act of the Parliament may make special provision to facilitate the regaining of citizenship by persons who lose their citizenship by reason of the loss of citizenship by a parent.

#### *Division 4.—Citizenship Advisory Committee.*

#### 75. The Committee.

(1) An Act of the Parliament shall make provision for a Citizenship Advisory Committee, all of the members of which must be citizens (other than naturalized citizens).

(2) The Committee shall consist of—

(a) four permanent members, at least two of whom are members of the Parliament other than Ministers; and

(b) one ad hoc member to represent the community in which the person to whom a matter before the Committee relates resides.

#### 76. Functions of the Committee.

(1) Before taking any action under this Part in relation to a person, the Minister responsible for citizenship matters shall refer the matter to the Citizenship Advisory Committee.

(2) If the Minister refuses to accept the advice of the Committee on any matter referred to it under Subsection (1), he shall, if so requested by a person affected or by the Committee, give to the Parliament, as soon as practicable, a statement on the matter setting out the reasons for his refusal, and the Parliament may reverse his decision on such conditions as it thinks proper.

(3) The reversal by the Parliament of a decision to grant or to allow the regaining of citizenship, or to grant a certificate under Section 81 (*certificate as to citizenship*), takes effect, subject to any conditions to which it is made subject, as a deprivation of citizenship on the date of the reversal.

(4) The reversal by the Parliament of a decision to refuse to grant citizenship to a person, to deprive a person of citizenship or to refuse to grant a certificate under Section 81 (*certificate as to citizenship*) takes effect retrospectively to the date of the decision.

(5) The Committee has such powers and such other functions and duties as are conferred or imposed by or under an Act of the Parliament.

*Division 5.—General.*

77. Special provisions for certain persons.

(1) A foundling discovered at any time in the country shall, in the absence of proof to the contrary, be deemed to be the child of parents at least one of whom was, or if he had survived would have been, a citizen.

(2) Where the identity or the citizenship status of a parent of a child born in the country is unknown or doubtful, the parent shall be deemed to have been, in the absence of proof to the contrary, a person who was, or if he had survived would have been, a citizen.

(3) For the purposes of this Part, a posthumous child of a person has the same status as he would have had if he had been born immediately before the date of the death of his father.

78. Effect of adoption.

(1) Where the citizenship status or entitlement of a person is to be determined by reference to a parent or grand-parent and the person, or a parent of the person, was adopted under a law at any time in force in the country or any other place, the status or entitlement shall be determined by reference to the natural parents or grand-parents, except that the Minister responsible for citizenship matters may, in his deliberate judgement (but subject to Division 4 (*Citizenship Advisory Committee*)), allow an adoptive parent or grand-parent to be taken into account where the result would be to recognize citizenship or the entitlement to citizenship.

(2) In Subsection (1), a reference to adoption includes a reference to an adoption by custom.

79. Place of birth of certain persons.

For the purposes of this Part—

(a) a person born on a registered ship or aircraft shall be deemed to have been born at the place where the ship or aircraft was registered; and

(b) a person born on an unregistered ship or aircraft belonging to the government of a country shall be deemed to have been born in that country.

80. "Residence".

Subject to any Act of the Parliament, a requirement in this Part of a period of residence in a place is not satisfied by—

(a) residence in custody under sentence awaiting deportation or removal from the country; or

(c) residence as an unlawful immigrant.

## 81. Certificate as to citizenship.

(1) A person whose status or entitlement in relation to citizenship of Papua New Guinea is, or may be, in doubt may apply to the Minister responsible for citizenship matters for a certificate under this section.

(2) If the Minister is satisfied that the applicant is, or is entitled to become, a citizen, he may, in his deliberate judgement (but subject to Division 4 (*Citizenship Advisory Committee*)), grant a certificate stating that the person is or may become a citizen by virtue of a provision specified in the certificate.

(3) Subject to Section 76 (*functions of the Committee*), a certificate under this section is (unless it is proved that it was obtained by means of a false representation, fraud or concealment of a material fact) conclusive evidence that on the material date the person concerned was, is or may become a citizen in accordance with the terms of the certificate.

## PART V.—THE HEAD OF STATE

## Division 1.—The Head of State

## 82. Queen and Head of State.

## (1) Her Majesty the Queen—

(a) having been requested by the people of Papua New Guinea, through their Constituent Assembly, to become the Queen and Head of State of Papua New Guinea; and

(b) having graciously consented so to become, is the Queen and Head of State of Papua New Guinea.<sup>1</sup>

(2) Subject to and in accordance with this Constitution, the privileges, powers, functions, duties and responsibilities of the Head of State<sup>2</sup> may be had, exercised and performed through a Governor-General appointed in accordance with Division 3 (*appointment, etc., of Governor-General*) and, except where the contrary intention appears, reference in any law to the Head of State shall be read accordingly.

83. Queen's successors.<sup>3</sup>

The provisions of this Constitution referring to the Queen extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom of Great Britain and Northern Ireland.

## 84. Precedence.

The Head of State<sup>2</sup> takes precedence in rank over all other persons in Papua New Guinea, and the Governor-General takes precedence in rank immediately after the Head of State<sup>2</sup>.

<sup>1</sup> Paragraph (b) is printed in the form in which it was adopted. The words "is the Queen and Head of State of Papua New Guinea" are, however, obviously not part of that paragraph, and the correct form of printing is—

"(b) having graciously consented so to become,

is the Queen and Head of State of Papua New Guinea."

<sup>2</sup> *Semble*, "the Queen and Head of State" was intended.

<sup>3</sup> *See*, also, Section Sch. 1.21(a)(ii), which to some extent duplicates this provision.

85. Royal Style and Titles. ✓

The Style and Titles of the Head of State<sup>1</sup> are as determined by Act of the Parliament, and until such an Act is made are—

Elizabeth II, Queen of Papua New Guinea and Her other Realms and Territories, Head of the Commonwealth.

*Division 2.—Functions, etc., of the Head of State.*

86. Functions, etc. ✓

(1) The privileges, powers, functions, duties and responsibilities of the Head of State are as prescribed by or under Constitutional Laws and Acts of the Parliament.

(2) Except as provided by Section 96(2) (*terms and conditions of employment*), in the exercise and performance of his privileges, powers, functions, duties and responsibilities the Head of State shall act only with, and in accordance with, the advice of the National Executive Council, or of some other body or authority prescribed by a Constitutional Law or an Act of the Parliament for a particular purpose as the body or authority in accordance with whose advice the Head of State is obliged, in a particular case, to act.

(3) Any instrument made by or in the name of the Head of State shall recite that it is made with, and in accordance with, the advice of the National Executive Council or of any other body or authority in accordance with whose advice the Head of State is obliged, in the particular case, to act, but failure to comply with this subsection does not affect the validity of an instrument.

(4) The question, what (if any) advice was given to the Head of State, or by whom, is non-justiciable.

*Division 3.—Appointment, etc., of Governor-General.*

87. Qualifications for appointment.

(1) The Governor-General must be a citizen who—

- (a) is qualified to be a member of the Parliament (except for the reason that he occupies the office of Governor-General); and
- (b) is a mature person of good standing who enjoys the general respect of the community.

(2) The question, whether for the purposes of Subsection (1) a person is a person to whom Subsection (1)(b) applies, is non-justiciable.

(3) The Governor-General must not hold any office or position or engage in any calling other than that of, or an office or position associated with, his office as Governor-General, except with the consent of the Head of State<sup>1</sup>, acting with, and in accordance with, the joint advice of the National Executive Council and the Ombudsman Commission.

(4) A request for the consent of the Head of State<sup>1</sup> under Subsection (3) shall not be made unless agreement on the matter in relation to which the consent is sought has been reached between the National Executive Council and the Ombudsman Commission.

(5) No person is eligible for appointment as Governor-General more than once unless the Parliament, by two-thirds absolute majority vote, approves appointment for a second term, but no person is eligible for appointment for a third term.

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<sup>1</sup> *Seemle*, "the Queen and Head of State" was intended.

**88. Appointment to office.**

(1) Except in the case of the first Governor-General appointed before Independence Day the Governor-General shall be appointed by the Head of State<sup>1</sup>, acting with, and in accordance with, the advice of the National Executive Council given in accordance with a decision of the Parliament.

(2) A decision of the Parliament to nominate a person for appointment as Governor-General shall be made by a simple majority vote, in an exhaustive secret ballot conducted in accordance with an Organic Law.

(3) Subject to Subsection (5), the Speaker shall, within the period of three months before the completion of the normal term of office of the Governor-General, call a meeting of the Parliament to nominate the next Governor-General.

(4) Subject to Subsection (5), in the event of a casual vacancy in the office of Governor-General, the Speaker shall, as soon as practicable, call a meeting of the Parliament to nominate the next Governor-General.

(5) If—

(a) at a time when a meeting of the Parliament should otherwise be called under Subsection (3) or (4) a general election to the Parliament has been ordered; or

(b) between the time when a meeting of the Parliament should otherwise be called under Subsection (3) and the date of the completion of the normal term of office of the outgoing Governor-General a general election to the Parliament is due to be held in accordance with this Constitution,

the Speaker shall not call a meeting of the Parliament in accordance with Subsection (3) or (4), as the case may be, and a nomination shall be made at the first meeting of the new Parliament as its first item of business after any formal business, and the election of a Speaker.

**89. Assumption of office.**

Notwithstanding Section 90 (*Declaration of Loyalty, etc.*) for the purposes of this Constitution a person appointed as Governor-General takes office—

(a) subject to paragraph (b), at the end of his predecessor's term of office; or

(b) if he is appointed to fill a casual vacancy—on the date of his appointment.

**90. Declaration of Loyalty, etc.**

(1) Before entering upon the duties of his office, a Governor-General shall take the Oath of Allegiance and make the Declaration of Loyalty and the Declaration of Office before the Chief Justice and in the presence of the Parliament, but during a period of declared national emergency they may be taken and made in such manner as is directed by the National Executive Council.

(2) If the Governor-General has not complied with Subsection (1) before taking office—

(a) he is suspended from office until such time as he does so; and

(b) if he does not do so at the first reasonably available opportunity, he may be dismissed from office by the Head of State<sup>1</sup>, acting with, and in accordance with, the advice of the National Executive Council given in accordance with

<sup>1</sup> *Semble*, "the Queen and Head of State" was intended.

a decision of the Parliament, and in that event is not eligible for re-appointment for a period of six years.

91. Normal term of office. -

Unless he earlier dies, resigns, ceases to be qualified for office in accordance with Section 87 (*qualifications for appointment*), is dismissed under Section 90 (*Declaration of Loyalty, etc.*), or 93(1) (*dismissal and removal from office*), or is removed from office under Section 93(2) (*dismissal and removal from office*), the Governor-General holds office for a term of six years from the date of his assumption of office in accordance with Section 89 (*assumption of office*), plus any period that is required, in accordance with Section 88(5) (*appointment to office*), for the appointment of the next Governor-General.

92. Resignation. -

(1) The Governor-General may resign from office by notice in writing to the Head of State<sup>1</sup>.

(2) The resignation takes effect on its acceptance by the Head of State<sup>1</sup>, acting with, and in accordance with, the advice of the National Executive Council.

93. Dismissal and removal from office. -

(1) The Governor-General may be dismissed from office by the Head of State<sup>1</sup>, acting with, and in accordance with, the advice of the National Executive Council given in accordance with either—

(a) a decision of the National Executive Council; or

(b) a decision made by an absolute majority of the Parliament.

(2) The Governor-General may be removed from office by the Head of State<sup>1</sup>, acting with, and in accordance with, the advice of the National Executive Council given in accordance with a decision of the Parliament, if the Speaker advises the Parliament that two medical practitioners appointed for the purpose by the National authority responsible for the registration or licensing of medical practitioners have jointly reported to the Speaker that, in their professional opinions, the Governor-General is unfit, by reason of physical or mental incapacity, to carry out the duties of his office.

94. Suspension from office. -

(1) The Governor-General may be suspended from office—

(a) by the National Executive Council, if he refuses or fails to act in accordance with the advice of the National Executive Council or of any other body or authority in accordance with whose advice he is obliged, in the particular case, to act, or acts, or purports to act contrary to, or without, any such advice; or

(b) in accordance with an Act of the Parliament pending an investigation for the purposes of Section 93(2) (*dismissal and removal from office*),

and pending any resultant action by the Parliament.

(2) If the Governor-General is suspended from office by the National Executive Council under Subsection (1)(a), the Prime Minister shall immediately inform the Speaker of the suspension and of the reasons for it.

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<sup>1</sup> *Semble*, "the Queen and Head of State" was intended.

(3) If the Governor-General is suspended from office under Subsection (1)(a)—

- (a) the Speaker shall, as soon as practicable, call a meeting of the Parliament at which the matter of the suspension and of the possible dismissal of the Governor-General shall be the first item of business after any formal business and, if necessary, the appointment of a Speaker; and
- (b) the suspension may be lifted at any time by decision of the Parliament; and
- (c) unless before the end of the meeting a recommendation is made in accordance with Section 93(1) (*dismissal and removal from office*) that the Governor-General be dismissed from office, the suspension ceases at the end of the meeting.

(4) If the Governor-General is suspended from office under this section, the Prime Minister shall, as soon as practicable, inform the Head of State<sup>1</sup> of the suspension and of the reasons for it.

(5) A period of suspension under this section shall be taken into account in calculating for the purposes of this Division, the length of the period of service in office of the Governor-General.

#### 95. Acting Governor-General.

(1) In this section, a reference to the Speaker or to the Chief Justice shall be read as a reference to the substantive holder of that office.

(2) If—

- (a) there is a vacancy in the office of Governor-General; or
- (b) the Governor-General is suspended from office; or
- (c) the Governor-General is—
  - (i) on leave of absence; or
  - (ii) absent from the country; or
  - (iii) out of speedy and effective communication; or
  - (iv) otherwise unable to perform, or is not readily available to perform, the duties of his office,

the Speaker is, subject to Subsection (3), the Acting Governor-General.

(3) If at any time to which Subsection (2) applies—

- (a) there is a vacancy in the office of Speaker; or
- (b) the Speaker is suspended from office; or
- (c) the Speaker is—
  - (i) on leave of absence; or
  - (ii) absent from the country; or
  - (iii) out of speedy and effective communication; or
  - (iv) otherwise unable to perform, or is not readily available to perform, the duties of his office,

the Chief Justice (if he is a citizen) is the Acting Governor-General.

(4) During any period when he is the Acting Governor-General, the Speaker or the Chief Justice shall not exercise or perform any of the other powers, functions, duties and

<sup>1</sup> *Seemingly, "the Queen and Head of State" was intended.*

responsibilities of the office of Speaker or Chief Justice, as the case may be, except that the Chief Justice may complete any proceedings actually commenced before him unless other suitable arrangements can be made.

(5) When neither the Speaker nor the Chief Justice is available (or, in the case of the Chief Justice, qualified) to be the Acting Governor-General, the powers, functions, duties and responsibilities of the Governor-General shall be exercised and performed by a Minister appointed by the Head of State<sup>1</sup> on the advice<sup>2</sup> of the National Executive Council for the purpose.

(6) The question, whether the occasion for the exercise or performance of a power, function, duty or responsibility by an Acting Governor-General or a Minister under this section has arisen or has ceased, is non-justiciable.

#### 96. Terms and conditions of employment.

(1) Subject to this Constitution, the terms and conditions of employment of the Governor-General are as determined by or under an Organic Law.

(2) Except with the consent of the Governor-General the terms and conditions of employment of the Governor-General shall not be changed to his detriment during his term of office, and an Organic Law that so changes them shall recite the terms of the consent.

#### *Division 4.—General.*

#### 97. Conveyance of decisions, etc.

Where any act is done, decision is made or advice is given by the Parliament or the National Executive Council under this Part, the Prime Minister shall immediately convey it to the Head of State<sup>1</sup>.

#### 98. Acts, etc., of the Head of State.

Unless the contrary intention appears, any act by the Head of State takes effect when it is formally advised to the Prime Minister or the National Executive Council.

### PART VI.—THE NATIONAL GOVERNMENT.

#### *Division 1.—General Principles.*

#### 99. Structure of Government.

(1) Subject to and in accordance with this Constitution, the power, authority and jurisdiction of the People shall be exercised by the National Government.

(2) The National Government consists of three principal arms, namely:—

- (a) the National Parliament, which is an elective legislature with, subject to the Constitutional Laws, unlimited powers of law-making; and
- (b) the National Executive; and
- (c) the National Judicial System, consisting of a Supreme Court of Justice and a National Court of Justice, of unlimited jurisdiction, and other courts.

<sup>1</sup> *Semble*, "the Queen and Head of State" was intended.

<sup>2</sup> *Semble*, "acting with, and in accordance with, the advice" was intended—compare the expressions used throughout in this context.

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

(4) Subsection (2) is descriptive only and is non-justiciable.

Division 2.—The National Parliament.

Subdivision A.—The Legislative Power.

**100. Exercise of the legislative power.**

(1) Subject to this Constitution, the legislative power of the People is vested in the National Parliament.

(2) Subsection (1) does not prevent a law from conferring on an authority other than the Parliament legislative powers or functions (including, if the law so provides, a further power or further powers of delegation and subdelegation).

(3) Nothing in any Constitutional Law enables or may enable the Parliament to transfer permanently, or divest itself of, legislative power.

Subdivision B.—Composition of the National Parliament.

**101. Membership.**

(1) Subject to this section, the Parliament is a single-chamber legislature, consisting of—

- (a) a number of members elected from single-member open electorates; and
- (b) a number of members elected from single-member provincial electorates; and
- (c) not more than three nominated members, appointed and holding office in accordance with Section 102 (*nominated members*).

(2) An Organic Law shall make provision for the number of open and provincial electorates.

(3) No member may represent two or more electorates at the same time.

(4) The precise number of open electorates and of provincial electorates and their boundaries shall be determined from time to time in accordance with Section 125 (*electorates*).

(5) An alteration to the number of electorates or to the boundaries of an electorate takes effect for the purposes of the next general election and of succeeding elections.

**102. Nominated members.**

The Parliament may, from time to time, by a two-thirds absolute majority vote, appoint a person (other than a member) to be a nominated member of the Parliament.

**103. Qualifications for and disqualifications from membership.**

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

(2) A candidate for election to the parliament must have been born in the electorate for which he intends to nominate or have resided in the electorate for a continuous period of two years immediately preceding his nomination or for a period of five years at any time.

(3) **"and must pay a nomination fee of K1,000.00"**

(3) A person is not qualified to be, or to remain, a member of the Parliament if—

(a) he is not entitled to vote in elections to the Parliament; or

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- (b) he is of unsound mind within the meaning of any law relating to the protection of the persons and property of persons of unsound mind; or
- (c) subject to Subsections (4) to (7), he is under sentence of death or imprisonment for a period of more than nine months; or
- (d) he is otherwise disqualified under this Constitution.

(4) Where a person is under sentence of death or imprisonment for a period exceeding nine months, the operation of Subsection (3)(d)<sup>1</sup> 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.

(5) The references in Subsection (4), 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.

(6) If a free pardon is granted, a conviction is quashed or a sentence is changed to a sentence of imprisonment for nine 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 the writ for the by-election has not been issued the member is restored to his seat.

(7) In this section—

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

"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 is granted within that definite period.

#### 104. Normal term of office.

(1) An elected member of the Parliament takes office on the day immediately following the day fixed for the return of the writ for the election in his electorate.

(2) The seat of a member of the Parliament becomes vacant—

- (a) if he is appointed as Governor-General; or
- (b) upon the expiry of the day fixed for the return of the writs, for the general election after he last became a member of the Parliament; or
- (c) if he resigns his seat by notice in writing to the Speaker, or in the case of the Speaker to the Clerk of the Parliament; or
- (d) if he is absent, without leave of the Parliament, during the whole of three consecutive meetings of the Parliament unless Parliament decides to waive this rule upon satisfactory reasons being given; or
- (e) if, except as authorized by or under an Organic Law or an Act of the Parliament, he directly or indirectly takes or agrees to take any payment in respect of his services in the Parliament; or
- (f) if he becomes disqualified under Section 103 (*qualifications for and disqualifications from membership*); or
- (g) on his death; or

<sup>1</sup> The correct reference is to Subsection (3)(c).

(b) if he is dismissed from office under Division III.2 (*leadership code*).

(3) For the purposes of Subsection (2)(d), a meeting of the Parliament commences when the Parliament first sits following a general election, prorogation of the Parliament or an adjournment of the Parliament otherwise than for a period of less than 12 days and ends when next the Parliament is prorogued or adjourned otherwise than for a period of less than 12 days.

#### 105. General elections.

(1) A general election to the Parliament shall be held—

- (a) within the period of three months before the fifth anniversary of the day fixed for the return of the writs for the previous general election; or
- (b) if, during the last 12 months before the fifth anniversary of the day fixed for the return of the writs for the previous general election—
  - (i) a vote of no confidence in the Prime Minister or the Ministry is passed in accordance with Section 145 (*motions of no confidence*); or
  - (ii) the Government is defeated on the vote on a question that the Prime Minister has declared to the Parliament to be a question of confidence; or
- (c) if the Parliament, by an absolute majority vote, so decides.

(2) The Head of State, acting with, and in accordance with, the advice of the Electoral Commission, shall fix the first and last days of the period during which polling shall take place and the date by which the writs for a general election shall be returned.

(3) In advising the Head of State under Subsection (2), and in conducting the election, the Electoral Commission shall do its best to ensure that—

- (a) in a case to which Subsection (1)(a) applies—the date for the return of the writs is fixed as nearly as may reasonably be to the fifth anniversary of the date fixed for the return of the writs for the previous general election; and
- (b) in a case to which Subsection (1)(b) or (c) applies—the date for the return of the writs is fixed as soon as may reasonably be after the date of the relevant decision of the Parliament.

#### 106. By-elections.

If the office of an elected member of the Parliament becomes vacant otherwise than by virtue of Section 104(2)(b) (*normal term of office*), an 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 105(1) (*general elections*) and before the day fixed for the return of that writ, writs for a general election are issued, the first-mentioned writ shall be deemed to have been revoked<sup>1</sup>.

<sup>1</sup> Section 106(b) seems to have been garbled in the course of amendment: "an election under Section 105(1) (*general elections*)" in Paragraph (b) should read "the election", and something like "in which case" should appear before "the first-mentioned writ" in Paragraph (b).

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Subdivision C.—The Speaker and the Deputy Speaker.

107. Offices of Speaker and Deputy Speaker.

- (1) There shall be offices of Speaker and Deputy Speaker of the National Parliament.
- (2) The Speaker and the Deputy Speaker must be members of the Parliament, and shall be elected by the Parliament by secret ballot in accordance with the Standing Orders of the Parliament.
- (3) The Speaker and the Deputy Speaker hold office, and their offices become vacant, in accordance with the Constitutional Laws and the Standing Orders of the Parliament.
- (4) No Minister may be the Speaker or Deputy Speaker, and if a Speaker or Deputy Speaker becomes a Minister he vacates his office as Speaker or Deputy Speaker, as the case may be.

108. Functions of the Speaker and Deputy Speaker.

- (1) The Speaker is responsible, subject to and in accordance with the Constitutional Laws, the Acts of the Parliament and the Standing Orders of the Parliament, for upholding the dignity of the Parliament, maintaining order in it, regulating its proceedings and administering its affairs, and for controlling the precincts of the Parliament as defined by or under an Act of the Parliament.
- (2) In the event of a vacancy in the office of the Speaker or his absence from the country or from the Parliament, and otherwise as determined by or under a Constitutional Law, an Act of the Parliament or the Standing Orders of the Parliament, the Deputy Speaker has, subject to Section 95 (*Acting Governor-General*), all the rights, privileges, powers, functions, duties and responsibilities of the Speaker.
- (3) A Constitutional Law, an Act of the Parliament or the Standing Orders of the Parliament may provide for other powers, functions, duties and responsibilities of the Speaker and the Deputy Speaker.

Subdivision D.—Powers, Privileges and Procedures.

109. General power of law-making.

- (1) Subject to this Constitution, the Parliament may make laws, having effect within and outside the country, for the peace, order and good government of Papua New Guinea and the welfare of the People.
- (2) In particular, Acts of the Parliament, not inconsistent with the Constitutional Laws, may provide for all matters that are necessary or convenient to be prescribed for carrying out and giving effect to this Constitution.
- (3) No law made by the Parliament is open to challenge in any court on the ground that—
  - (a) it is not for the peace, order or good government of Papua New Guinea or the welfare of the People; or
  - (b) it purports to have extra-territorial effect.
- (4) Each law made by the Parliament shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit, and there is no presumption against extra-territoriality.

**110. Certification as to making of laws.**

(1) Subject to Section 137(3) (*Acts of Indemnity*) and to any Act of the Parliament made for the purposes of Subsection (3), the Speaker shall certify under the National Seal, in accordance with the Standing Orders of the Parliament, that a law has been made by the Parliament and, subject to Subsection (2), the law comes into operation on the date of the certificate.

(2) Nothing in Subsection (1) prevents a law—

(a) being expressed to come, or to be deemed to have come, into force on a date specified by, or fixed in accordance with, law; or

(b) being retrospective or retroactive.

(3) An Act of the Parliament or the Standing Orders of the Parliament may make provision under which a law made by the Parliament may, at the direction of the Head of State, acting with, and in accordance with, the advice of the National Executive Council, be recommitted to the Parliament for the consideration of amendments proposed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

**111. Right to introduce bills, etc.**

(1) Subject to Section 210 (*executive initiative*), any member of the Parliament is entitled to introduce into the Parliament, in accordance with, and subject to any reasonable restrictions contained in, the Standing Orders of the Parliament, a petition, question, bill, resolution or motion.

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

(3) The Standing Orders of the Parliament may make provision for priority to be given to Government business at certain times or in certain circumstances.

**112. Presiding in the Parliament.**

(1) Subject to Subdivision C (*the Speaker and the Deputy Speaker*) and to Subsection (2), the Standing Orders of the Parliament shall make provision in respect of the chairmanship of the Parliament and of Committees of the Whole.

(2) No Minister may preside in the Parliament or in a Committee of the Whole.

**113. Quorum.**

(1) The quorum for a sitting of the Parliament is one-third of the number of seats in the Parliament at the time.

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

**114. Voting in the Parliament.**

(1) Except as otherwise provided by a Constitutional Law or the Standing Orders of the Parliament, all questions before a meeting of the Parliament shall be decided in accordance with the majority of votes of the members present and voting.

(2) The member presiding does not have a deliberative vote except—

(a) on a motion of no confidence in the Prime Minister, the Ministry or a Minister, in accordance with an Organic Law referred to in<sup>1</sup> Section 145 (*motions of no confidence*); or

(b) on any question which requires an affirmative vote greater than a simple majority.

(3) Except in a case where he has voted under Subsection (2), in the event of an equality of votes on a question, the member presiding has a casting vote, but if he fails to use it the motion shall be deemed to be withdrawn.

(4) The Standing Orders of the Parliament shall make provision for the manner in which a vote is to be taken and recorded.

#### 115. Parliamentary privileges, etc.

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

(2) There shall be freedom of speech, debate and proceeding in the Parliament, and the exercise of those freedoms shall not be questioned in any court or in any proceedings whatever (otherwise than in proceedings in the Parliament or before a committee of the Parliament).

(3) No member of the Parliament 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 Division III.2 (*leadership code*).

(4) No member of the Parliament 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 Parliament or a committee of the Parliament.

(5) No member of the Parliament 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 Parliament or under an order of the Parliament or a committee of the Parliament; 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 Parliament or a committee of the Parliament.

(6) Members of the Parliament are free from arrest for civil debt during meetings of the Parliament and during the period commencing three days before, and ending three days after, a meeting when they are travelling from their respective electorates to attend the meeting or are returning to their electorates from the meeting.

(7) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed through the Speaker, an officer of the Parliament or a member of the Parliamentary Service, or within the precincts of the Parliament (as defined by or under an Act of the Parliament) while it is sitting.

<sup>1</sup> *Seemingly*, the words "an Organic Law referred to in" were included in error, as Section 145 does not refer to an Organic Law (nor did the draft Constitution considered by the Constituent Assembly).

(8) The powers conferred by Section 109 (*general powers of law-making*) extend to the making of laws—

- (a) declaring further powers (other than legislative powers), privileges and immunities of the Parliament, 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 purposes of this section that are triable within the National Judicial System.

#### 116. Disallowance of subordinate laws.

(1) All subordinate legislative enactments made under an Act of the Parliament—

- (a) shall be tabled in the Parliament as soon as practicable, and in any event within seven sitting days of the Parliament, after being made; and
- (b) are subject to disallowance in whole or in part by decision of the Parliament,

in accordance with Section Sch.1.18 (*disallowance, etc.*) and the Standing Orders of the Parliament.

(2) Subject to Section Sch.1.18 (*disallowance, etc.*) an Act of the Parliament may make further provision as to the disallowance of a subordinate legislative enactment or part of a subordinate legislative enactment under this section, and as to the effect of such a disallowance on or in respect of rights and liabilities under or affected by the disallowed enactment or part.

(3) Failure to comply with Subsection (1) does not invalidate a subordinate legislative enactment.

#### 117. Treaties, etc.

(1) In this section, unless the contrary intention appears—

"treaty" means an agreement between States that—

- (a) is governed by international law; and
- (b) creates a relationship binding at international law on Papua New Guinea,

whether embodied in a single instrument or in two or more related instruments and whatever may be its designation, but does not include a visiting forces agreement entered into in accordance with Section 206 (*visiting forces*);

"treaty document" means—

- (a) the text of a treaty that it is proposed to accept or to ratify; or
- (b) a statement of the effect of such a treaty; or
- (c) a copy of the document by which it is intended that Papua New Guinea will express its consent to be bound by such a treaty.

(2) Subject to Subsection (3), the consent of Papua New Guinea to be bound as a party to a treaty may be given only—

- (a) by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; or

- (b) by a Minister authorized either generally or specifically for the purpose by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; or
  - (c) otherwise in accordance with international law, usage and practice,
- and in accordance with this section.
- (3) Subject to Subsection (5), the consent of Papua New Guinea to be bound as a party to a treaty shall not be given—
- (a) unless a treaty document relating to the treaty has been presented to the Parliament for at least ten sitting days; or
  - (b) if within ten sitting days of the Parliament after the day on which the treaty document was presented to the Parliament the Parliament, by an absolute majority vote, disapproves the giving of the consent.
- (4) The fact that the Parliament has disapproved the giving of the consent of Papua New Guinea to be bound as a party to a treaty does not prevent the re-presentation to the Parliament of a treaty document relating to the treaty, and in that event Subsection (3) once again applies.
- (5) Subsection (3) does not apply if—
- (a) the Parliament has, by an absolute majority vote, waived the requirements of that subsection; or
  - (b) both the Speaker (acting on behalf of the Parliament) and the Prime Minister are satisfied that the giving of the consent of Papua New Guinea to be bound as a party to the treaty is too urgent a matter to allow of compliance with that subsection, or that compliance would not be in the national interest.
- (6) A certificate of the Speaker as to any matter arising under this section is, before all courts and all persons acting judicially, conclusive evidence of the facts certified to.
- (7) Notwithstanding the consent of Papua New Guinea to be bound as a party to a treaty, no treaty forms part of the municipal law of Papua New Guinea unless, and then only to the extent that, it is given the status of municipal law by or under a Constitutional Law or an Act of the Parliament.
- (8) Legislative approval or ratification of a treaty does not, without more, give it the status of municipal law for the purposes of Subsection (7).

#### Subdivision E.—The Committee System.

##### 118. Permanent Parliamentary Committees.

- (1) In order to ensure full and active participation by backbenchers in the work of the Parliament and of government, there shall be the following Permanent Parliamentary Committees which, in principle, should cover all major fields of the activities of the National Government:—
- (a) a Public Accounts Committee, established in accordance with Subdivision VIII.1.C (*the Public Accounts Committee*); and
  - (b) such other committees as are determined by the Parliament from time to time.

(2) The Parliament shall, subject to this Constitution, make provision by Organic Law, by<sup>1</sup> Act of the Parliament, Standing Order or otherwise, for the establishment, membership, jurisdiction, functions, powers and procedures of the Permanent Parliamentary Committees, and in particular for empowering such a Committee to call for persons, papers and records.

(3) No Minister may be a member of a Permanent Parliamentary Committee.

(4) In principle, membership of the Permanent Parliamentary Committees should be spread as widely as practicable among the backbenchers.

#### 119. Chairmen and Deputy Chairmen.

(1) There shall be a Chairman and a Deputy Chairman of each Permanent Parliamentary Committee.

(2) In principle, either the Chairman or the Deputy Chairman of each Permanent Parliamentary Committee should be a member of the Parliament who is recognized by the Parliament as being generally committed to support the Government in the Parliament, and the other should be a member of the principal party or group, or coalition of parties or groups, that is recognized by the Parliament as being not so committed.

(3) Subject to any Act of the Parliament and to the Standing Orders of the Parliament, in the event of the absence or non-availability to act of the Chairman, the Deputy Chairman has all the rights, privileges, powers, functions, duties and responsibilities of the Chairman.

#### 120. Roles of Chairmen and Deputy Chairmen of Permanent Parliamentary Committees.

(1) The Chairman and Deputy Chairman of each Permanent Parliamentary Committee shall be granted full access to each Minister having responsibilities relevant to the jurisdiction and functions of his Committee and, by arrangement with the Minister, to the head of the Minister's department, and are entitled to be briefed and consulted on major policy issues.

(2) In relation to any information given to or obtained by them under Subsection (1), the Chairman and the Deputy Chairman are under the same obligation, whether by law or by convention, as to confidentiality as is the Minister but this principle does not prevent the Chairman or Deputy Chairman from briefing the members of his Permanent Parliamentary Committee on major policy issues.

(3) In relation to any information given to him under Subsection (2), a member of a Permanent Parliamentary Committee is under the same obligation, whether by law or convention, as to confidentiality as is the Minister.

#### 121. Sessional Committees, Select Committees, etc.

Nothing in this Subdivision prevents the Parliament from establishing Sessional or Select Committees or other committees for any purpose, or prevents the Parliament from sitting as a Committee of the Whole.

#### 122. Arrangement of Parliamentary business in relation to Committees.

The business of the Parliament shall be so arranged as to allow reasonable time for committees of the Parliament to perform their functions adequately, and the Standing Orders of the Parliament shall make provision to ensure that such time is allowed either within or outside the sitting hours of the Parliament.

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<sup>1</sup> *Semble*, "by" was included in error.

**123. Membership of Parliamentary Committees.**

Each committee of the Parliament shall consist only of members of the Parliament, but nothing in this section prevents the establishment, by statute or otherwise, of commissions or committees of any other kind.

**Subdivision F.—Calling, etc., of the Parliament.****124. Calling, etc.**

(1) The Parliament shall be called to meet not more than seven days after the day for the return of the writs for a general election, and shall meet not less frequently than three times in each period of 12 months, and, in principle, for not less than nine weeks in each such period.

(2) An Organic Law shall make provision for the calling of meetings of the Parliament.

(3) Subject to Subsections (1) and (2), an Act of the Parliament or the Standing Orders of the Parliament may make provision in respect of the sittings of the Parliament.

**Subdivision G.—Electorates and Elections.****125. Electorates.**

(1) The number of open electorates and of provincial electorates and their boundaries shall be determined by the Parliament in accordance with recommendations from a Boundaries Commission from time to time, at intervals determined by or under an Organic Law, being intervals of not more than 10 years.

(2) In recommending open electorates<sup>1</sup> and open electorate boundaries, the Boundaries Commission shall, taking into account any considerations laid down by an Organic Law, endeavour to ensure that all open electorates contain approximately the same population, within limits prescribed by an Organic Law.

(3) The Parliament may accept or reject, but may not amend, any recommendation of the Boundaries Commission under Subsection (1).

(4) The Boundaries Commission is not subject to direction or control by any person or authority.

(5) An Organic Law shall make further provision for and in respect of the appointment, constitution and procedures of the Boundaries Commission, and for safeguarding its independence, and in relation to the procedures for formulating and considering its recommendations.

(6) An Organic Law relating to provinces or to provincial government and local-level governments may confer or impose on the Boundaries Commission powers, functions, duties or responsibilities in relation to the boundaries of provinces and of provincial electorates.

**126. Elections.**

(1) Elections to the Parliament shall be conducted, in accordance with an Organic Law, by an Electoral Commission.

(2) General elections shall be held in accordance with Sections 105 (*general elections*) and 106 (*by-elections*), as required.

<sup>1</sup>Seemingly, "the number of open electorates," was intended.

<sup>2</sup>It appears from the course of amendment in the Constituent Assembly that "provincial electorates" refers to electorates for elections to provincial governments or "provincial government bodies" (see Section Sch. 1.2(1)), and not "provincial electorates" of the kind referred to in Sections 101 (1)(b) and 125(1).

(3) The members of the Parliament (other than the nominated members) shall be elected under a system of universal, adult, citizen suffrage in accordance with Section 50 (*right to vote and stand for public office*) and the other Constitutional Laws, and the voting age is 18 years.

(4) A citizen's right to vote in an election to the Parliament is as provided by Section 50 (*right to vote and stand for public office*).

(5) No non-citizen may vote in an election for the Parliament.

(6) The Electoral Commission is not subject to direction or control by any person or authority.

(7) An Organic Law shall make provision for and in respect of—

- (a) the appointment, constitution and procedures of the Electoral Commission, and for safeguarding its independence; and
- (b) the electoral system; and
- (c) safeguarding the integrity of elections; and
- (d) appeals to the National Court in electoral matters.

Subdivision H.—Protection of Elections from Outside or Hidden Influence.

127. Purpose of Subdivision H.

The purpose of this Subdivision is to protect elections and to prevent candidates from being, or appearing to be or to have been, improperly or unduly influenced by outside (especially foreign) or hidden influences, and an Organic Law may make provision, in addition to the provisions expressly referred to in this Subdivision, for achieving that purpose.

128. "Registered political party".

In this Subdivision, "registered political party" means a political party or organization registered under an Organic Law made for the purpose of Section 129(1)(a) (*integrity of political parties*).

129. Integrity of political parties.

(1) An Organic Law shall make provision—

- (a) requiring any political party or organization having political aims and desiring to nominate a candidate for election to the Parliament, or to publicly support such a candidate as representing its views, to register with the Electoral Commission such reasonable particulars as are prescribed by Organic Law; and
- (b) requiring any such party or organization to disclose to the Ombudsman Commission or some other authority prescribed by the law in such manner, at such times and with such details as are prescribed in or under the law—
  - (i) its assets and income, and their sources; and
  - (ii) its expenditure on or connected with an election or the support of a candidate; and
- (c) prohibiting non-citizens from membership of, and from contributing to the funds of, any such party or organization; and

- (d) defining the corporations and organizations that are to be regarded as non-citizens for the purposes of a provision made for the purposes of paragraph (c); and
- (e) limiting the amount of contributions that such a party or organization may receive from any source or sources; and
- (f) requiring persons who have made, or may have made, contributions to any such party or organization to give to the Ombudsman Commission, or some other authority, details of any such contribution.

(2) Where another authority is prescribed by the law under Subsection (1)(b), that authority—

- (a) shall be composed of a person or persons who are declared under paragraph (i) of the definition of "constitutional office-holder" in Section 221 (*definitions*) to be a constitutional office-holder; and
- (b) is not subject to direction or control by any person or authority.

(3) An Organic Law made for the purposes of Subsection (1) may provide that the value of any assistance given otherwise than in cash shall be taken into account as expenditure or contributions for any purpose of that subsection or of that law.

### 130. Integrity of candidates.

(1) An Organic Law shall make provision—

- (a) requiring a candidate or former candidate for election to the Parliament to disclose to the Ombudsman Commission or some other authority prescribed by the law, in such manner, at such times and with such details as are prescribed by or under the law—
  - (i) any assistance (financial or other) received by him in respect of his candidature, and its source; and
  - (ii) the amount or value of his electoral expenses; and
- (b) prohibiting a candidate or former candidate for election to the Parliament from accepting from a non-citizen assistance (financial or other) in respect of his candidature; and
- (c) defining the corporations and organizations that are to be regarded as non-citizens for the purposes of a provision made for the purposes of paragraph (b); and
- (d) regulating or restricting the amount or kind of such assistance that may be received from any source other than a registered political party; and
- (e) prohibiting a candidate for election to the Parliament from holding himself out as representing any party or organization other than a registered political party that has publicly adopted him as its candidate.

(2) Where another authority is prescribed by the law under Subsection (1)(b)<sup>1</sup>, that authority—

- (a) shall be composed of a person or persons who are declared under paragraph (i) of the definition of "constitutional office-holder" in Section 221 (*definitions*) to be a constitutional office-holder; and
- (b) is not subject to direction or control by any person or authority.

<sup>1</sup>The correct reference is to Subsection (1)(a).

(3) An Organic Law made for the purposes of Subsection (1) may make provision for further defining what are to be regarded as assistance and electoral expenses for any purpose of that subsection or of that law, and in particular may provide that—

(a) the value of hospitality (including meals, accommodation and transport) of a kind and to a degree recognized by custom in the country shall not be taken into account as assistance; and

(b) the personal expenses of a candidate shall not be taken into account as electoral expenses.

(4) In this section—

"electoral expenses", in relation to a candidate, means expenses incurred (whether before, during or after an election to the Parliament, including expenses incurred before the issue of the writ for election) by him or on his behalf on account of or in respect of the election;

"personal expenses", in relation to a candidate, means any reasonable costs incurred by him personally for travel and for living away from his home for the purposes of the election.

#### Subdivision I.—General.

#### 131. The Parliamentary Salaries Tribunal.

\* 5131 IS REPEALED BY CN  
No 9 OF 1988.

(1) A Parliamentary Salaries Tribunal is hereby established.

(2) The Tribunal shall consist of—

(a) a judicial officer, appointed by the Judicial and Legal Services Commission, who shall be the Chairman; and

(b) a person with wide practical experience in wage fixation, appointed by the Public Services Commission; and

(c) a member of the Public Services Commission, appointed by that Commission.

(3) The Tribunal is responsible for fixing from time to time, at intervals determined by it, the salaries, allowances, pensions and other financial benefits for all or any members of the Parliament.

(4) An Act of the Parliament shall make provision for the powers and procedures of the Tribunal, and generally in respect of it.

#### 132. The Parliamentary Service.

(1) An Act of the Parliament shall make provision for and in respect of a Parliamentary Service, separate from the other State Services.

(2) Within the Service, there shall be an office of Clerk of the National Parliament who shall, subject to Subsection (3), be the head of the Service.

(3) The Tribunal is solely responsible for fixing from time to time, at intervals determined by it—

(a) the salaries, allowances and benefits, financial and otherwise, (other than pensions or retirement benefits which shall be fixed by a Parliamentary Committee), for all or any members of the Parliament; and

(b) the salaries, allowances and benefits, financial and otherwise (other than pensions or retirement benefits), for all or any members of Provincial Assemblies (including any Speakers appointed from outside the Assemblies).

*(Replaced by Constitutional Amendment No. 6.)*

**133. Standing Orders.**

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

134. Proceedings non-justiciable.

Except as is specifically provided by a Constitutional Law, the question, whether the procedures prescribed for the Parliament or its committees have been complied with, is non-justiciable, and a certificate by the Speaker under Section 110 (*certification as to making of laws*) is conclusive as to the matters required to be set out in it.

135. Questions as to membership, etc.

The National Court has jurisdiction to determine any question as to—

- (a) the qualifications of a person to be or to remain a member of the Parliament; or
- (b) the validity of an election to the Parliament.

136. Validation of Acts of the Parliament.

Where a person who has purported to sit or vote as a member of the Parliament at a meeting of the Parliament or of a committee of the Parliament—

- (a) was not duly qualified to be elected or appointed, or to continue, as a member of the Parliament; or
- (b) had vacated his office as a member of the Parliament,

all things done or purporting to have been done by the Parliament 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 Parliament, or had not vacated his office, as the case may be.

*Division 3.—Special Instances of the Legislative Power.*

137. Acts of Indemnity.

(1) If—

- (a) a provision of a Constitutional Law has been contravened or not complied with; and
- (b) the Parliament is satisfied that—
  - (i) the contravention or non-compliance was made in good faith and in exceptional circumstances for the purpose, or with the intention, of upholding this Constitution or protecting Papua New Guinea, or of dealing with an emergency for which no provision or no adequate provision appeared to exist; and
  - (ii) no blameworthiness attaches to some person or some persons concerned in the contravention or non-compliance,

the Parliament may make a special law (to be known as an "Act of Indemnity") in relation to that person or those persons.

(2) An Act of Indemnity shall—

- (a) specify the contravention or non-compliance; and
- (b) certify as to the Parliament's satisfaction concerning the matters specified in Subsection (1)(b) (i) and (ii); and
- (c) identify or provide for the identification of the person or persons to whom it relates; and

- (d) provide for the making of full compensation to any person suffering injury as a result of the contravention or non-compliance; and
  - (e) be made in accordance with the procedures laid down by this Constitution for the making of Organic Laws; and
  - (f) be passed by an absolute majority vote of the Parliament.
- (3) Before the Speaker certifies under Section 110 (*certification as to making of laws*) as to the Act, he shall refer the question, whether the Act complies with this section, for the opinion of the Supreme Court in accordance with Section 19 (*special references to the Supreme Court*), and until the Court advises that the Act does so comply he shall not so certify it.
- (4) An Act of Indemnity—
- (a) relieves, and shall be expressed to relieve, the person or persons concerned from all liability for, and from all legal consequences of, the contravention or non-compliance; and
  - (b) if a person concerned has been convicted of an offence in respect of or arising out of the contravention or non-compliance, takes effect as a free pardon,
- but in respect only of acts done before the Parliament was formally advised of the intention to propose the Act.
- (5) An Act of Indemnity does not take effect as a Constitutional Law.
- (6) An Act of Indemnity shall not be amended or extended in any way, and its repeal does not affect the operation of Subsection (4).

#### Division 4.—The National Executive.

##### Subdivision A.—The National Executive and the Executive Power.

#### 138. Vesting of the executive power.

Subject to this Constitution, the executive power of the People is vested in the Head of State, to be exercised in accordance with Division V.2 (*functions, etc., of the Head of State*).

#### 139. The National Executive.

The National Executive consists of—

- (a) the Head of State acting in accordance with Division V.2 (*functions, etc., of the Head of State*); and
- (b) the National Executive Council.

#### 140. Conferring of powers, etc., outside the National Executive.

Except where the contrary intention appears, nothing in this Constitution prevents an Organic Law or a statute from conferring or imposing powers, functions, duties or responsibilities on a person or authority outside the National Executive.

##### Subdivision B.—The Ministry.

#### 141. Nature of the Ministry : collective responsibility.

The Ministry is a Parliamentary Executive, and therefore—

- (a) no person who is not a member of the Parliament is eligible to be appointed to be a Minister, and, except as is expressly provided in this Constitution to the contrary, a Minister who ceases to be a member of the Parliament ceases to hold office as a Minister; and

- (b) it is collectively answerable to the People, through the Parliament, for the proper carrying out of the executive government of Papua New Guinea and for all things done by or under the authority of the National Executive; and
- (c) it is liable to be dismissed from office, either collectively or individually, in accordance with this Subdivision.

142. The Prime Minister.

- (1) An office of Prime Minister is hereby established.
- (2) The Prime Minister shall be appointed, at the first meeting of the Parliament after a general election and otherwise from time to time as the occasion for the appointment of a Prime Minister arises, by the Head of State, acting in accordance with a decision of the Parliament.
- (3) If the Parliament is in session when a Prime Minister is to be appointed, the question of the appointment shall be the first matter for consideration, after any formal business and any nomination of a Governor-General or appointment of a Speaker, on the next sitting day.
- (4) If the Parliament is not in session when a Prime Minister is to be appointed, the Speaker shall immediately call a meeting of the Parliament, and the question of the appointment shall be the first matter for consideration, after any formal business and any nomination of a Governor-General or appointment of a Speaker, on the next sitting day.
- (5) The Prime Minister—
  - (a) shall be dismissed from office by the Head of State if the Parliament passes, in accordance with Section 145 (*motions of no confidence*), a motion of no confidence in him or the Ministry, except where the motion is moved within the last 12 months before the fifth anniversary of the date fixed for the return of the writs at the previous general election; and
  - (b) may be dismissed from office in accordance with Division III.2 (*leadership code*); and
  - (c) may be removed from office by the Head of State, acting in accordance with a decision of the Parliament, if the Speaker advises the Parliament that two medical practitioners appointed by the National Authority responsible for the registration or licensing of medical practitioners have jointly reported in accordance with an Act of the Parliament that, in their professional opinions, the Prime Minister is unfit, by reason of physical or mental incapacity, to carry out the duties of his office.
- (6) The Prime Minister may be suspended from office—
  - (a) by the tribunal appointed under an Organic Law made for the purposes of Section 28 (*further provisions*), pending an investigation into a question of misconduct in office within the meaning of Division III.2 (*leadership code*), and any resultant action; or
  - (b) in accordance with an act of the Parliament, pending an investigation for the purposes of Subsection (5)(c), and any resultant action by the Parliament.

**143. Acting Prime Minister.**

(1) Subject to Subsection (2) an Act of the Parliament shall make provision for and in respect of the appointment of a Minister to be Acting Prime Minister to exercise and perform the powers, functions, duties and responsibilities of the Prime Minister when—

- (a) there is a vacancy in the office of Prime Minister; or
- (b) the Prime Minister is suspended from office; or
- (c) the Prime Minister is—
  - (i) absent from the country; or
  - (ii) out of speedy and effective communication; or
  - (iii) otherwise unable or not readily available to perform the duties of his office.

(2) Where a Prime Minister is dismissed under section 142(5)(a) (*the Prime Minister*) the person nominated under Section 145(2)(a) (*motions of no confidence*)—

- (a) becomes the Acting Prime Minister until he is appointed a Prime Minister in accordance with Section 142(2) (*the Prime Minister*); and
- (b) may exercise and perform all the powers, functions, duties and responsibilities of a Prime Minister.

(3) The question whether the occasion for the appointment of an Acting Prime Minister or for the exercise or performance of a power, function, duty or responsibility by an Acting Prime Minister, under this section has arisen or has ceased, is non-justiciable.

**144. Other Ministers.**

(1) There shall be such number of Ministers (other than the Prime Minister), not being less than six or more than one quarter of the number of members of the Parliament from time to time, as is determined by or under an Organic Law.

(2) The Ministers, other than the Prime Minister, shall be appointed by the Head of State, acting with, and in accordance with, the advice of the Prime Minister.

(3) A Minister, other than the Prime Minister, may be suspended from office in accordance with an Organic Law made for the purposes of Section 28(2) (*further provisions*).

(4) A Minister other than the Prime Minister—

- (a) shall be dismissed from office by the Head of State if the Parliament passes, in accordance with Section 145 (*motions of no confidence*), a motion of no confidence in him; and
- (b) may be dismissed from office—
  - (i) by the Head of State, acting with, and in accordance with, the advice of the Prime Minister; or
  - (ii) in accordance with Division III.2 (*leadership code*).

**145. Motions of no confidence.**

(1) For the purposes of Sections 142 (*the Prime Minister*) and 144 (*other Ministers*), a motion of no confidence is a motion—

- (a) that is expressed to be a motion of no confidence in the Prime Minister, the Ministry or a Minister, as the case may be; and
- (b) of which not less than one week's notice, signed by a number of members of the Parliament being not less than one-tenth of the total number of seats in

the Parliament, has been given in accordance with the Standing Orders of the Parliament.

(2) A motion of no confidence in the Prime Minister or the Ministry—

(a) moved during the first four years of the life of Parliament<sup>1</sup> shall not be allowed unless it nominates the next Prime Minister; and

(b) moved within 12 months before the fifth anniversary of the date fixed for the return of the writs at the previous general election shall not be allowed if it nominates the next Prime Minister.

(3) A motion of no confidence in the Prime Minister or the Ministry moved in accordance with Subsection (2)(a) may not be amended in respect of the name of the person nominated as the next Prime Minister except by substituting the name of some other person.

(4) A motion of no confidence in the Prime Minister or in the Ministry may not be moved during the period of "eighteen months commencing on the date of the appointment of the Prime Minister."

*S. 145 (4) AMENDED BY CONST. AMEND. ACT NO. 14 OF 1991.*

#### 146. Resignation.

(1) The Prime Minister may resign from office by notice in writing to the Head of State.

(2) A Minister other than the Prime Minister may resign from office by notice in writing to the Prime Minister.

#### 147. Normal term of office.

(1) Unless he earlier—

(a) dies; or

(b) subject to Subsection (2), resigns; or

(c) subject to Subsection (3), ceases to be qualified to be a Minister; or

(d) is dismissed or removed from office,

a Minister (including the Prime Minister) holds office until the next appointment of a Prime Minister.

(2) Notwithstanding Subsection (1)(b)—

(a) a Prime Minister who resigns; and

(b) a Ministry that resigns collectively,

shall continue<sup>2</sup> in office until the appointment of the next Prime Minister<sup>3</sup>.

(3) Notwithstanding Subsection (1)(c), a Minister who—

(a) ceases, by reason of a general election, to be a member of the Parliament; but

(b) remains otherwise qualified to be a member of the Parliament,

shall continue<sup>2</sup> in office until the next appointment of a Prime Minister.

#### 148. Functions, etc., of Ministers.

(1) Ministers (including the Prime Minister) have such titles, portfolios and responsibilities as are determined from time to time by the Prime Minister.

<sup>1</sup> *Seemly*, "the Parliament" was intended—compare, for example, Section 101(1).

<sup>2</sup> *Seemly*, simply "continues" was intended, and the verb is not imperative—compare Subsection (1).

<sup>3</sup> *Seemly*, "the next appointment of a Prime Minister" was intended—compare Subsections (1) and (3).

(2) Except as provided by a Constitutional Law or an Act of the Parliament, all departments, sections, branches and functions of government must be the political responsibility of a Minister, and the Prime Minister is politically responsible for any of them that are not specifically allocated under this section.

(3) Subsection (2) does not confer on a Minister any power of direction or control.

**Subdivision C.—The National Executive Council.**

**149. The National Executive Council.**

(1) A National Executive Council is hereby established.

(2) The Council shall consist of all the Ministers (including the Prime Minister when he is present as Chairman).

(3) The functions of the Council are—

(a) to be responsible, in accordance with this Constitution, for the executive government of Papua New Guinea; and

(b) such other functions as are allocated to it by this Constitution or any other law.

(4) Except where the contrary intention appears, nothing in this Constitution prevents the powers, functions, duties or responsibilities of the Council from being exercised, as determined by it, through a Minister.

(5) Subject to any Organic Law or Act of the Parliament, the procedures of the Council are as determined by it.

**150. The Secretary to the National Executive Council.**

(1) An office of Secretary to the National Executive Council is hereby established.

(2) Subject to any Act of the Parliament, the functions and responsibilities of the Secretary of the Council shall be as determined by the Council.

**Subdivision D.—The Power of Mercy.**

**151. Grant of pardon, etc.**

(1) Subject to this Subdivision, the Head of State, acting with, and in accordance with, the advice of the National Executive Council, may grant to a person convicted of an offence or held in penal detention under a law of Papua New Guinea—

(a) a pardon, either free or conditional; or

(b) a remission or commutation of sentence; or

(c) a respite of the execution of sentence; or

(d) a less severe form of punishment for that imposed by any sentence,

and may remit or refund, in whole or in part, any fine, penalty or forfeiture paid or payable to a governmental body.

(2) Where an offence has been committed, the Head of State, acting with, and in accordance with, the advice of the National Executive Council, may grant a pardon, either free or conditional, to an accomplice who gives evidence that leads to the conviction of a principal offender.

(3) Except in a case referred to in Subsection (2) or as otherwise permitted by or under an Act of the Parliament, the exercise of the power conferred by Subsection (1) shall not be held out, offered or promised in advance of conviction.

(4) Nothing in this section prevents the establishment by law of systems of probation, parole or release on licence, or any similar systems.

**152. Advisory Committee on the Power of Mercy.**

(1) An Organic Law shall make provision for and in respect of an Advisory Committee on the Power of Mercy, and for and in respect of its appointment, constitution, powers and procedures.

(2) Before giving any advice to the Head of State under Section 151(1) (*grant of pardon, etc.*), the National Executive Council shall consider a report from the Advisory Committee.

*Subdivision E.—General.*

**153. Validity of executive acts.**

(1) Subsections (2), (3) and (4) are subject to any Constitutional Law or Act of the Parliament.

(2) The question, whether the procedures prescribed for the National Executive Council have been or are being complied with, is non-justiciable.

(3) The question, whether any, and if so what report has been given to the National Executive Council by the Advisory Committee on the Power of Mercy, is non-justiciable.

(4) No act of a Minister is open to challenge on the ground that he was not empowered to perform the act, if some other Minister, or any Minister, was so empowered.

(5) This section does not limit the jurisdiction or powers of the Ombudsman Commission, or of an authority or tribunal established under Division III.2 (*leadership code*).

*Division 5.—The Administration of Justice.*

*Subdivision A.—General Structure and Principles of the National Justice Administration.*

**154. The National Justice Administration.**

The National Justice Administration consists of—

- (a) the National Judicial System; and
- (b) the Minister responsible for the National Justice Administration; and
- (c) the Law Officers of Papua New Guinea.

**155. The National Judicial System.**

(1) The National Judicial System consists of—

- (a) the Supreme Court; and
- (b) the National Court; and
- (c) such other courts as are established under Section 172 (*establishment of other courts*).

(2) The Supreme Court—

- (a) is the final court of appeal; and
- (b) has an inherent power to review all judicial acts of the National Court; and

(c) has such other jurisdiction and powers as are conferred on it by this Constitution or any other law.

(3) The National Court—

(a) has an inherent power to review any exercise of judicial authority; and

(b) has such other jurisdiction and powers as are conferred on it by this Constitution or any law,

except where—

(c) jurisdiction is conferred upon the Supreme Court to the exclusion of the National Court; or

(d) the Supreme Court assumes jurisdiction under Subsection (4); or

(e) the power of review is removed or restricted by a Constitutional Law or an Act of the Parliament.

(4) Both the Supreme Court and the National Court have an inherent power to make, in such circumstances as seem to them proper, orders in the nature of prerogative writs and such other orders as are necessary to do justice in the circumstances of a particular case.

(5) In a case referred to in Subsection (3)(e), the National Court has nevertheless an inherent power of review where, in its opinion, there are over-riding considerations of public policy in the special circumstances of a particular case.

(6) 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 Papua New Guinea and other public officers in their respective official capacities), and of all bodies and institutions, to comply with and, so far as is within their respective lawful powers, to put into effect all decisions of the National Judicial System.

**156. The Law Officers.**

(1) The Law Officers of Papua New Guinea are—

(a) the principal legal adviser to the National Executive; and

(b) the Public Prosecutor; and

(c) the Public Solicitor.

(2) An Act of the Parliament shall make provision for and in respect of the office referred to in Subsection (1)(a).

**157. Independence of the National Judicial System.**

Except to the extent that this Constitution specifically provides otherwise, neither the Minister responsible for the National Justice Administration nor any other person or authority (other than the Parliament through legislation) outside the National Judicial System has any power to give directions to any court, or to a member of any court, within that System in respect of the exercise of judicial powers or functions.

**Subdivision B.—The Judicial Power.**

**158. Exercise of the judicial power.**

(1) Subject to this Constitution, the judicial authority of the People is vested in the National Judicial System.

(2) In interpreting the law the courts shall give paramount consideration to the dispensation of justice.

159. Tribunals, etc., outside the National Judicial System.

(1) Subject to Subsection (3), nothing in this Constitution prevents an Organic Law or a statute from conferring judicial authority on a person or body outside the National Judicial System, or the establishment by or in accordance with law, or by consent of the parties, of arbitral or conciliatory tribunals, whether ad hoc or other, outside the National Judicial System.

(2) Nothing in, or done in accordance with, Subsection (1) affects the operation of Section 155(4) or (5) (*the National Judicial System*).

(3) No person or body outside the National Judicial System, 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 detention or any other disciplinary punishment (other than death) by a disciplinary authority of a disciplined force on persons subject to the disciplinary law of the force; or

(b) the imposition, in accordance with law, of disciplinary punishments (other than death or detention) on members of other State or provincial services; or

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

(4) In Subsection (3)(a), "disciplined force" has the same meaning as in Section 207 (*definition of "disciplined force"*).

Subdivision C.—The Supreme Court of Justice.

160. Establishment of the Supreme Court.

(1) A Supreme Court of Justice is hereby established.

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

161. Composition of the Supreme Court.

(1) The Supreme Court shall consist of the Chief Justice, the Deputy Chief Justice and the other Judges of the National Court (excluding the acting Judges).

(2) Subject to Section 162(2) (*jurisdiction of the Supreme Court*) and for the purposes of any hearing, the Supreme Court shall consist of at least three Judges.

(3) In a hearing that consists of at least three Judges, the Chief Justice, the Deputy Chief Justice or the most senior Judge available shall preside over the Court.

162. Jurisdiction of the Supreme Court.

(1) The jurisdiction of the Supreme Court is as set out in—

(a) Subdivision II.2.C (*constitutional interpretation*); and

(b) Subdivision III.3.D (*enforcement*); and

(c) Section 155 (*the National Judicial System*),

and otherwise as provided by this Constitution or any other law.

(2) In such cases as are provided for by or under an Act of the Parliament or the Rules of Court of the Supreme Court, the jurisdiction of the Supreme Court may be exercised by a single Judge of that Court, or by a number of Judges sitting together.

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

(4) The jurisdiction of the Supreme Court may be exercised either in court or in chambers, as provided by or under an Act of the Parliament or the Rules of Court of the Supreme Court.

Subdivision D.—The National Court of Justice.

163. Establishment of the National Court.

(1) A National Court of Justice is hereby established.

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

164. Composition of the National Court.

The National Court shall consist of—

- (a) the Chief Justice; and
- (b) the Deputy Chief Justice; and
- (c) subject to Section 165(2) (*Acting Judges*) not less than four or more than six other Judges, or such greater number as is determined by or under an Act of the Parliament.

165. Acting Judges.

(1) A person who is qualified under Section 168 (*qualifications*) for appointment may be appointed to be an acting Judge of the National Court—

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

(2) An appointment under Subsection (1)(c) may be made without reference to the numerical limit imposed by Section 164 (*composition of the National Court*).

166. Jurisdiction of the National Court.

(1) Subject to this Constitution, the National Court is a court of unlimited jurisdiction.

(2) In particular, the National Court has the jurisdiction set out in—

- (a) Section 22 (*enforcement of the Constitution*); and
- (b) Subdivision III.3.D (*enforcement*); and
- (c) Section 155 (*the National Judicial System*),

and otherwise as provided by this Constitution or any other law.

(3) Subject to any Act of the Parliament and to the Rules of Court of the National Court, the jurisdiction of the National Court may be exercised by a single Judge of that Court, or by a number of Judges sitting together.

(4) The jurisdiction of the National 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 other Judges.

(5) The jurisdiction of the National Court may be exercised either in court or in chambers, as provided by or under an Act of the Parliament or the Rules of Court of the National Court.

#### 167. Assistant Judges.

Subject to this section<sup>1</sup>, an Act of the Parliament may make provision for and in respect of the appointment of Assistant Judges of the National Court, and for and in respect of their qualifications, privileges, powers, functions, duties and responsibilities, and of their terms and conditions of employment.

#### Subdivision E.—Appointment, etc., of Judges.

#### 168. Qualifications.

The qualifications for appointment as a Judge are as determined by or under an Act of the Parliament.

#### 169. Appointment, etc., of the Chief Justice.

(1) An office of Chief Justice of Papua New Guinea is hereby established.

(2) The Chief Justice shall be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after consultation with the Minister responsible for the National Justice Administration.

(3) In addition to his other powers, functions, duties and responsibilities, the Chief Justice, after consultation with the other Judges, is responsible for the organization of the affairs and the administration of the business of the Supreme Court and the National Court (other than, except to the extent allowed by or under an Act of the Parliament, matters relating to the National Public Service).

(4) Where—

- (a) there is a vacancy in the office of Chief Justice; or
- (b) the Chief Justice is absent from the country or is absent from duty; or
- (c) the Chief Justice is unable or unavailable to act; or
- (d) the Chief Justice so directs,

the powers, functions, duties and responsibilities (other than as acting Governor-General) of the Chief Justice may be exercised and performed by the next most senior Judge who is available.

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

<sup>1</sup> *Semble*, "Subject to this section" was included in error, as there is nothing for it to be subject to (nor was there in the draft Constitution considered by the Constituent Assembly).

**170. Appointment of other Judges.**

- (1) An office of Deputy Chief Justice of Papua New Guinea is hereby established.
- (2) The Deputy Chief Justice and the other Judges of the National Court (other than the Chief Justice) and acting Judges shall be appointed by the Judicial and Legal Services Commission.
- (3) No appointment of an acting Judge shall continue for a period of more than 12 months, but one extension for a period of not more than 12 months may be granted by the Judicial and Legal Services Commission.
- (4) The question, whether the occasion for the appointment of an acting Judge has arisen or has ceased, is non-justiciable.

**171. Seniority of Judges.**

- (1) Subject to Subsection (2), the Chief Justice is the most senior Judge, the Deputy Chief Justice is the second senior Judge and the other Judges (other than acting Judges) have seniority according to the dates of their respective appointments, unless otherwise stated in an instrument of appointment.
- (2) Unless otherwise stated in an instrument of appointment, acting Judges—
  - (a) rank in seniority after the other Judges; and
  - (b) have seniority as between themselves according to the dates of their respective appointments or last appointments, as the case requires.

Subdivision F.—Inferior Courts, the Magisterial Service, etc.

**172. Establishment of other courts.**

- (1) Subject to this Constitution, Acts of the Parliament may establish, or provide for the establishment of, courts within the National Judicial System in addition to the Supreme Court and the National Court, and may define, or provide for the definition of, their respective powers, functions and jurisdictions and their relationship with other components of the National Judicial System.
- (2) Courts established under Subsection (1) may include courts intended to deal with matters primarily by reference to custom or in accordance with customary procedures, or both.
- (3) Full-time members of courts established under Subsection (1) (other than courts referred to in Subsection (2)) shall be appointed by the Judicial and Legal Services Commission, and may be removed from office in accordance with an Act of the Parliament, but only for incapacity or misbehaviour (including, if applicable, misconduct in office).
- (4) Acts of the Parliament may make provision for or in respect of the appointment and removal from office of members of courts referred to in Subsection (2).

**173. Establishment of the Magisterial Service.**

- (1) A service to be known as the Magisterial Service is hereby established.
- (2) The Magisterial Service consists of—
  - (a) the Chief Magistrate; and
  - (b) subject to Section 174 (*magistrates, etc., outside the Magisterial Service*), all other members of courts established under Section 172 (*establishment of other courts*); and

(c) such other persons employed in connexion with the National Judicial System as are prescribed by or under Acts of the Parliament.

(3) The Chief Magistrate is responsible to the Judicial and Legal Services Commission for the efficient functioning and operation of the Magisterial Service.

(4) Subject to the Constitutional Laws, an Act of the Parliament shall make provision for and in respect of the Magisterial Service.

#### 174. Magistrates, etc., outside the Magisterial Service.

(1) Unless and except to the extent that an Act of the Parliament makes provision to the contrary, members of village courts are not, as such, members of the Magisterial Service.

(2) An Act of the Parliament may provide for part-time members of courts established under Section 172 (*establishment of other courts*), who need not be members of the Magisterial Service.

#### 175. The Chief Magistrate.

(1) An office of Chief Magistrate is hereby established.

(2) The Chief Magistrate shall be appointed by the Judicial and Legal Services Commission.

(3) Unless and except to the extent that an Act of the Parliament makes provision to the contrary, the Chief Magistrate is *ex officio* a member of all courts (other than village courts) established under Section 172 (*establishment of other courts*), and, if provision is made for grades of powers, functions or jurisdiction within any such courts, has all the powers, functions and jurisdiction of the highest grades.

(4) In the performance of his functions under Section 173(3) (*establishment of the Magisterial Service*), the Chief Magistrate shall carry out any directions or instructions of the Judicial and Legal Services Commission.

#### Subdivision G.—The Public Prosecutor and the Public Solicitor.

#### 176. Establishment of offices.

(1) Offices of Public Prosecutor and Public Solicitor are hereby established.

(2) The Public Prosecutor and the Public Solicitor shall be appointed by the Judicial and Legal Services Commission.

(3) Subject to this Constitution—

(a) in the performance of his functions under this Constitution the Public Prosecutor is not subject to direction or control by any person or authority; but

(b) nothing in paragraph (a) prevents the Head of State, acting with, and in accordance with, the advice of the National Executive Council, giving a direction to the Public Prosecutor on any matter that might prejudice the security, defence or international relations of Papua New Guinea (including Papua New Guinea's relations with the Government of any other country or with any international organization).

(4) The Prime Minister shall table in the National Parliament any direction to the Public Prosecutor at the next sitting of the Parliament after the direction is given unless, after consultation with the Leader of the Opposition, he considers that tabling of the

direction is likely to prejudice the security, defence or international relations of Papua New Guinea.

(5) Subject to Section 177(2) (*functions of the Public Prosecutor and the Public Solicitor*), in the performance of his functions under this Constitution the Public Solicitor is not subject to direction or control by any person or authority.

#### 177. Functions of the Public Prosecutor and the Public Solicitor.

(1) The functions of the Public Prosecutor are—

- (a) in accordance with an Act of the Parliament and the Rules of Court of the Supreme Court and the National Court, to control the exercise and performance of the prosecution function (including appeals and the refusal to initiate and the discontinuance of prosecutions) before the Supreme Court and the National Court, and before other Courts as provided by or under Acts of the Parliament; and
- (b) to bring or to decline to bring proceedings under Division III.2 (*leadership code*) for misconduct in office.

(2) The functions of the Public Solicitor are to provide legal aid, advice and assistance for persons in need of help by him, and in particular—

- (a) to provide legal assistance to a person in need of help by him who has been charged with an offence punishable by imprisonment for more than two years; and
- (b) notwithstanding the provisions of Section 176(5) (*establishment of offices*) he shall provide legal aid, advice and assistance to any person when directed to do so by the Supreme Court or the National Court; and
- (c) in his discretion in any matter, whether of a criminal or civil nature provided that such assistance shall be—
  - (i) limited to advice and preparation of documents in any proceedings<sup>1</sup> in respect of which an Act of the Parliament prohibits legal representation of any party to the proceedings; and
  - (ii) granted in accordance with an order of priorities relative to the resources of the Public Solicitor laid down by an Act of the Parliament.

(3) A person aggrieved by a refusal of the Public Solicitor to provide legal aid may apply to the Supreme Court or the National Court for a direction under Subsection (2)(b).

(4) For the purposes of this section the need of a person is to be interpreted in relation to each particular case and, without limiting the generality of this expression, account shall be taken of the means of the person to meet the probable cost of obtaining alternative legal assistance, the availability of such assistance and the hardship which might result to the person if compelled to obtain legal assistance other than by the Public Solicitor.

(5) An Act of Parliament<sup>1</sup> may make provision for the Public Solicitor to make a reasonable charge for services provided by him to persons in need of his help whom he considers are able to make a contribution towards the cost of these services.

(6) An Act of the Parliament may confer, or may provide for the conferring of, additional functions, not inconsistent with the performance of the functions conferred by Subsections (1) and (2), on the Public Prosecutor or the Public Solicitor.

<sup>1</sup> *Semble*, "Act of the Parliament" was intended—compare the definition "Act of the Parliament" in Section Sch. 1, 2(1).

Subdivision H.—Removal from Office of Senior Judicial and Legal Office-holders.

178. Grounds of removal.

A Judge, the Public Prosecutor, the Public Solicitor or the Chief Magistrate may, during his term of office, 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 Division III.2 (*leadership code*), for misconduct in office.

179. Removal from office of Chief Justice.

(1) If the National Executive Council is satisfied that the question of the removal from office of the Chief Justice should be investigated, the Head of State, acting with, and in accordance with, the advice of the National Executive Council, may—

- (a) appoint a tribunal under Section 181 (*constitution, etc., of tribunals*); and
- (b) refer the matter, together with a statement of the reasons for its opinion, to the tribunal for investigation and report to it.

(2) If the tribunal reports that there are good grounds for removing the Chief Justice from office, the Head of State, acting with, and in accordance with, the advice of the National Executive Council, may, by notice in writing to the Chief Justice, remove him from office.

(3) The Prime Minister shall send a copy of the notice, together with a copy of the report of the tribunal, to the Speaker for presentation to the Parliament, and shall also forward copies to the Judicial and Legal Services Commission.

180. Removal from office of other Judges, etc.

(1) If the Judicial and Legal Services Commission is satisfied that the question of the removal from office of a Judge (other than the Chief Justice), the Public Prosecutor, the Public Solicitor or the Chief Magistrate should be investigated, it may—

- (a) appoint a tribunal under Section 181 (*constitution, etc., of tribunals*); and
- (b) refer the matter, together with a statement of the reasons for its opinion, to the tribunal for investigation and report to it.

(2) If the tribunal reports that there are good grounds for removing the Judge, Public Prosecutor, Public Solicitor or Chief Magistrate from office, the Judicial and Legal Services Commission, may, by notice in writing to the Judge, Public Prosecutor, Public Solicitor or Chief Magistrate, as the case may be, remove him from office.

(3) The Commission shall send a copy of the notice, together with a copy of the report of the tribunal, to the Speaker for presentation to the Parliament.

181. Constitution, etc., of tribunals.

(1) A tribunal for the purposes of Section 179 (*removal from office of Chief Justice*) or 180 (*removal from office of other Judges, etc.*) shall consist of a Chairman and two other members, each of whom must be—

- (a) a Judge or former Judge of the Supreme Court or of the National Court; or
- (b) a former Judge or acting Judge of the pre-Independence Supreme Court; or

- (c) a Judge or former Judge of a court of unlimited jurisdiction of a country with a legal system similar to that of Papua New Guinea, 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 regard to 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.

**182. Suspension.**

- (1) Where a question has been referred to a tribunal under this Subdivision—

- (a) the Head of State, acting with, and in accordance with, the advice of the National Executive Council, in the case of the Chief Justice; or

- (b) the Judicial and Legal Services Commission, in any other case,

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 Head of State, acting with, and in accordance with, the advice of the National Executive Council, or by the Judicial and Legal Services Commission, as the case may be, the suspension shall be on full pay.

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

**Subdivision 1.—The Judicial and Legal Services Commission.**

**183. Establishment of the Commission.**

- (1) A Judicial and Legal Services Commission is hereby established.

- (2) Subject to Subsection (3), the Commission consists of—

- (a) the Minister responsible for the National Justice Administration, or a person nominated by him, who is the Chairman; and

- (b) the Chief Justice; and

- (c) the Deputy Chief Justice; and

- (d) the Chief Ombudsman; and

- (e) a member of the Parliament appointed by the Parliament.

(3) When the Commission is considering a matter relating to the appointment or removal from office of a member of the Magisterial Service, or any other matter relating to the Magisterial Service prescribed for the purposes of this subsection by or under an Act of the Parliament, the Chief Magistrate is (except in a matter involving himself) an additional member of the Commission.

- (4) The Commission is not subject to direction or control by any person or authority.

(5) An Organic Law may make further provision in respect of the constitution, powers, functions, duties and responsibilities of the Commission, and for guaranteeing its independence.

Subdivision J.—Miscellaneous.

184. Rules of court.

(1) The Judges of the Supreme Court or of the National Court may make rules of court, not inconsistent with a Constitutional Law or an Act of the Parliament, with respect to the practice and procedure in and in relation to the Supreme Court or the National Court, as the case may be.

(2) Without limiting the generality of Subsection (1), the rules may make provision for and in respect of—

- (a) the practice and procedures in the offices of the Supreme Court and the National Court; and
- (b) the service and execution of process and judgements of the Supreme Court and the National Court; and
- (c) the service and execution within the country of process and judgements of foreign courts; and
- (d) the issue by the Supreme Court or the National Court of letters of request for the service in a foreign country of process of the Supreme Court or the National Court, as the case may be, or for the examination of witnesses in a foreign country; and
- (e) the costs of and relating to proceedings in the Supreme Court or the National Court; and
- (f) the methods of pleading; and
- (g) the attendance of witnesses and the taking of evidence; and
- (h) 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 connexion with, or at any stage of, any proceedings.

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

(4) If an Act of the Parliament comes into force that is inconsistent with a rule of court, the rule ceases to have effect to the extent of the inconsistency.

(5) All rules of court shall be forwarded by the Chief Justice to the Speaker, for presentation to the Parliament, as soon as practicable after being made, and may be disallowed by the Parliament.

185. Lack of procedural provision.

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

186. Juries and assessors.

Nothing in this Division prevents the establishment, by or under an Act of the Parliament, of a system of juries or assessors.

187. Reports by Judges.

(1) The Judges shall, at least once in each period of 12 months, at such times as are fixed by or under an Act of the Parliament or, subject to any such Act, by the Head of State, acting with, and in accordance with, the advice of the National Executive Council,

give to the Head of State, for presentation to the Parliament, a report on the work of the National Judicial System, with such recommendations as to improvement as they think proper.

(2) Nothing in Subsection (1) prevents the Judges from making, on their own initiative or at the request of the Parliament or of the National Executive, other reports on any aspect of the work of the National Judicial System.

**PART VIA.—PROVINCIAL GOVERNMENT AND LOCAL LEVEL GOVERNMENT.**

(Added by Constitutional Amendment No. 16, 1995)

**187A. - Provincial Governments and Local-Level Governments System**

There shall be a system of Provincial Governments and Local-Level Governments for Papua New Guinea in accordance with this Part.

**187B. - Grant of Provincial Government and Local-Level Government.**

An Organic Law shall provide for, or make provision in respect of, the form and the manner of establishment of the provincial governments and the local-level governments.

**187C. - Constitution, functions, etc, of Provincial Governments and Local-Level Government.**

(1) Subject to this Part, an Organic Law shall make provision in respect of the constitution, powers and functions of a provincial government or a local-level government.

(2) For each provincial government and local-level government, there shall be established -

- (a) an elective, or mainly elective, legislature with such powers as are conferred by law; and
- (b) an executive; and
- (c) an office of head of the executive.

(3) An Organic Law shall provide for the minimum number of members for the provincial assemblies and local-level governments and the maximum number of members that may be appointed as nominated members of Provincial Assemblies and Local-Level Governments.

(4) An Organic Law shall make provision for an in respect of -

- (a) grants by the National Government to Provincial Governments and Local-Level Governments; and
- (b) the imposition and collection of taxation by provincial governments, and local-level governments,

and may make other financial provisions for provincial governments and local-level governments, to an extent reasonably adequate for the performance of their functions.

(5) An Organic Law shall make provision for the devolution and delegation to each provincial government and local-level government of substantial powers of decision-making and substantial administrative powers in respect of matters of direct concern to the province and to the local-level government area.

(6) An Organic Law shall make provision in respect of the legislative powers of provincial governments and local-level governments.

(7) A question of the adequacy of provision made under Subsection (3), (4), (5) or (6) is non-justiciable.

(8) Elections to a UG shall be conducted, in accordance with an Organic Law, by the Electoral Commission.  
**187D. - Inconsistency and justiciability of provincial laws and local-level laws.**

(1) Subject to any Constitutional Law, the application by its own force of an Act of the Parliament is not affected by a provincial law or a local-level law.

(2) Nothing in this Part authorises the making of a provincial law or a local-level law, or authorises any other action, that is inconsistent with -

(a) this *Constitution* (and in particular with Division 3 (*Basic Rights*)) ; or

(b) an Organic Law,

and all questions as to such consistency are justiciable.

(3) In order to avoid fruitless controversy and litigation, an Organic Law may provide that a question as to the effect of Subsection (1) is non-justiciable either absolutely or to the extent or in the cases prescribed by the Organic Law, except in proceedings between the National Government and a provincial government or a local-level government, or between governments.

**187E. - Suspension of Provincial Governments and Local-Level Governments.**

(1) Where a Provincial Government or a Local-Level Government undermines or attempts to undermine the authority of the National Parliament or the national unity, the National Executive Council may provisionally suspend the Provincial Government or the Local-Level Government concerned subject to confirmation by an absolute majority vote of the Parliament.

(2) An Organic Law may make provision for and in respect of the procedures to be followed in the exercise of the powers under Subsection (1).

(3) An Organic Law may make provisions for further defining any matter referred to in Subsection (1).

(4) The National Executive Council may suspend a provincial government or a local-level government that cannot carry out its functions effectively because of a war or a national emergency declared under **Part X (Emergency Powers)** affecting the province, local-level government area or the whole of the country.

(5) While a provincial government or a local-level government is suspended, its powers and functions are vested in and shall be exercised by or on behalf of the National Executive Council, in accordance with an Organic Law.

(6) Where a provincial government or a local-level government is suspended -

- (a) in the case of a suspension under Subsection (4), the Minister responsible for provincial government and local-level government matters shall, as soon as practicable and in any event not later than the first meeting of the Parliament after the suspension, table in the Parliament a report on the suspension, the reasons for it and the circumstances of it; and
- (b) at each meeting of the Parliament during the suspension, the Minister responsible for provincial government and local-level government matters shall report to the Parliament on the measures taken to re-establish the provincial government or the local-level government, as the case may be.

#### **187F. - Re-establishment of Provincial Governments and Local-Level Governments.**

(1) Subject to Subsections (2) and (3), if a provincial government or a local-level government is suspended, arrangements shall be made to re-establish it within nine months from the effective date of the suspension.

(2) Subject to Subsections (3) and (4), where -

- (a) a provincial government or a local-level government is suspended under Section 187E (4) (*suspension of provincial governments and local-level governments*) as a result of a declaration of a national emergency under Section 228 (*declaration of national emergency*); and

(3) A period of nine months referred to in the preceding provisions of this section may be extended by periods, each not exceeding six months, by the Parliament by a simple majority vote.

(4) Subject to Subsection (3), where a provincial government or a local-level government is suspended under Section 187E(4) (*suspension of provincial governments and local-level government*) the period of suspension, unless earlier terminated, ends at the end of nine months after the end of the war or national emergency concerned.

#### **187G. - Gradations of Provincial Governments and Local-Level Governments.**

Nothing in any law is inconsistent with this Part so far as it provides for the full status, powers or functions of provincial governments and local-level governments to be acquired by a provincial government and a local-level government in stages, or provides for a gradation of provincial governments and local-level governments or provides for interim provincial governments.

#### **187H. - Inter-Governmental Relations.**

(1) An Organic Law shall make provision for and in respect of a National Economic and Fiscal Commission, to advise, and to make recommendations to, the National Executive Council and the Parliament on the allocation of grants by the National Government to provincial governments and local-level governments and as between provincial governments and local-level governments and as to other fiscal matters relating to provincial governments and local-level governments.

#### **187I. Local and Village Governments**

(1) Until an Organic Law makes provision for government at the local-level, and such provision is implemented in accordance with the Organic Law the *Local Government Act* (Chapter 57), as in force from time to time, continues to apply in respect of such government in the province.

**187J. - Reports on Provincial Governments and Local-Level Governments.**

The Minister responsible for provincial government and local-level government matters shall, at least once in each period of 12 months, at such times as are fixed -

- (a) by or under an Act of the Parliament; or
- (b) subject to any such Act, by the the Head of State acting with, and in accordance with, the advice of the National Executive Council,

present to the Head of State, for presentation to the Parliament, a report on the working of the system of provincial governments and local-level governments.

## 187J. Reports on provincial and local level governments.

The Minister responsible for provincial affairs shall, at least once in each period of 12 months, at such times as are fixed—

(a) by or under an Act of the Parliament; or

(b) subject to any such Act, by the Head of State acting with, and in accordance with, the advice of the National Executive Council,

present to the Head of State, for presentation to the Parliament, a report on the working of the systems of provincial government and government at the local level.

## PART VII.—THE STATE SERVICES.

## Division 1.—Introductory.

## 188. Establishment of the State Services.

(1) The following State Services are hereby established :—

(a) the National Public Service; and

(b) the Police Force; and

(c) the Papua New Guinea Defence Force; and

(d) the Parliamentary Service.

(2) Acts of the Parliament may make provision for or in respect of other State Services.

## 189. Civilian control.

All of the State Services other than the Defence Force shall be civilian services, and all of the State Services shall be subject at all times to ultimate civilian control.

## Division 2.—The Public Services Commission.

## "190. — ESTABLISHMENT OF THE COMMISSION.

(1) A Public Services Commission is hereby established.

(2) The Commission shall consist of three members who shall be appointed for a term of five years by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after consultation with any appropriate Permanent Parliamentary Committee.

(3) All of the members of the Commission must be citizens who have gained substantial experience in the National Public Service.

(4) Subject to this Constitution, an Act of the Parliament shall make provision for and in respect of the appointment and the conditions of employment of the members of the Commission, and for and in respect of its constitution, powers and procedures."

S. 190 Repealed  
E. Rebl by No. 8  
of 1986 S. 1

"191. - FUNCTIONS OF THE COMMISSION.

(1) The Public Services Commission shall be responsible, in accordance with an Act of the Parliament, for -

- (a) the review of personnel matters connected with the National Public Service; and
- (b) the continuous review of the State Services (other than the Papua New Guinea Defence Force), and the services of other governmental bodies, and to advise, either on its own initiative or on request, the National Executive Council and any authority responsible for any of those services, on organizational matters.

(2) The Public Services Commission has such other functions as may be prescribed by or under a Constitutional Law or an Act of the Parliament.

(3) In carrying out its function under Subsection (1)(b), the Public Services Commission -

- (a) shall take into account the government policy on a particular matter when advising the National Executive Council and the other authorities responsible for those services; and
- (b) shall not have any power to direct or control a State Service or the services of other governmental bodies.

(.) The Public Services Commission shall, in respect of each year, prepare and forward to the Speaker for presentation to the Parliament, a report on the advice it has given during the year to the National 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."

*S. 191 Repealed & Replaced by No. 8 of 1986 S. 2.*

"192. - INDEPENDENCE OF THE COMMISSION."

The Public Services Commission is not subject to direction or control when carrying out its function under Section 191(1)(a) (functions of the Commission)."

*S. 192. Repealed and replaced by NO. 80 of 1986  
S. 3.*

193. Appointments to certain offices.

(1) This section applies to and in respect of the following offices and positions:—

- (a) all offices in the National Public Service the occupants of which are directly responsible to the National Executive Council or to a Minister; and
- (b) the offices of the members of the Boundaries Commission; and
- (c) the office the occupant of which is responsible for the administration of the Government broadcasting service, or, if that responsibility rests with a board or commission, the chairman or president of the board or commission; and
- (d) the offices of the persons (including members of boards or commissions) responsible for the administration of any of the State Services; and
- (e) the office of Commissioner of Police; and
- (f) the office of Commander of the Defence Force; and
- (g) the office of Secretary to the National Executive Council; and
- (h) such other offices and positions as are prescribed by an Act of the Parliament for the purpose,

other than the offices of the members of the Public Services Commission.

(2) All appointments (whether temporary or substantive) to offices to which Subsection (1)(b), (c), (e) and (h) apply shall be made by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after consultation with the Public Services Commission and any appropriate Permanent Parliamentary Committee, and a report concerning each of them shall be given to the Parliament by the responsible Minister as soon as possible after it has been made.

(3) All appointments (whether temporary or substantive) to which Subsection (1)(a), (d), (f) and (g) apply and such other offices and positions as are prescribed by an Act of the Parliament for the purpose of this subsection, shall be made by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after consultation with the Public Services Commission.

(4) An Act of the Parliament may make provision for and in respect of a temporary appointment to an office to which this section applies until such time as it is practicable to make an appropriate substantive appointment in accordance with Subsection (2)<sup>1</sup>.

#### 194. "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.—The State Services Generally.*

#### 195. Organization, etc., of the State Services.

Subject to this Part, Acts of the Parliament may make provision for or in respect of the State Services, and in particular for and in respect of—

- (a) the structures and organizations of the State Services; and
- (b) the employment of persons in the State Services; and
- (c) the terms and conditions of appointment to, and of employment in, the State Services.

### *Division 4.—Special Provisions in Relation to the Police Force.*

#### 196. Control of the Police Force.

(1) The Police Force is subject to the control of the National Executive Council through a Minister.

(2) The Minister has no power of command within the Police Force, except to the extent provided for by a Constitutional Law or an Act of the Parliament.

#### 197. Functions of the Police Force.

(1) The primary functions of the Police Force are, in accordance with the Constitutional Laws and Acts of the Parliament—

- (a) to preserve peace and good order in the country; and
- (b) to maintain and, as necessary, enforce the law in an impartial and objective manner.

(2) Insofar as it is a function of the Police Force to lay, prosecute or withdraw charges in respect of offences, the members of the Police Force are not subject to direction or control by any person outside the Force.

#### 198. Commissioner of Police.

There shall be, within the Police Force, an office of Commissioner of Police, who shall be responsible for the superintendence, efficient organization and control of the Force in accordance with an Act of the Parliament.

<sup>1</sup>In the draft Constitution considered by the Constituent Assembly, what are now Subsections (2) and (3) were combined. *Seemly*, the reference to "Subsection (2)" should be to "Subsection (2) or (3), as the case requires", and Subsection (4) should be read subject to Subsections (2) and (3) and not as overriding them. In addition, as Subsections (2) and (3) apply to both temporary and substantive appointments, it would seem that the limitation in Subsection (4) to substantive appointments was made in error.

199. Other forces.

There shall be only one Police Force in Papua New Guinea, but this section does not prevent—

- (a) the creation of reserve or special forces, or other similar forces (by whatever name known); or
- (b) the creation of special bodies, or the authorization of persons other than members of the Police Force, for the administration or enforcement of particular laws; or
- (c) the conferring of police powers on persons who are not members of the Police Force,

by or under an Act of the Parliament.

*Division 5.—Special Provisions in Relation to the Defence Force.*

200. Raising unauthorized forces.

(1) It is strictly forbidden to establish, organize, equip, train or take part in or associate with a military or para-military force, or to organize or take part in military or para-military training, except such as is provided for by this Constitution, or to plan, prepare for or assist in the raising or training of such a force or in such training.

(2) Subsection (1) does not prevent—

- (a) the establishment of a reserve, auxiliary or special force (by whatever name known) as part of the Defence Force; or
- (b) the establishment of civilian components of the Defence Force, or the establishment or recognition of non-combatant units or organizations within, attached to or associated with the Defence Force,

in accordance with an Act of the Parliament.

(3) An Act of the Parliament may provide that Subsection (1) does not apply to the armed forces of any other country specified in or under the Act, or to the civilian components of, or to the non-combatant units or organizations whether attached to or associated with such forces.

201. Control of the Defence Force.

(1) There shall be no office of Commander-in-Chief of the Defence Force, whether honorary or otherwise.

(2) The Defence Force is subject to the superintendence and control of the National Executive Council, through the Minister responsible for the Defence Force.

(3) No serving member of the Defence Force may be the Minister responsible for the Defence Force.

(4) The Minister responsible for the Defence Force shall not use any military rank or title, and, except to the extent provided for by Constitutional Law or an Act of the Parliament, has no power of command within the Defence Force.

(5) There shall be—

- (a) within the Defence Force, an office of Commander of the Defence Force, who shall be the principal military adviser to the Minister responsible for the Defence Force on matters relating to the Defence Force; and

- (b) within the National Public Service, an officer of the Service, who shall be the principal civilian adviser to the Minister on matters relating to the Defence Force,

and each of whom shall have such other powers, functions, duties and responsibilities as are prescribed by or under an Act of the Parliament.

## 202. Functions of the Defence Force.

The functions of the Defence Force are—

- (a) to defend Papua New Guinea and its territory; and
- (b) to assist in the fulfilment by Papua New Guinea of its international obligations; and
- (c) to provide assistance to civilian authorities—
  - (i) in a civil disaster; or
  - (ii) in the restoration of public order and security on being called out in accordance with Section 204 (*call-out in aid to the civil power*); or
  - (iii) in accordance with an Act of the Parliament during a period of declared national emergency under Part X. (*emergency powers*); and
- (d) to perform, as directed, functions and services of a civil nature so as to participate to the maximum in the task of national development and improvement,

either within the country or outside it, in accordance with this Constitution and Acts of the Parliament.

## 203. Application of general law.

Since it is necessary that the Defence Force and the members of the Defence Force have no special position under the law except to such extent as is required by the nature of the Force as a disciplined force and its peculiar functions, duties and responsibilities, it is hereby declared that, except as is specifically provided by a Constitutional Law or an Act of the Parliament, the Defence Force and the members of the Defence Force are subject to all laws in the same way as other bodies and persons.

## 204. Call-out in aid to the civil power.

(1) The Defence Force or a part of the Defence Force may be called out to perform functions under Section 202(c)(ii) (*functions of the Defence Force*) only by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

(2) When called out in accordance with Subsection (1), the Defence Force or a part of the Defence Force—

- (a) does not have, and shall not be given, any power or protection that would not be possessed by the Police Force or the members of the Police Force in similar circumstances; and
- (b) shall support the Police Force for so long and so far as is necessary to enable the Police Force to restore public order and security; and<sup>1</sup>
- (c) in so doing shall act only on, and to the extent specified in, a request by the appropriate civilian authority in accordance with an Act of the Parliament; and<sup>1</sup>

<sup>1</sup> *Semble*, Paragraphs (b) and (c) should form a single paragraph.

- (d) shall cease to act in support of the Police Force when directed to do so by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

205. Active service.

(1) Except for the purposes of defence against attack, the Defence Force or a part of the Defence Force—

- (a) may be ordered on active service only by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; and
- (b) may be sent out of the country only by the authority of and on conditions imposed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

(2) The Defence Force or a part of the Defence Force may not be ordered on, or committed to—

- (a) active service; or
- (b) an international peace-keeping or relief operation,

outside the country without the prior approval of the Parliament.

(3) If practicable before, and in any event as soon as practicable after, action is taken under Subsection (1) or the Defence Force becomes engaged in war or warlike operations, or in defence against attack, the Parliament shall be advised of the action taken, or likely to be taken, and of the reasons for it, and shall be given an opportunity to debate the matter.

(4) Subsection (1)(b) does not prevent—

- (a) the Defence Force or a part of the Defence Force being sent out of the country for normal administrative or training purposes; or
- (b) any action that is required or permitted by an Act of the Parliament for the purposes of enforcing a law.

206. Visiting forces.

(1) An Act of the Parliament may make provision for or in respect of—

- (a) the presence in the country, by arrangement with the National Executive, of forces of another country; and
- (b) the presence in another country of the Defence Force or a part of the Defence Force,

and in particular for or in respect of—

- (c) the concession to courts or tribunals, and to service authorities, of the other country of jurisdiction over members of its forces (other than citizens of Papua New Guinea) in relation to some or all civil and criminal matters; or
- (d) the assertion of the exclusive jurisdiction of courts and tribunals of Papua New Guinea, and of Defence Force authorities, over members of the Defence Force in another country.

(2) Except in relation to its own members or to civilian components of, or civilians accompanying, the force, a visiting force of another country shall not be used in the country in any role in which the Defence Force may not be used, and accordingly any law that restricts the role, powers or functions of the Defence Force or of members of the Defence Force applies equally to visiting forces and members of visiting forces.

(3) A law made for the purposes of Subsection (1) may apply, in whole or in part, to civilian components of, or civilians accompanying, the Defence Force or a part of the Defence Force, or to civilian components of, or civilians accompanying a visiting force.

*Division 6.—Special Provisions relating to Disciplined Forces.*

207. Definition of "disciplined force".

- (1) The following are, for the purposes of this Division, disciplined forces :—
- (a) the Police Force; and
  - (b) the Defence Force; and
  - (c) any other force or service that—
    - (i) is established by or under a statute; and
    - (ii) is declared by an Organic Law to be a disciplined force for the purpose of this Division.

(2) For the purposes of any Organic Law made for the purposes of this Division, a person acting, as required or authorized by law, under the direction of a member of a disciplined force, for the purpose of assisting in the performance of the functions or duties of the member or of the force, shall be deemed to be a member of that force.

208. Protection of members of disciplined forces.

(1) Because of the special nature of disciplined forces and of their operations, it is a primary duty of their members to obey lawful orders, and accordingly an Organic Law shall make special provision for relieving a member of such a force from responsibility for the consequences of—

- (a) carrying out a lawful order; or
- (b) carrying out an order which he honestly, and on reasonable grounds believed to be a lawful order, in which case the onus of establishing his belief and the reasonable grounds on which it was based, shall be upon him.

(2) Without derogating any other right to compensation from an authority responsible for the disciplined force concerned, an Organic Law made for the purposes of Subsection (1) shall make provision for any liability to make compensation that would otherwise lie on a member of a disciplined force to lie on the authority responsible for the force.

PART VIII.—SUPERVISION AND CONTROL.

*Division 1.—Public Finances.*

Subdivision A.—The Parliament and Finance.

209. Parliamentary responsibility.

(1) Notwithstanding anything in this Constitution, the raising and expenditure of finance by the National Government, including the imposition of taxation and the raising of loans, is subject to authorization and control by the Parliament, and shall be regulated by an Act of the Parliament.

"(2) For each fiscal year, there shall be a National Budget comprising —

- (a) estimates of finance proposed to be raised and estimates of proposed expenditure by the National Government in respect of the fiscal year; and

S 209(2) Amd by  
Cons Amd No 10  
of 1988 S 1.

(b) separate appropriations for the service of that year in respect of -

1

- (i) the services of the Parliament; and
- (ii) general public services; and
- (iii) the services of the Judiciary; and

(c) such other supplementary Budgets and appropriations as are necessary.

"(2A) For the purposes of this Sub-division -

S 209 and, By  
Cons. Amend No 10  
1988 S 1.

(a) "the services of the Parliament" include the salaries and allowances (financial and otherwise) of the Members of Parliament, the maintenance of the precincts of the Parliament, and the Parliamentary Service established under the Parliamentary Service Act (Chapter 26); and

(b) "the services of the Judiciary" include -

- (i) the salaries and allowances (financial and otherwise) of Judges of the Supreme and National Courts; and
- (ii) the maintenance of the Supreme and National courts; and
- (iii) the National Judicial Staff Service established under the National Judicial Staff Service Act 1987; and
- (iv) the salaries and allowances (financial and otherwise) of all persons appointed under the Supreme Court Act (Chapter 37), the National Court Act (Chapter 38) and the Sheriff Act (Chapter 55).

"(2B) For the purposes of subsection (2)(b)(i) and (iii), the Speaker of the Parliament and the Chief Justice respectively shall, before 30 September each year, submit to the Prime Minister estimates of expenditure for the services of the Parliament and the services of the Judiciary respectively in the following fiscal year."

(3) Before any Budget or appropriation is prepared for submission to the Parliament, the National Executive Council shall consult with any appropriate Permanent Parliamentary Committee, but this subsection does not confer any right or impose any duty of consultation after the initial stages of the preparation of the Budget or appropriation.

210. Executive initiative.

(1) The Parliament shall not provide for the imposition of taxation, the raising of loans or the expenditure of public moneys of Papua New Guinea except on the recommendation of the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

"(2) Subject to subsections (3) and (4), Parliament 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."; and

S 210 Amd  
By Cons Am!  
No 10 of 1988  
S 2

"(3) Where, in the opinion of the Parliament, the proposed expenditure for the services of the Parliament or the services of the Judiciary is below the estimate submitted by the Speaker or Chief Justice respectively and is insufficient adequately to meet the requirements of that service, the Parliament may increase the expenditure to an amount not exceeding the original estimates submitted by the Speaker or the Chief Justice, as the case may be, under Section 209(2B).

"(4) For the purposes of Subsection (3), the Parliament may re-allocate, or reduce and re-allocate, the amount of expenditure appropriated for any purpose."

211. Accounting, etc., for public moneys.

(1) All moneys of or under the control of the National Government

"for public expenditure and the Parliament and the Judiciary for their respective services,"; and

S 211 (1) and 4  
Cons Amd No 10 1988  
S 3W

(2) No moneys of or under the control of the National Government

"for public expenditure or the Parliament and the Judiciary for their respective services."

S 211 (2) and 4  
Cons Amd No 10 1988  
S 3 (W)

212. Revenue and expenditure without prior approval.

"(1) If at the beginning of a fiscal year the Parliament has not made provision for public expenditure by the National Executive or expenditure by the Parliament or the Judiciary for their respective services for that year, the National Executive, the Parliament or the Judiciary, as the case maybe, may, without authorization other than this section but in accordance with an Act of the Parliament, expend amounts appropriated out of the Consolidated Revenue Fund for the purpose not exceeding in total one-third of its respective budgetted expenditure during the immediately preceding fiscal year."

S 212 (1)  
REPEALED  
By Const Am  
No 10 1988  
S 4.

(2) The authority conferred by Subsection (1) lapses when the Parliament has made provision for the public expenditure for the fiscal year in question, and any amounts expended by virtue of that subsection are a charge against the expenditure so provided for and shall be properly brought to account accordingly.

Subdivision B.—The Auditor-General.

213. Establishment of the office of Auditor-General.

(1) An office of Auditor-General is hereby established.

(2) The Auditor-General shall be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Public Services Commission and the Public Accounts Committee.

(3) In the performance of his functions under this Constitution, the Auditor-General is not subject to the control or direction of any person or authority.

214. Functions of the Auditor-General.

(1) The primary functions of the Auditor-General are to inspect and audit, and to report at least once in every fiscal year (as provided by an Act of the Parliament) to the Parliament on the public accounts of Papua New Guinea, and on the control of and on transactions with or concerning the public moneys and property of Papua New Guinea, and such other functions as are prescribed by or under a Constitutional Law.

(2) *next Page.*

(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 National Government; and
- (b) all bodies set up by an Act of the Parliament, or by executive or administrative act of the National Executive, for governmental or official purposes.

(3) Notwithstanding that other provision for inspection or audit is made as provided for by Subsection (2), the Auditor-General may, if he thinks it proper to do so, inspect and audit, and report to the Parliament on, any accounts, finances or property of an institution referred to in that subsection, insofar as they relate to, or consist of or are derived from, public moneys or property of Papua New Guinea.

(4) An Act of the Parliament may expand, and may provide in more detail for, the functions of the Auditor-General under Subsections (1), (2) and (3), and may confer on the Auditor-General additional functions and duties not inconsistent with the performance of the functions and duties conferred and imposed by those subsections.

#### Subdivision C.—The Public Accounts Committee.

##### 215. Establishment of the Committee.

There shall be a Public Accounts Committee, which is a Permanent Parliamentary Committee for the purposes of Subdivision VI.2.E (*the Committee system*).

##### 216. Functions of the Committee.

(1) The primary function of the Public Accounts Committee is, in accordance with an Act of the Parliament, to examine and report to the Parliament on the public accounts of Papua New Guinea and on the control of and on transactions with or concerning, the public moneys and property of Papua New Guinea.

(2) Subsection (1) extends to any accounts, finances and property that are subject to inspection and audit by the Auditor-General under Section 214(2) (*functions of the Auditor-General*), and to reports by the Auditor-General under that subsection or Section 214(3) (*functions of the Auditor-General*).

(3) An Act of the Parliament may expand, and may provide in more detail for, the functions of the Committee under Subsections (1) and (2), and may confer on the Committee additional functions and duties not inconsistent with the performance of the functions and duties conferred and imposed by those subsections.

"DIVISION 1A. — Salaries and Remuneration Commission. NEW DIVISION ADDED BY

CONS AMEND No 9 OF 1988

##### 216A. THE SALARIES AND REMUNERATION COMMISSION.

(1) A Salaries and Remuneration Commission is hereby established.

(2) The Commission shall consist of —

(a) the Speaker of the Parliament as the Chairman when attending, or in his absence, his nominee who shall be the Deputy Speaker; and

(b) the Prime Minister or, in his absence, his nominee who shall be a Minister; and

(c) the Leader of the Opposition or, in his absence, his nominee who shall be a member of Parliament in the Opposition; and

(d) the Chief Justice or, in his absence, his nominee who shall be nominated after consultation with the Judges to represent the Judges; and

(e) the head of the Department of Personnel Management or in his absence, his nominee who shall be an officer of that department; and

(f) the head of the Department of Labour and Employment or, in his absence, his nominee who shall be an officer of that department.

(3) The Commission is responsible for recommending to the Parliament from time to time, at intervals determined by it -

(a) the salaries, allowances and benefits, financial and otherwise (other than pensions or retirement benefits which shall be fixed by a Parliamentary Committee), for all or any members of the Parliament; and

(b) the salaries, allowances and benefits, financial and otherwise (including pensions or retirement benefits), for all or any members of Provincial Assemblies (including any Speakers appointed from outside the Assemblies); and

(c) the salaries, allowances and benefits, financial and otherwise (including pensions or retirement benefits if they are not provided for by law other than this provision) for all the Judges; and

(d) the salaries, allowances and benefits, financial or otherwise (including pensions or retirement benefits if they are not provided for by law other than this provision) for all Constitutional Office-holders.

(4) The Parliament shall determine the salaries, allowances and benefits, financial and otherwise of the members of the Parliament, Provincial Assemblies, the Judges and other Constitutional Office-holders in accordance with recommendations of the Commission made under subsection (3).

(5) Parliament may accept or reject, but may not amend, any recommendations of the Commission.

(6) An Act of the Parliament shall make further provision in respect of -

- (a) the salaries and remuneration for the holders of the different offices or levels of offices held by -
  - (i) members of the Parliament; and
  - (ii) members of Provincial Assemblies; and
  - (iii) the Judges; and
  - (iv) other Constitutional Office-holders; and
- (b) the powers and procedures of the Commission and generally in respect of it.

(7) The provisions of this section apply notwithstanding any law that prescribes a code of conduct for leaders or imposes a duty, restraint or obligation on leaders acquiring a benefit or gain."

*Division 2.—The Ombudsman Commission.*

**217. The Ombudsman Commission.**

(1) There shall be an Ombudsman Commission, consisting of a Chief Ombudsman and two Ombudsmen.

(2) The members of the Commission shall be appointed by the Head of State, acting with, and in accordance with, the advice of an Ombudsman Appointments Committee consisting of—

- (a) the Prime Minister, who shall be Chairman; and
- (b) the Chief Justice; and
- (c) the Leader of the Opposition; and

(d) the Chairman of the appropriate Permanent Parliamentary Committee, or, if the Chairman is not a member of the Parliament who is recognized by the Parliament as being generally committed to support the Government in the Parliament, the Deputy Chairman of that Committee; and

(e) the Chairman of the Public Services Commission.

(3) The salary and other conditions of employment of the Chief Ombudsman shall not be less than or inferior to the salary and other conditions of employment of a Judge other than the Chief Justice and the Deputy Chief Justice without taking into account any conditions of employment personal to that Judge.

(4) The salary and other conditions of employment of the Ombudsmen shall be not less than or inferior to the salary and other conditions of employment of the Public Prosecutor, without taking into account any conditions of employment personal to any particular Public Prosecutor.

(5) In the performance of its functions under Section 219 (*functions of the Commission*) the Commission is not subject to direction or control by any person or authority.

(6) The proceedings of the Commission are not subject to review in any way, except by the Supreme Court or the National Court on the ground that it has exceeded its jurisdiction.

(7) An Organic Law shall make further provision in respect of the appointment, powers, procedures and immunity of the Commission.

(8) In this section "conduct" includes—

(a) any action or inaction relating to a matter of administration; and

(b) any alleged action or inaction relating to a matter of administration<sup>1</sup>.

## 218. Purposes of the Commission.

The purposes of the establishment of the Ombudsman Commission are—

(a) to ensure that all governmental bodies are responsive to the needs and aspirations of the People; and

(b) to help in the improvement of the work of 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 governmental bodies; and

(d) to supervise the enforcement of Division III.2 (*leadership code*).

## 219. Functions of the Commission.

(1) Subject to this section and to any Organic Law made for the purposes of Subsection (7), the functions of the Ombudsman Commission are—

(a) to investigate, on its own initiative or on complaint by a person affected, any conduct on the part of—

(i) any State Service or a member of any such service; or

(ii) any other governmental body, or an officer or employee of a governmental body; or

(iii) any local government body or provincial government body, or an officer or employee of any such body; or

<sup>1</sup> This subsection is meaningless. It seems that in the drafting Section 219(8) (which is meaningful) was accidentally repeated here.

(iv) any other body set up by statute—

(A) that is wholly or mainly supported out of public moneys of Papua New Guinea; or

(B) all of, or the majority of, the members of the controlling authority of which are appointed by the National Executive, or an officer or employee of any such body; and

(v) any member of the personal staff of the Governor-General, a Minister or the Leader or Deputy Leader of the Opposition; or

(vi) any other body or person prescribed for the purpose by an Act of the Parliament,

specified by or under an Organic Law in the exercise of a power or function vested in it or him by law in cases where the conduct is or may be wrong, taking into account, amongst other things, the National Goals and Directive Principles, the Basic Rights and the Basic Social Obligations; and

(b) to investigate any defects in any law or administrative practice appearing from any such investigation; and

(c) to investigate, either on its own initiative or on complaint by a person affected, any case of an alleged or suspected discriminatory practice within the meaning of a law prohibiting such practices; and

(d) any functions conferred on it under Division III.2 (*leadership code*); and

(e) any other functions conferred upon it by or under an Organic Law.

(2) Subject to Subsections (3), (4) and (5), and without otherwise limiting the generality of the expression, for the purposes of Subsection (1)(a) conduct is wrong if it is—

(a) contrary to law; or

(b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or

(c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or

(d) based wholly or partly on a mistake of law or of fact; or

(e) conduct for which reasons should be given but were not,

whether or not the act was supposed to be done in the exercise of deliberate judgement within the meaning of Section 62 (*decisions in "deliberate judgement"*).

(3) The Commission shall not inquire into the justifiability of a policy of the National Government or a Minister, except insofar as the policy may be contrary to law or to the National Goals and Directive Principles, the Basic Rights or the Basic Social Obligations, or of any act<sup>1</sup> of the Parliament.

(4) The Commission shall not inquire into the exercise of a rule-making power by a local government body.

(5) The Commission shall not inquire into a decision by a court, except insofar as the decision may show an apparent defect in law or administrative practice to which Subsection (1)(b) would apply.

<sup>1</sup> *Semble*, "Act" was intended.

(6) Except as provided by or under Division III.2 (*leadership code*), the Commission's powers of enforcement are limited to publicity for its proceedings, reports and recommendations, to the making of reports and recommendations to the Parliament and other appropriate authorities as provided by an Organic Law, and to the giving of advice.

(7) An Organic Law shall make provision in respect of the powers and procedures of the Commission, and in particular—

- (a) shall, subject to paragraph (b), make provision for the Commission to have access to all available relevant information; and
- (b) may impose reasonable restrictions on the availability of information; and
- (c) shall make provision to ensure the secrecy or confidentiality of secret or confidential information made available to the Commission or to a member of the Commission or of its staff; and
- (d) may limit or restrict to a reasonable extent and in a reasonable manner the jurisdiction of the Commission in relation to any matters or class of matters, and in particular in relation to national security; and
- (e) shall make provision for and in respect of publicity for the proceedings, reports and recommendations of the Commission.

(8) In this section, "conduct" includes—

- (a) any action or inaction relating to a matter of administration; and
- (b) any alleged action or inaction relating to a matter of administration.

## 220. Reports by the Commission.

(1) The Ombudsman Commission shall, at least once in each period of 12 months, at such time as is fixed by or under an Act of the Parliament or, subject to any such Act, by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, give to the Head of State, for presentation to the Parliament, a report on the functions and workings of the Commission, with such recommendations as to improvement as the Commission thinks proper.

(2) Nothing in Subsection (1) prevents the Commission from making, on its own initiative or at the request of the Parliament or of the National Executive, other reports on any aspect of the functions and workings of the Commission.

## PART IX.—CONSTITUTIONAL OFFICE-HOLDERS AND CONSTITUTIONAL INSTITUTIONS.

### 221. Definitions.

In this Part—

"constitutional institution" means any office or institution established or provided for by this Constitution, other than an office of Head of State or of a Minister<sup>1</sup>, or the National Executive Council;

"constitutional office-holder" means—

- (a) a Judge; or
- (b) the Public Prosecutor or the Public Solicitor; or
- (c) the Chief Magistrate; or
- (d) a member of the Ombudsman Commission; or

<sup>1</sup> *Semble*, "the office of Queen and Head of State or Governor-General or an office of a Minister" was intended.

- (e) a member of the Electoral Commission; or
- (f) the Clerk of the Parliament; or
- (g) a member of the Public Services Commission; or
- (h) the Auditor-General; or
- (i) the holder of any other office declared by an Organic Law or an Act of the Parliament to be a constitutional office for the purposes of this Part.

**222. Other provisions relating to constitutional office-holders and constitutional institutions.**

This Part shall be read subject to any other provisions of this Constitution relating to particular constitutional office-holders or particular constitutional institutions.

**223. General provision for constitutional office-holders.**

(1) Subject to this Constitution, Organic Laws shall make provision for and in respect of the qualifications, appointment and terms and conditions of employment of constitutional office-holders.

(2) In particular, Organic Laws shall make provision guaranteeing the rights and independence of constitutional office-holders by, amongst other things—

- (a) specifying the grounds on which, and the procedures by which, they may be dismissed or removed from office, but only by, or in accordance with the recommendation of, an independent and impartial tribunal; and
- (b) providing that at the end of their periods of office they are entitled, unless they have been dismissed from office, to suitable further employment by a governmental body, or to adequate and suitable pensions or other retirement benefits, or both, subject to such reasonable requirements and conditions (if any) as are laid down by an Organic Law.

(3) A constitutional office-holder may not be suspended, dismissed or removed from office during his term of office except in accordance with a Constitutional Law.

(4) The total emoluments of a constitutional office-holder shall not be reduced while he is in office, except—

- (a) as part of a general reduction applicable equally or proportionately to all constitutional office-holders or, if he is a member of a State Service, to members of that service; or
- (b) as a result of taxation that does not discriminate against him as a constitutional office-holder, or against constitutional office-holders generally.

(5) The office of a constitutional office-holder may not be abolished while there is a substantive holder of the office but this subsection does not apply to the abolition of any additional constitutional office created by an Act of the Parliament.

(6) Nothing in this section prevents the making by or under an Organic Law or an Act of the Parliament of reasonable provision for the appointment of a person to act temporarily in the office of a constitutional office-holder.

**224. Special provision for constitutional institutions.**

(1) Subject to this Constitution, Organic Laws and Acts of the Parliament shall provide, or shall make provision for, the powers and procedures of constitutional

institutions, and generally for facilitating the performance of their functions, duties and responsibilities.

(2) Subject to this Constitution, if no provision is made under Subsection (1) a constitutional institution—

- (a) may provide, to the extent of the deficiency, for its own procedures; and
- (b) has all reasonable powers that are necessary or convenient for the exercise and performance of its powers, functions, duties and responsibilities.

#### 225. Provision of facilities, etc.

Without limiting the generality of any other provision of this Constitution, it is the duty of the National Government and of all other governmental bodies, and of all public office-holders and institutions, to ensure, as far as is within their respective legal powers, that all arrangements are made, staff and facilities provided and steps taken to enable and facilitate, as far as may reasonably be, the proper and convenient performance of the functions of all constitutional institutions and of the offices of all constitutional office-holders.

### PART X.—EMERGENCY POWERS.

#### Division 1.—Introductory.

#### 226. Definitions.

In this Part, unless the contrary intention appears—

"declaration of a national emergency" means a declaration under Section 228 (*declaration of national emergency*);

"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, storm, tempest, flood, fire or outbreak of pestilence or infectious disease, or any other natural calamity whether similar to any such occurrence or not 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 or any substantial portion of the community of supplies or services essential to life;

"Emergency Act" means an Act of the Parliament made for the purposes of this Part and in accordance with Section 230 (*Emergency Acts*);

"Emergency Committee" means an Emergency Committee appointed under Section 240 (*Emergency Committees*), and includes a Temporary Emergency Committee appointed and in office under Section 241 (*Temporary Emergency Committees*);

"emergency law" means—

- (a) an Emergency Act; or
- (b) an Emergency Regulation;

"emergency order" means an order made under an emergency law, as provided for by Section 232 (*emergency orders*);

"Emergency Regulation" means a law that is made in accordance with Section 231 (*Emergency Regulations*);

"internment" means detention that is authorized by or under a law the validity of which depends solely on this Part, but does not include the detention of a member of the armed forces of another country as a prisoner of war;

"period of declared national emergency" means any period during which—

(a) Papua New Guinea is at war with another country by virtue of a declaration under Section 227 (*declaration of war*); or

(b) a declaration of a national emergency is in force under Section 228 (*declaration of national emergency*).

*Division 2.—Periods of Declared National Emergency*

**227. Declaration of war.**

The Head of State, acting with, and in accordance with, the advice of the National Executive Council, may publicly declare that Papua New Guinea is at war with another country.

**228. Declaration of national emergency.**

(1) If the National Executive Council is of the opinion that an emergency exists or is about to come into being such that it is necessary that the powers conferred by the succeeding provisions of this Part be available, the Head of State, acting with, and in accordance with, the advice of the National Executive Council, may publicly declare the existence of a national emergency in relation to the whole or part of the country.

(2) Unless it is impracticable to do so, a declaration under Subsection (1) shall be made in relation to a part of the country only after prior consultation with the Emergency Committee.

**229. Termination of periods of declared national emergency.**

A declaration of war or of a national emergency may be revoked at any time—

(a) by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; or

(b) by decision of the Parliament.

*Division 3.—Emergency Measures.*

**230. Emergency Acts.**

(1) Before or during a period of declared national emergency, the Parliament may make Acts of the Parliament (to be known as "Emergency Acts") to make provision 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 national emergency shall not come into operation until the commencement of the period.

**231. Emergency Regulations.**

(1) Subject to this Part, at any time before the end of the period of 24 hours after the Parliament first meets after commencement of a period of declared national emergency the Head of State, acting with, and in accordance with, the advice of the National 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 if, and to the extent that, the nature of the emergency or its requirements necessitate the making of the provision before the Parliament can reasonably consider the matter.

(2) An Emergency Regulation shall be immediately forwarded to—

- (a) the Speaker for presentation to the Parliament; and
- (b) an Emergency Committee in accordance with Section 242(1)(a) (*function, etc., of Emergency Committees*) or where no Emergency Committee has been established, to the Temporary Emergency Committee established under Section 241 (*Temporary Emergency Committees*).

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

**232. Emergency orders.**

(1) An emergency law may make provision for the giving of orders, not inconsistent with the emergency law, by persons authorized to do so by or under the law.

(2) No emergency law shall purport to confer powers to make orders that could not be made in the form of an emergency law.

(3) An order shall, if practicable, be in writing and be notified to the appropriate authority appointed by law.

(4) As far as practicable, details of, or copies of, all orders given in accordance with this section shall immediately be forwarded to—

- (a) the Speaker for presentation to the Parliament; and
- (b) the Emergency Committee in accordance with Section 242(1)(a) (*functions, etc., of Emergency Committees*) or where no Emergency Committee has been established, to the Temporary Emergency Committee established under Section 241 (*Temporary Emergency Committees*).

**233. Content, operations, etc., of emergency laws.**

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

(2) Notwithstanding the provisions of Sections 12 and 13 but subject to Subsections (3) and (4), an emergency law may alter, wholly or partly, and absolutely or subject to conditions, any provision of Division III.3 (*basic rights*), any Organic Law made for the purposes of any such provision or any other law (other than a Constitutional Law) 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.

## (3) An emergency law—

## (a) may not alter—

- (i) Section 35 (*right to life*); or
- (ii) Section 36 (*freedom from inhuman treatment*); or
- (iii) Section 45 (*freedom of conscience, thought and religion*); or
- (iv) Section 50 (*right to vote and stand for public office*); or
- (v) Section 55 (*equality of citizens*); or
- (vi) Section 56 (*other rights and privileges of citizens*); and

(b) may provide for internment only in accordance with Division 5 (*internment*); and(c) may alter Section 37 (*protection of the law*) or Section 42 (*liberty of the person*) only to the extent allowed by paragraph (b).

## (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 to privacy*); or
- (d) Section 51 (*right to freedom of information*),

and may not provide for a sentence of imprisonment for a period exceeding nine months.

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

## 234. Release from custody on expiry, etc., of Emergency Regulations.

Subject to any Act of the Parliament made for the purpose of dealing with the effect of the expiry or revocation of a particular Emergency Regulation, any person held in custody under or for the purposes of an Emergency Regulation shall be released from custody on its expiry or repeal, unless he is also held in custody under some other law.

## 235. Custody of members of Parliament under Emergency Regulations or in internment.

If a member of the Parliament is held in custody under an Emergency Regulation, or is an internee, he shall, at all times when the Parliament is in session or when a committee (of which he is a member) of the Parliament is meeting, be released, on such conditions (if any) as are prescribed by an Act of the Parliament, into the custody of the Parliament in order to allow him to attend to his parliamentary duties, unless he is also held in custody under some other law.

## 236. Revocation, etc., of emergency laws, etc.

## (1) An Emergency Act may be altered—

- (a) by an Act of the Parliament; or
- (b) in an urgent case, where to do so would not be contrary to the positive intention expressed by a resolution of the Parliament dealing with the particular emergency, by an Emergency Regulation.

## (2) An Emergency Regulation may be altered at any time—

- (a) by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; or

- (b) by an Emergency Act; or
- (c) by decision of the Parliament.

(3) An emergency order may be disallowed at any time by decision of the Parliament.

#### 237. Automatic termination of emergency laws, etc.

(1) Subject to Section 238 (*extension of Emergency Acts*) an emergency law, unless it has expired under Section 231(3) (*Emergency Regulations*) or unless earlier repealed<sup>1</sup> shall be deemed to be repealed immediately after the end of the day on which the period of declared national emergency ends.

(2) Where an Emergency Regulation which has amended or repealed any law in force immediately before the regulation took effect, is deemed to be repealed under Subsection (1), the repeal of that regulation shall revive the previous law from the date of that repeal as if the repealed regulation had not been made.

#### 238. Extension of Emergency Acts.

(1) Subject to Subsection (2), to the extent that its extension is necessary to deal with the results or aftermath of the period of declared national emergency and is reasonably justifiable in a democratic society that has a proper regard<sup>2</sup> 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 national emergency, by decision of the Parliament by an absolute majority vote, for a period or periods each not exceeding two months.

(2) After the end of the period of declared national emergency, internment may be continued only in accordance with Section 244 (6) (*laws providing for internment*).

#### *Division 4.—Parliamentary Supervision and Control.*

#### 239. Parliamentary control.

(1) Unless the Parliament is in session at the commencement of a period of declared national emergency, it shall be called to meet as soon as practicable, and in any event not more than 15 days, after the commencement of the period and thereafter during the period at intervals each not exceeding two months.

(2) At each meeting of the Parliament during a period of declared national emergency the Prime Minister shall present to the Parliament a statement setting out—

- (a) the reasons for the declaration of war or of the national emergency, or for the continuance of the period; and
- (b) the reasons for any new Emergency Regulations; and
- (c) a report on the operation of the emergency laws.

(3) Unless earlier revoked, a declaration of a national emergency expires at the end of the period of 21 days after its making, but may be extended from time to time by decision of the Parliament by an absolute majority vote, for a period or periods each not exceeding two months.

#### 240. Emergency Committees.

(1) An Act of the Parliament shall provide for and in respect of the appointment of committees of the Parliament (to be known as "Emergency Committees") in respect of a period or periods of declared national emergency.

<sup>1</sup> *Seemle*, "or is earlier repealed" was intended.

<sup>2</sup> *Seemle*, "having a proper regard" was intended—compare the footnote to Section 38(1).

(2) No Minister may be a member of a Committee.

(3) A Committee shall be available to meet at all times during the period in respect of which it was appointed.

(4) Subject to the availability of members to meet in accordance with Subsection (3), a Committee should, in principle, be broadly representative of the various parts of the country and of parties and groups in the Parliament.

#### 241. Temporary Emergency Committees.

(1) An Act of the Parliament or the Standing Orders of the Parliament shall make provision for and in respect of the appointment of a Temporary Emergency Committee to hold office if a period of declared national emergency commences at a time when the Parliament is not in session and an Emergency Committee has not been established in accordance with Section 240 (*Emergency Committees*) in respect of the period.

(2) A Temporary Emergency Committee ceases to hold office (except for the purpose of making a report in accordance with Section 242(2) (*Functions, etc., of Emergency Committees*) as to events occurring during its term of office)—

(a) at the time of the establishment of an Emergency Committee in accordance with Section 240 (*Emergency Committees*) in respect of the period of declared national emergency; or

(b) at the end of the first meeting of the Parliament after its establishment, whichever first occurs.

#### 242. Functions, etc., of Emergency Committees.

(1) The Prime Minister shall ensure that—

(a) copies of all emergency laws and, so far as is practicable, of all emergency orders, are forwarded immediately to the Emergency Committee; and

(b) subject to any Emergency Act, the Committee is fully provided with information concerning, and is fully consulted concerning, developments in the situation and in particular concerning proposed emergency laws and the operation of existing emergency laws.

(2) At each meeting of the Parliament during a period of declared national emergency the Emergency Committee shall present to the Parliament a statement as to—

(a) whether or not the period of declared national emergency should continue; and

(b) the justification for and the operation of the emergency laws; and

(c) whether or not any emergency law should be altered,

and such other related matters as it thinks fit.

(3) As soon as practicable after receipt by him of a request to do so from the Emergency Committee, and in any event not more than 15 days afterwards, the Speaker shall call a meeting of the Parliament to consider—

(a) any statements by the Committee under Subsection (2) and by the Prime Minister under Section 239(2) (*Parliamentary control*); and

(b) whether or not the period of declared national emergency should be allowed to continue; and

(c) whether or not an emergency law should be altered,

and such other matters as the Parliament thinks fit.

**243. Priority of emergency business in Parliament.**

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

*Division 5.—Internment.***244. Laws providing for internment.**

- (1) The internment of persons may be permitted only by an Act of the Parliament.
- (2) An Act referred to in Subsection (1)—
  - (a) must be made by an absolute majority vote; and
  - (b) takes effect on a date fixed by an absolute majority vote of the Parliament made after the commencement of a period of declared national emergency and, after at least four days' notice of the relevant motion has been given; and
  - (c) subject to Subsection (6), authorizes internment only during a period of declared national emergency.
- (3) Subject to Subsection (4), at least four days' notice of the intention to introduce to the Parliament a proposed law to permit internment must be given, and the proposed law must be circulated, in accordance with the Standing Orders of the Parliament, to all members of the Parliament at least four days before the proposed law is made.
- (4) During a time of war, the periods of four days prescribed in Subsection (3) are reduced to 24 hours.
- (5) In his certificate given under Section 110 (*certification as to making of laws*) the Speaker must certify that the requirements of Subsection (2)(a) and (b), and of Subsection (3) or (4), as the case may be, have been complied with.
- (6) Internment may continue after the end of the period of declared national emergency only to the extent that is reasonably required for the orderly and peaceful repatriation, resettlement or re-establishment of internees.

**245. Internment.**

- (1) The following provisions apply to and in relation to an internee :—
  - (a) an internee and his next-of-kin or other close relative in the country shall, as soon as practicable and in any case not more than seven days after the commencement of his internment, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is interned; and
  - (b) subject to Section 244(6) (*laws providing for internment*), an internee (other than an alien enemy) shall be released from detention at the end of the period of two months after his internment unless an independent and impartial tribunal established under paragraph (c) has reviewed his case and found that sufficient cause has been shown for his internment; and
  - (c) subject to Section 244(6) (*laws providing for internment*) an internee (other than an alien enemy) shall be released from detention at the end of the period of six months after his internment; and
  - (d) an internee (other than an alien enemy) is entitled to have his case reviewed by an independent and impartial tribunal established under paragraph (c) as

soon as practicable after he has been interned, and in any case not more than one month after the commencement of his internment, and afterwards at intervals not exceeding two months; and

- (e) an Organic Law shall provide for the establishment of the independent and impartial tribunal referred to in this section and that the Chairman of the tribunal shall be a person qualified to be a Judge of the National Court; and
- (f) the Organic Law referred to in paragraph (e) shall provide that as far as practicable where the case of an internee is being reviewed on a second or subsequent occasion, a majority of the members (including the Chairman) of any tribunal referred to in that paragraph which conducts that review shall be different from the members of any such tribunal which previously reviewed the case of that detainee; and
- (g) subject to Subsection (5), where a tribunal established under paragraph (e) finds that a citizen has been interned wrongly or without sufficient reason—
  - (i) the Head of State, acting with, and in accordance with, the advice of the National Executive Council shall order that he be released; and
  - (ii) he is entitled to compensation, in accordance with law, for the internment and any consequences of it; and
- (h) subject to Subsection (5), where a tribunal established in accordance with paragraph (e) finds that there are no longer sufficient grounds for the internment of a citizen, the Minister responsible for national security shall order that he be released immediately; and
- (i) a person released from internment in accordance with paragraphs (c), (g) or (h) shall not again be interned substantially on the same facts unless a change in circumstances relating to the grounds of the original internment gives these<sup>1</sup> facts a new significance; and
- (j) internees shall be kept separated, as far as practicable, from other persons in custody, and shall receive treatment not less favourable than that afforded to persons in custody awaiting trial for offences; and
- (k) the names and places of residence of internees shall be published in the National Gazette and in any newspaper which has a national circulation, within 14 days of the internment, and at monthly intervals afterwards; and
- (l) the Minister responsible for national security shall present to the Parliament at each meeting of the Parliament during the period of declared national emergency, but in any event, at intervals not exceeding six months, reports concerning all internees, their treatment, the review of their cases and action taken in regard to them.

(2) An internee shall be given adequate facilities to prepare and make representations to the review tribunal referred to in Subsection (1)(e) either personally or through a lawyer, and in particular shall be allowed full access to a lawyer (and if necessary to legal aid) and the services of a competent interpreter if required.

(3) An internee shall—

- (a) be permitted to appear in person before the review tribunal; and
- (b) be permitted to be represented by a lawyer and a friend before the review tribunal.

<sup>1</sup> *Semble*, "those" was intended.

(4) The tribunal shall forward copies of its findings and recommendations to the internee and to his next-of-kin or other close relative in the country when they are furnished to the Minister responsible for national security.

(5) Where in his opinion it is necessary to do so in the interests of national security or public order, the Head of State, acting with, and in accordance with, the advice of the National Executive Council may refuse to make an order in accordance with Subsection (1)(g) or (b)<sup>1</sup> for the release of an internee, but in that event, except in time of war—

(a) he shall promptly present to the Parliament a report stating that he has refused to release the internee and setting out the reasons for his refusal; and

(b) the Parliament may order that the internee be released.

(6) Where an order is made in accordance with Subsection (5)—

(a) the internee shall be released in accordance with the order; and

(b) Subsection (1)(i) applies as though the order were an order under Subsection (1)(g) or (b), as appropriate.

(7) An Organic Law, an Act of the Parliament or an emergency law may make further provision, not inconsistent with this section, in respect of the treatment, security and discipline of internees.

(8) The provisions of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 14 1949, and any other international convention relating to interned persons, shall be complied with in relation to persons protected by them, and in addition such of those provisions that are of general application and can appropriately be applied to interned citizens shall be complied with in relation to such internees.

*Division 6.—Miscellaneous.*

**246. Extension of tenure of Parliament and Governor-General.**

During a period of declared national emergency the Parliament may, by an absolute majority vote, extend its term of office, or the term of office of the Governor-General, or both, for a term not exceeding the length of the period and such time afterwards as is necessary to allow a general election to be arranged and held, or for a Governor-General to be appointed, as the case requires.

**PART XI.—MISCELLANEOUS.**

**247. Legal capacity of the Independent State of Papua New Guinea.**

(1) Papua New Guinea has power to acquire, hold and dispose of property of any kind, and to make contracts, in accordance with an Act of the Parliament.

(2) Papua New Guinea may sue and be sued, in accordance with an Act of the Parliament.

**248. Vesting of rights and liabilities of former Government.**

All property that was, immediately before Independence Day, vested in the body corporate at that time known as "The Government of Papua New Guinea" is, on that day, vested in Papua New Guinea, and all rights and liabilities (actual or contingent) of that body immediately before that day are, on that day, rights and liabilities of Papua New Guinea.

<sup>1</sup> What is now Subsection (1)(g) and (b) was in the draft Constitution considered by the Constituent Assembly a single paragraph, imposing the duty on the Head of State, acting on advice. When the duty was divided between the Head of State and the Minister, the need for a consequential amendment to Subsection (5) was apparently overlooked.

## 249. Declarations by certain office-holders.

Subject to any Organic Law, every person who is subject to Division III.2 (*leadership code*) before entering upon the duties of or exercising any of the powers of his office, shall make—

(a) unless he has made it on a previous occasion or is exempt from making it under—

(i) Section 251(1) (*taking certain oaths, etc., by non-citizens*); or

(ii) Section 272 (*oaths, affirmation, etc.*),

the Declaration of Loyalty; and

(b) in the case of—

(i) a judicial officer—the Judicial Declaration; or

(ii) an office-holder other than a judicial officer—the Declaration of Office.

## 250. Making of Declaration of Loyalty, etc.

(1) Subject to any provision of a Constitutional Law making special provision for the purpose, the Oath of Allegiance, the Declaration of Loyalty, the Judicial Declaration or the Declaration of Office (or any other oath, affirmation or declaration that is required or permitted to be taken or made by or for the purposes of a Constitutional Law) may be taken or made before any person appointed for the purpose by or under an Act of the Parliament, or in the absence of any such Act, before a person appointed for the purpose by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

(2) Notwithstanding the provisions of Subsection (1), an oath, affirmation or declaration referred to in that subsection is binding and effectual no matter before whom it is taken or made.

## 251. Taking certain oaths, etc., by non-citizens.

(1) If—

(a) it is desirable that a non-citizen be appointed to an office under a statute<sup>1</sup>, and

(b) it is a requirement that in order to be qualified for appointment, or to enter upon the duties or exercise the powers of the office, a person must take the Oath of Allegiance or make the Declaration of Loyalty, or take or make some oath, affirmation or declaration; and

(c) the National Executive Council is satisfied that, by reason of the law of some other country, to take the Oath of Allegiance or make the Declaration of Loyalty, or to take or make the other oath, affirmation or declaration, in the prescribed manner or form would or might adversely affect the nationality or citizenship status of the person concerned,

the Head of State, acting with, and in accordance with, the advice of the National Executive Council, may, by order, substitute some<sup>2</sup> oath, affirmation or declaration or, if thought necessary, exempt the person from the requirement.

<sup>1</sup> *Seemly*, "a Constitutional Law or a statute" was intended.

<sup>2</sup> *Seemly*, "other" was omitted.

(2) Notwithstanding Subsection (1), the non-citizen is subject to all laws as if he had made the Declaration of Loyalty, or had taken or made the other oath, affirmation or declaration, as the case may be.

(3) Nothing in Subsection (1) applies to or in respect of the Judicial Declaration.

#### 252. The National Gazette.

There shall be an official journal of the National Government, which shall be known as the National Gazette or by such other name as is given by or under an Act of the Parliament.

#### 253. Slavery, etc.

Slavery, and the slave trade in all their forms, and all similar institutions and practices, are strictly prohibited.

#### 254. Filling of offices, etc.

In principle—

- (a) no constitutional office shall be left unfilled on a substantive basis for longer than is necessary for it to be filled by an appropriate appointee; and
- (b) no person shall hold more than one public office at the same time except where one such office is so much associated with, or related to, another, or where the holding of one such office is so relevant to the holding of another, as to make it desirable that the offices be held jointly; and
- (c) public offices of similar importance or standing, and in particular offices in any statutory board or committee, should be filled by persons from the various areas of the country.

#### 255. Consultation.

In principle, where a law provides for consultation between persons or bodies, or persons and bodies, the consultation must be meaningful and allow for a genuine interchange and consideration of views.

#### 256. Reports by public office-holders, etc.

Subject to this Constitution, an Act of the Parliament may make provision for and in respect of annual and other reports by a constitutional office-holder or any other public office-holder, or by a constitutional institution or any other statutory body.

#### 257. Proof of acts of the Constituent Assembly.

(1) All courts, Judges and persons acting judicially shall take judicial notice of all acts and proceedings of the Constituent Assembly.

(2) An act of, or the proceedings of, the Constituent Assembly may be proved for any purpose by the production of—

- (a) a certificate under the hand, or purporting to be under the hand, of the Speaker of the pre-Independence House of Assembly; or
- (b) a document under the hand, or purporting to be under the hand, of the Clerk or other proper officer of the pre-Independence House of Assembly and purporting to be the minutes or other official record of the proceedings of the Constituent Assembly.

## 258. Constitutional Regulations.

(1) The Head of State, acting with, and in accordance with, the advice of the National Executive Council, may make regulations, not inconsistent with a Constitutional Law or an Act of the Parliament, prescribing all matters that by a Constitutional Law are required or permitted to be prescribed or provided for by Constitutional Regulation.

(2) All Constitutional Regulations shall be tabled in the Parliament as soon as practicable after being made, and may be disallowed by the Parliament at any time.

## 259. Independent tribunals.

Unless otherwise provided for by a Constitutional Law, in any case where a Constitutional Law requires the appointment of an independent tribunal, the members of that tribunal shall be appointed from a list of names approved by the Judicial and Legal Services Commission.

## PART XII.—CONSTITUTIONAL REVIEW.

## 260. General Constitutional Commission.

(1) An Act of the Parliament shall make provision for and in respect of the establishment, at or after the end of the period of three years commencing on Independence Day, of a General Constitutional Commission.

(2) The members of the Commission shall—

- (a) be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after consultation with any appropriate parliamentary committee; and
- (b) be broadly representative of the different areas of the country; and
- (c) give balanced representation of the major parties and groups in Parliament<sup>1</sup>.

(3) Each member of the General Constitutional Commission must be—

- (a) a member of the Parliament; or
- (b) a member of a provincial government or local government body; or
- (c) a member of a State Service; or
- (d) some other citizen with relevant expertise.

(4) The General Constitutional Commission shall inquire into the working of this Constitution and the Organic Laws.

(5) As soon as is reasonably practicable after its appointment, the General Constitutional Commission shall forward a report of its findings to the Speaker for presentation to the Parliament, together with its recommendations (if any) as to amendment of this Constitution, and new or amended Organic Laws or other laws or administrative procedures.

## 261. Interim Constitutional Commission.

(1) An Act of Parliament<sup>2</sup> shall provide that until the Constitutional Commission<sup>3</sup> is established there shall be an Interim Constitutional Commission the membership of which is in accordance with Section 260(2) and (3) (*General Constitutional Commission*).

<sup>1</sup> *Seemle*, "the Parliament" was intended—compare the definition "the Parliament" in Section Sch. 1.2(1).

<sup>2</sup> *Seemle*, "Act of the Parliament" was intended—compare the definition "Act of the Parliament" in Section Sch. 1.2(1).

<sup>3</sup> *Seemle*, "the General Constitutional Commission" was intended.

(2) The Interim Constitutional Commission shall consider proposed alteration<sup>1</sup> of this Constitution or of any Organic Law, and report to Parliament<sup>2</sup> before there is an opportunity for debate of the proposed legislation.

262. Subordinate commissions and committees.

(1) Acts of the Parliament may make provision for and in respect of other commissions and committees to investigate such other aspects of the working of this Constitution as the Parliament thinks desirable.

(2) The commissions and committees established in accordance with Subsection (1)(b)<sup>3</sup> shall report to the General Constitutional Commission on the subject matters of their respective investigations, with such recommendations (if any) as they think desirable, in time to allow the General Constitutional Commission to report to the Parliament in accordance with Section 260 (*General Constitutional Commission*).

(3) The General Constitutional Commission shall ensure that any reports of commissions or committees established in accordance with Subsection (1)(b)<sup>3</sup> are forwarded to the Speaker for presentation to the Parliament before or at the same time as its report is so forwarded.

263. Further definition, etc.

Acts of the Parliament may make provision for further defining the terms of reference of the General Constitutional Commission and any other commissions or committees established in accordance with Section 262 (*subordinate commissions and committees*).

PART XIII.—IMMEDIATE AND TRANSITIONAL PROVISIONS.

264. Effect of Part XIII.

The provisions of this Part, and of any Provisional Organic Law or Organic Law made for the purposes of Section 267 (*transitional laws*), have effect notwithstanding anything in the preceding provisions of this Constitution.

265. Dissolution of the Constituent Assembly.

The Constituent Assembly, having performed its duty to frame and adopt, on behalf of the People, a Constitution, and its other duties, is dissolved.

266. Provisional laws.

(1) If before Independence Day the Constituent Assembly has made an instrument expressed to be a Provisional Organic Law, the instrument takes effect, on Independence Day, as if it were an Organic Law made and coming into effect on that day.

(2) If before Independence Day the Constituent Assembly has made an instrument expressed to be a Provisional Act of the Parliament made for the purpose of bringing any provision of this Constitution into effective operation on Independence Day, the instrument takes effect, on Independence Day, as if it were an Act of the Parliament made and coming into effect on that day.

267. Transitional laws.

(1) A Provisional Organic Law or an Organic Law may make whatever provision seems necessary or desirable for a smooth transition from pre-Independence arrangements to

<sup>1</sup> *Seemly*, "any proposed alteration" was intended.

<sup>2</sup> *Seemly*, "the Parliament" was intended—compare the definition "the Parliament" in Section Sch. 1,2(1).

<sup>3</sup> *Seemly*, "Subsection (1)" was intended.

arrangements under this Constitution and, in particular, but without limiting the generality of the foregoing, for securing—

(a) the immediate filling of offices, and the immediately effective operation of institutions under this Constitution where there were corresponding pre-Independence offices or institutions; and

(b) the continued effect of acts done or commenced before Independence Day under pre-Independence laws.

(2) A Provisional Organic Law or an Organic Law made for the purposes of Subsection (1) may declare what were the pre-Independence offices and institutions that correspond with offices and institutions under this Constitution.

#### 268. First Governor-General.

If before Independence Day—

(a) the Constituent Assembly has nominated by a simple majority vote, in an exhaustive secret ballot a person to be the first Governor-General; and

(b) Her Majesty, Elizabeth II, having consented to become Queen and Head of State of Papua New Guinea has signified her approval to that person becoming the Governor-General,

that person becomes the first Governor-General on Independence Day.

#### 269. First Parliament, electorates, etc.

(1) Notwithstanding anything in this Constitution, but subject to Subsection (6), the open and regional electorates for the pre-Independence House of Assembly established immediately before Independence Day are the first open and provincial (as the case may be) electorates for the Parliament.

(2) Notwithstanding anything in this Constitution but subject to any Organic Law on national electoral matters—

(a) each member of the pre-Independence House of Assembly in office immediately before Independence Day (including a member who although he is or may be disqualified under Section 37(4)(a) of the *Papua New Guinea Act 1949-1975* of Australia has been confirmed in his membership by resolution of the House of Assembly) is the first member of the Parliament for his electorate and shall continue to hold office unless or until—

(i) his seat becomes vacant by virtue of Section 104(2)(a), (b), (c), (d), (e), (g) or (h) (*normal term of office*); or

(ii) he becomes a person who has been convicted of and is under sentence of imprisonment, or is subject to be sentenced (other than a person who has been released on recognizance to appear and receive judgement when called upon), for an offence punishable by imprisonment for one year or longer, as in Section 50(1)(a) (*right to vote and stand for public office*); or

(iii) he becomes disqualified under Section 103(3)(b) or (d) (*qualifications for and disqualifications from membership*); and

(b) the pre-Independence Speaker and Chairman of Committees in office immediately before Independence Day are the first Speaker and Deputy Speaker, respectively, of the Parliament; and

- (c) the electoral rolls in effect immediately before Independence Day are the first electoral rolls for the first open and provincial electorates (as the case may be).
- (3) The Boundaries Commission shall recommend to the Parliament the number of open electorates and their boundaries for determination by the Parliament under Section 125(1) (*electorates*) as soon as possible after Independence Day.
- (4) Unless a general election to the Parliament is held earlier under Section 105 (*general elections*) the term of the first Parliament is—
  - (a) the balance of the term of the pre-Independence House of Assembly remaining unexpired immediately after Independence Day; and
  - (b) the period up to the first general election held after Independence Day and the first general elections shall be held, as directed by the Head of State, acting with, and in accordance with, the advice of the Electoral Commission, in the months May and June 1977.
- (5) If the Parliament has not made a determination under Section 125(1) (*electorates*) in time for the first general elections held after Independence Day—
  - (a) the number and boundaries of the open electorates shall remain the same as for the previous general elections; and
  - (b) the number of provincial electorates shall be as determined by an Organic Law; and
  - (c) the boundaries of the provincial electorates shall be as determined by the Head of State, acting with, and in accordance with, the advice of the Boundaries Commission, but so that the boundaries of the provincial electorates—
    - (i) enclose all the territory of open electorates within each province; and
    - (ii) so near as may be, coincide with the boundaries of the provinces as defined in the Organic Law on Provincial Boundaries and the boundaries of the National Capital District as defined in the Organic Law on the Boundaries of the National Capital District.
- (6) If a provincial electorate consists of two or more provinces, an Organic Law shall make adequate provision for—
  - (a) the declaration of each province as a provincial electorate; and
  - (b) each electorate to be represented by a provincial member,
 as soon as practicable after Independence Day.

**270. First Ministry.**

- (1) The pre-Independence Chief Minister in office immediately before Independence Day is the first Prime Minister.
- (2) The other Ministers of the pre-Independence House of Assembly in office immediately before Independence Day are the other first Ministers.

**271. First Judges.**

Notwithstanding anything in this Constitution—

- (a) the pre-Independence Chief Justice in office immediately before Independence Day is the first Chief Justice of Papua New Guinea; and
- (b) the Senior Puisne Judge in office immediately before Independence Day is the First Deputy Chief Justice of Papua New Guinea; and

(c) each Judge in office immediately before Independence Day is a Judge of the National Court; and

(d) each acting Judge in office immediately before Independence Day is an Acting Judge of the National Court,

on the same terms and conditions that were applicable to him before Independence Day but in no case shall his term of office exceed three years from the date of his present appointment.

#### 272. Oaths, affirmation, etc.

(1) Notwithstanding anything in this Constitution, but subject to Section 250 (*making of Declaration of Loyalty, etc.*) and Section 251 (*taking certain oaths, etc., by non-citizens*)—

(a) the first Governor-General shall take the Oath of Allegiance and make the Declaration of Loyalty and the Declaration of Office; and

(b) the first Prime Minister and other Ministers, and the first Speaker and Deputy Speaker, shall make the Declaration of Loyalty and the Declaration of Office; and

(c) the first Chief Justice and other Judges shall make the Judicial Declaration, in public on Independence Day, at such place, and in such manner and form, as are directed by the Prime Minister.

(2) If it is not practicable for a person referred to in Subsection (1)(a), (b) or (c) to comply with the requirements of Subsection (1), he shall take and make the necessary oath or declarations, or both, as the case requires, at such time and place, and in such manner and form, as are directed by the Head of State, acting with, and in accordance with, the advice of the Prime Minister.

(3) Any provision of this Constitution preventing a person referred to in Subsection (1)(a), (b) or (c) from entering upon the duties of his office until he has taken the Oath of Allegiance or made the Declaration of Loyalty, the Declaration of Office or the Judicial Declaration (as the case requires) is suspended pending compliance with the preceding provisions of this section.

#### 273. Treaties applying before Independence.

The provisions of Section 117 (*treaties, etc.*) do not prevent the Head of State, acting with, and in accordance with, the advice of the National Executive Council, from making a declaration that an international commitment, that, immediately before Independence Day, applied to the territory at that time known as Papua New Guinea or a component part of that territory may, by agreement, be treated as if it were binding on Papua New Guinea for a period not exceeding five years after that day.

#### 274. Composition of certain constitutional institutions.

Except where expressly provided otherwise in a Constitutional Law, until 16 September 1985, where a constitutional institution other than the Supreme Court or the National Court is composed of more than one person, the majority of those persons must be citizens, but failure to comply with this section does not invalidate any act of the institution.

#### 275. Chairmanship of tribunal to review internments.

Until 16 September 1985, in addition to persons who are qualified to be appointed as Judges of the National Court, a person who holds office as a magistrate of the highest grade

or classification is eligible for appointment as Chairman of a tribunal appointed in accordance with Section 245(1)(e) (*internment*).

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SCHEDULES.

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SCHEDULE 1.

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RULES FOR SHORTENING AND INTERPRETATION OF THE CONSTITUTIONAL LAWS.

PART 1.—INTRODUCTORY.

Sch.1.1. Application of Schedule 1.

- (1) The rules contained in this Schedule apply, unless the contrary intention appears, in the interpretation of the Constitution and of the Organic Laws.
- (2) Unless adopted by law for the purposes, they do not apply to any other law.

PART 2.—GENERAL.

Sch.1.2. Meaning of certain expressions.

(1) In this Constitution or an Organic Law—

"absolute majority vote", in relation to proceedings in the Parliament, 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 Parliament; 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;

"Act of the Parliament" means a law (other than a Constitutional Law) made by the Parliament, and includes a subordinate legislative enactment made under any such law;

"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;

"committee", in relation to the Parliament, includes a subcommittee of a committee of the Parliament;

"Constitutional Law" means this Constitution, a law altering this Constitution or an Organic Law;

"the country" means the area of Papua New Guinea;

"custom" means the customs and usages of indigenous inhabitants of the country 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.

"the Declaration of Office" means a declaration in the form in Schedule 3;

"the Deputy Leader of the Opposition" means the member of the Parliament (if any) recognized by the Parliament as being the second principal speaker on behalf of those

- members of the Parliament who are not generally committed to support the Government in the Parliament;
- "deliberate judgement", in relation to an act, has the meaning and effect attributed to it by Section 62 (*decisions in "deliberate judgement"*);
- "Emergency Regulation" means a law that is made in accordance with Section 231 (*Emergency Regulations*);
- "fiscal year", in relation to any activity of the National Government, means the period of 12 months commencing on 1 July or on such other date as is fixed by an Act of the Parliament for the purpose;
- "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;
- "governmental body" means—
- (a) the National Government; or
  - (b) a provincial government body; or
  - (c) an arm, department, agency or instrumentality of the National Government or a provincial government body; or
  - (d) a body set up by statute or administrative act for governmental or official purposes;
- "Judge" means a Judge of the Supreme Court or a Judge of the National Court;
- "Judge of the National Court" means the Chief Justice, the Deputy Chief Justice or a Judge, and includes an acting Judge;
- "Judge of the Supreme Court" means a Judge of the National Court, other than an acting Judge;
- "the Judicial Declaration" means a declaration in the form in Schedule 4;
- "judicial officer" means a Judge or Magistrate<sup>1</sup> of a court within the National Judicial System (other than a magistrate or member of a village court) in his capacity as such;
- "law" includes the underlying law;
- "lawyer" means a person who has been admitted to practice as a lawyer under an Act of the Parliament;
- "the Leader of the Opposition" means the member of the Parliament (if any) recognized by the Parliament as being the principal speaker on behalf of those members of the Parliament who are not generally committed to support the Government in the Parliament;
- "local government body" includes a local government council and a local government authority established under the pre-Independence law known as the *Local Government Act* 1963 or any other law;
- "medical practitioner" means a person who has been admitted to practice as a medical practitioner under an Act of the Parliament;
- "the Minister" in relation to any Constitutional Law, provision, matter or thing, means the Minister for the time being administering that Constitutional Law or provision, or the Minister for the time being administering the Constitutional Law or provision that governs that matter or thing, as the case may be;
- "misconduct in office" means misconduct in office as described in Section 27 (*responsibilities of office*) or as prescribed by an Organic Law made for the purposes of Section 28 (*further provisions*);
- "the National Gazette" includes any Special National Gazette or National Gazette Extraordinary, and any supplement to a National Gazette;
- "Papua New Guinea" means the Independent State of Papua New Guinea;
- "personal staff", in relation to the Governor-General, a Minister, the Leader of the Opposition or the Deputy Leader of the Opposition, means the staff supplied to him by or under an Act of the Parliament at the public expense, not being members of the National Public Service in their capacities as such;

<sup>1</sup> *Semble*, "a member" was intended—compare Subdivision VI 5 E

"pre-Independence law" has the same meaning as in Section Sch.2.6 (*adoption of pre-Independence laws*);

"the pre-Independence Supreme Court" means the pre-Independence court known as the Supreme Court of Papua New Guinea, the Supreme Court of the Territory of Papua and New Guinea or the Supreme Court of the Territory of Papua-New Guinea;

"provincial government body" means a body declared to be a provincial government body under the pre-Independence law known as the *Provincial Government (Preparatory Arrangements) Act 1974* or any other law;

"public accounts of Papua New Guinea" includes all accounts, books and records of, or in the custody, possession or control of, the National Executive or of a public officer, relating to public property or public moneys of Papua New Guinea;

"public moneys of Papua New Guinea" includes moneys held in trust by the National Executive or a public officer in his capacity as such, whether or not they are so held for particular persons;

"principles of natural justice" means the principles referred to in Division III.4 (*principles of natural justice*), and where those principles have been altered in accordance with Section 60 (*development of principles*), or by an Act of the Parliament, includes those principles as so altered;

"public office-holder" means—

- (a) a member of any of the State Services; or
- (b) any other 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 other 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;

"seat", in relation to the Parliament, includes—

- (a) the position of an elected member, whether or not the position is for the time being filled; and
- (b) where there is for the time being a nominated member appointed in accordance with Section 102 (*nominated members*)—the position of that nominated member;

"statute" means an Act of the Parliament, and an Emergency Regulation<sup>1</sup> and includes a subordinate legislative enactment under any such law;

"subordinate legislative enactment" means a regulation or any other instrument (whether of a legislative nature or not) made under a statute;

"taxation" includes rates, charges and fees and imposts of any kind;

"time of war" means a period during which a declaration under Section 227 (*declaration of war*) is in force;

"the underlying law" means—

- (a) the underlying law provided for by an Act of the Parliament under Section 20(1) (*underlying law and pre-Independence statutes*); and
- (b) until such time as there is an Act of the Parliament, the underlying law prescribed in Schedule 2 (*adoption, etc., of certain laws*);

"village court" means a court referred to in Section 172(2) (*establishment of other courts*).

(2) Unless the contrary intention appears, where an expression is defined for any purpose in this Schedule, or otherwise in a Constitutional Law, 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 a Constitutional Law to an institution, office or other thing shall be read as a reference to the appropriate institution, office or thing established or provided for<sup>2</sup> this Constitution, or referred to in the Preamble to this Constitution.

<sup>1</sup> *Seemly*, "Act of the Parliament or an Emergency Regulation," was intended.

<sup>2</sup> *Seemly*, "by" was omitted.

**Sch.1.3. Form of the Constitutional Laws.**

(1) The Preamble to this Constitution (being the provisions that end immediately before the heading to Part I. forms part of this Constitution, but expresses general principles and therefore must be read subject to any other provision of this Constitution, though it may be used as an aid to interpretation in cases of doubt.

(2) The heading<sup>1</sup> or head-notes to the various sections of a Constitutional Law do not form part of the Law, but other headings and notes do form part of the Law.

(3) Each provision of a Constitutional Law takes effect as a Constitutional Law.

(4) Where a reference in a provision of a Constitutional Law to another provision of that Law, or to a provision of another Constitutional Law, is followed by words in brackets describing, or purporting to describe, the effect of the provision so referred to, the description or purported description does not, unless the contrary is expressed, affect the meaning or effect of the provision so referred to.

**Sch.1.4. Constitutional Laws speak from time to time.**

A Constitutional Law speaks from time to time.

**Sch.1.5. Fair meaning to be given to language used.**

(1) Each Constitutional Law is intended to be read as a whole.

(2) All provisions of, and all words, expressions and propositions in, a Constitutional Law shall be given their fair and liberal meaning.

**Sch.1.6. Statements of general principle.**

Where a provision of a Constitutional Law 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.1.7. "Non-justiciable".**

Where a Constitutional Law 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 Ombudsman Commission or of any other tribunal established for the purposes of Division III.2 (*leadership code*).

**Sch.1.8. Gender and number.**

In a Constitutional Law—

(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.1.9. Provision where no time prescribed.**

Where no time is prescribed or allowed within which an act is required or permitted by a Constitutional Law 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.1.10. Exercise and performance of powers and duties.**

(1) Where a Constitutional Law 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 a Constitutional Law 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 a Constitutional Law 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.

<sup>1</sup> *Seemly*, "headings" was intended.

(4) Subject to Subsection (5), where a Constitutional Law 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.1.11. Determination of appropriate authority<sup>1</sup>.**

Where a Constitutional Law refers to "the appropriate Permanent Parliamentary Committee", the Parliament shall determine which Permanent Parliamentary Committee is the appropriate committee for the purpose and where the Parliament fails to do so the Speaker may so determine.

**Sch.1.12. Power of majority of more than two persons, and quorums.**

(1) Where a Constitutional Law requires or permits an act or thing to be done by more than two persons, a majority of them may do it.

(2) Subsection (1) does not affect any requirement of a quorum, and, subject to Subsection (3), where no quorum is prescribed for a body the quorum is the full membership of the body.

(3) A power conferred by a Constitutional Law, otherwise than on the body in question, to determine the procedures of a body includes power to determine a quorum.

(4) The exception contained in Subsection (3) does not apply to the National Executive Council.

**Sch.1.13. Attainment of age.**

For any purpose of a Constitutional Law, a person attains a certain age at the first moment of the relevant anniversary of his birth.

**Sch.1.14. References to series.**

(1) Where in a Constitutional Law 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 include, where the elements of a series are identified by letters or in some other manner, references to letters or that other means of identification.

**Sch.1.15. Residence.**

(1) Where in a Constitutional Law there is a requirement for any purpose of permanent residence or of continuous residence in a place (including the area of Papua New Guinea), an Organic 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) An Organic 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 a Constitutional Law.

**Sch.1.16. Effect of time limits.**

(1) Where in a Constitutional Law 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.

<sup>1</sup> *Seemle*, "appropriate Permanent Parliamentary Committee" was intended.

## Sch.1.17. Repeal, etc.

(1) The repeal of a Constitutional Law or a part of a Constitutional Law 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 a Constitutional Law or a part of a Constitutional Law does not—

- (a) affect any liability under Division III.2 (*leadership code*); or
- (b) prevent the Ombudsman Commission or any other tribunal established for the purpose of that Division from investigating any act,

to which the repealed provisions were relevant.

(3) Where a Constitutional Law or a part of a Constitutional Law is repealed and re-enacted (with or without modification), references 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.1.18. Disallowance, etc.

(1) Where a Constitutional Law provides that a law may be disallowed, the disallowance takes effect in the same way as a repeal of a provision of a Constitutional Law 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 Parliament to confirm, approve or extend a law that requires such confirmation, approval or extension has the same effect as a disallowance.

## Sch.1.19. Independence.

Where a Constitutional Law 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 a Constitutional Law or an Act of the Parliament, of the exercise or performance of the powers, functions, duties or responsibilities of the person or institution; or
- (c) the exercise of jurisdiction under Division III.2 (*leadership code*), Subdivision VIII.1.B (*the Auditor-General*), or Subdivision VIII.1.C (*the Public Accounts Committee*),

and does not constitute an appropriation of, or authority to expend, funds.

## Sch.1.20. Regulation of acts, etc.

A provision of a Constitutional Law that provides for the regulation of an act or thing does not extend to prohibition, whether in law or in effect.

PART 3.—SPECIAL PROVISIONS RELATING TO THE OFFICE OF HEAD OF STATE.

Sch.1.21. "the Head of State"; "the Governor-General"<sup>1</sup>.

For the avoidance of doubt, it is hereby declared that—

(a) in this Constitution—

- (i) a reference to "the Head of State" is a reference to the Queen and Head of State of Papua New Guinea for the time being and includes a reference to the person or persons exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland in the event of the youth or incapacity of the person in that sovereignty; and
  - (ii) a reference to "the Governor-General" does not include a reference to the Queen or the person exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland; and
  - (iii) a reference to "the Head of State" is a reference to the Queen or a person exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland or, where such a person does not act personally, to the Governor-General as the representative of the Queen or that person; and
- (b) the question, whether in performing a function or carrying out a duty as Head of State the Governor-General is acting in accordance with the will or opinion of the person exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland, is non-justiciable and is not subject to the jurisdiction of the Ombudsman Commission or any other person or authority.

SCHEDULE 2.

Sec. 18.

ADOPTION, ETC., OF CERTAIN LAWS.

PART 1.—CUSTOM.

Sch.2.1. Recognition, etc., of custom.

- (1) Subject to Subsections (2) and (3), custom is adopted, and shall be applied and enforced, as part of the underlying law.
- (2) Subsection (1) does not apply in respect of any custom that is, and to the extent that it is, inconsistent with a Constitutional Law or a statute, or repugnant to the general principles of humanity.
- (3) An Act of the Parliament may—
  - (a) provide for the proof and pleading of custom for any purpose; and
  - (b) regulate the manner in which, or the purposes for which, custom may be recognized, applied or enforced; and
  - (c) provide for the resolution of conflicts of custom.

PART 2.—RECEPTION OF A COMMON LAW, ETC.

Sch.2.2. Adoption of a common law.

- (1) Subject to this Part, the principles and rules that formed, immediately before Independence Day, the principles and rules of common law and equity in England are adopted, and shall be applied and enforced, as part of the underlying law, except if, and to the extent that—
  - (a) they are inconsistent with a Constitutional Law or a statute; or
  - (b) they are inapplicable or inappropriate to the circumstances of the country from time to time; or

<sup>1</sup> See, also, Section 83, which to some extent duplicates this provision.

- (c) in their application to any particular matter they are inconsistent with custom as adopted by Part 1.
- (2) Subject to Subsection (1)(a), (b) and (c), the principles and rules adopted under Subsection (1) include principles and rules relating to the Royal Prerogative, except insofar as they provide for—
  - (a) a power to declare martial law; or
  - (b) a power to grant letters of denization or similar privileges; or
  - (c) a power to do any other act, provision for the doing of which is made by a Constitutional Law or an Act of the Parliament.
- (3) The principles and rules of common law and equity are adopted as provided by Subsections (1) and (2) notwithstanding any revision of them by any statute of England that does not apply in the country by virtue of Section Sch.2.6 (*adoption of pre-Independence laws*).
- (4) In relation to any particular question before a court, the operation of Subsection (1)(b) shall be determined by reference, among other things, to the circumstances of the case, including the time and place of any relevant transaction, act or event.

#### PART 3.—DEVELOPMENT OF AN UNDERLYING LAW FOR PAPUA NEW GUINEA.

##### Sch.2.3. Development, etc., of the underlying law.

(1) If in any particular matter before a court there appears to be no rule of law that is applicable and appropriate to the circumstances of the country, it is the duty of the National Judicial System, and in particular of the Supreme Court and the National Court, to formulate an appropriate rule as part of the underlying law having regard—

- (a) in particular, to the National Goals and Directive Principles and the Basic Social Obligations; and
- (b) to Division III.3 (*basic rights*); and
- (c) to analogies to be drawn from relevant statutes and custom; and
- (d) to the legislation of, and to relevant decisions of the courts of, any country that in the opinion of the court has a legal system similar to that of Papua New Guinea; and
- (e) to relevant decisions of courts exercising jurisdiction in or in respect of all or any part of the country at any time,

and to the circumstances of the country from time to time.

(2) If in any court other than the Supreme Court a question arises that would involve the performance of the duty imposed by Subsection (1), then, unless the question is trivial, vexatious or irrelevant—

- (a) in the case of the National Court—the court may; and
- (b) in the case of any other court (not being a village court)—the court shall,

refer the matter for decision to the Supreme Court, and take whatever other action (including the adjournment of proceedings) is appropriate.

##### Sch.2.4. Judicial development of the underlying law.

In all cases, it is the duty of the National Judicial System, and especially of the Supreme Court and the National Court, to ensure that, with due regard to the need for consistency, the underlying law develops as a coherent system in a manner that is appropriate to the circumstances of the country from time to time, except insofar as it would not be proper to do so by judicial act.

##### Sch.2.5. Reports on the development of the underlying law.

In their reports under Section 187(1) (*reports by Judges*), and in any report under Section 187(2) (*reports by Judges*) if in their opinion it is desirable to do so, the Judges shall comment on the state, suitability and development of the underlying law, with any recommendations as to improvement that they think it proper to make.

PART 4.—ADOPTION OF CERTAIN STATUTES.

Sch.2.6. Adoption of pre-Independence laws.

(1) In Subsection (2), "pre-Independence law" means—

- (a) a law (including a law that had not yet come into operation) that was repealed by the *Laus Repeal Act 1975* made by the pre-Independence House of Assembly for Papua New Guinea, and includes—
  - (i) a law that was, and to the extent that it was, continued in force under or by virtue of any such law; and
  - (ii) a purported law that might have been (but had not been declared by a court to be) invalid by reason of a failure to comply with any other law in respect of the manner of its assent, other than such a law that was repealed or superseded, or had expired or was spent, before the commencement of the *Laus Repeal Act 1975*; and
- (b) the laws of Australia specified in Part 1 of Schedule 5 as in force in the country immediately before Independence Day; and
- (c) the laws of England specified in Part 2 of Schedule 5 as in force in the country immediately before Independence Day; and
- (d) subordinate legislative enactments under any such laws that were in force in the country immediately before the repeal, or immediately before Independence Day, as the case may be.

(2) Subject to any Constitutional Law, all pre-Independence laws are, by virtue of this section, adopted as Acts of the Parliament, or subordinate legislative enactments under such Acts, as the case may be, and apply to the extent to which they applied, or purported to apply, immediately before the repeal referred to in Subsection (1)(a), or immediately before Independence Day, as the case may be.

(3) For the avoidance of doubt it is hereby declared that where a pre-Independence law to which Subsection (2) applies has not been brought into operation, and does not itself express a date on which it is to come into operation, it may be brought into operation—

- (a) in the case of an Act—on a date to be fixed by the Head of State by notice published in the National Gazette; and
- (b) in the case of a subordinate legislative enactment—by publication in the National Gazette.

Sch.2.7. Adaptation of adopted law.

(1) A law adopted by Section Sch.2.6 (*adoption of pre-Independence laws*) takes effect subject to such changes as to names, titles, offices, persons and institutions, and to such other formal and non-substantive changes, as are necessary to adapt it to the circumstances of the country and to the Constitutional Laws.

(2) A Constitutional Regulation may prescribe changes to be made for the purposes of Subsection (1) and any such regulation is conclusive as to the changes so prescribed, but no omission to prescribe a change affects the generality of that subsection.

(3) A question as to a change to be made for the purposes of Subsection (1) is not a question relating to the interpretation or application of any provision of a Constitutional Law within the meaning of Section 18 (*original interpretative jurisdiction of the Supreme Court*), but this subsection does not affect the operation of Section 19 (*special references to the Supreme Court*).

PART 5.—JUDICIAL PRECEDENT.

Sch.2.8. Effect of Part 5.

(1) Nothing in this Part affects or is intended to affect, except to the extent specifically set out in this Part—

- (a) the legal doctrine of judicial precedent (also known as *stare decisis*); or
- (b) the principles of judicial comity; or
- (c) the rules of private international law (also known as *conflict of laws*); or

(d) the legal doctrine known as *res judicata*, or the further development and adoption of those doctrines, principles and rules in accordance with Part 3 of this Schedule (*development of an underlying law for Papua New Guinea*).

(2) Except as provided by or under an Act of the Parliament, this Part does not apply to or in respect of village courts.

#### Sch.2.9. Subordination of courts.

(1) All decisions of law by the Supreme Court are binding on all other courts, but not on itself.

(2) Subject to Section Sch.2.10 (*conflict of precedents*), all decisions of law by the National Court are binding on all other courts (other than the Supreme Court), but not on itself (except insofar as a decision of the National Court constituted by more Judges than one is of greater authority than a decision of the Court constituted by a lesser number).

(3) Subject to this Part, all decisions of law by a court other than the Supreme Court or the National Court are binding on all lower courts.

(4) In Subsection (3), "lower court", in relation to a matter before a court, means a court to which proceedings by way of appeal or review (whether by leave or as of right) lie from the first-mentioned court in relation to the matter.

#### Sch.2.10. Conflict of precedents.

(1) Where it appears to a court other than the Supreme Court or the National Court that—

(a) there are more decisions of law than one that are otherwise binding on it by virtue of the preceding provisions of this Part and that, in relation to the matter before it, the decisions are conflicting; or

(b) a decision of law that is otherwise binding on it by virtue of the preceding provisions of this Part and that is otherwise applicable to the matter before it—

(i) is not, or is no longer, appropriate to the circumstances of the country or of the matter; or

(ii) is inconsistent with any custom that is part of the underlying law and is applicable in relation to the matter; or

(iii) is seriously inconsistent with the trend of the adaptation and development of the law in other respects,

then unless the question is trivial, vexatious or irrelevant the court may, and shall if so requested by a party to the matter, state a case to the court that made the decision or decisions or the equivalent court, or if there be no such court to the National Court, and take whatever other action (including the adjournment of proceedings) is appropriate.

(2) Where a case is stated in accordance with Subsection (1), the court to which it is stated may require or permit the Minister responsible for the National Justice Administration to be represented by counsel to assist the court.

#### Sch.2.11. Prospective over-ruling.

(1) Subject to any decision of law that is binding upon it, in over-ruling a decision of law or in making a decision of law that is contrary to previous practice, doctrine or accepted custom, a court may, for a special reason, apply its decision of law only to situations occurring after the new decision.

(2) In the circumstances described by Subsection (1), a court may apply to a situation a decision of law that was over-ruled after the occurrence of the situation, or a practice, doctrine or custom that was current or accepted at the time of the occurrence of any relevant transaction, act or event.

(3) In a case to which Subsection (1) or (2) applies, a court may make its decision subject to such conditions and restrictions as to it seem just.

#### Sch.2.12. Outside decisions.

(1) For the purposes of this section, except in a matter before the Supreme Court or the National Court—

(a) a decision of law by a Full Court of the pre-Independence Supreme Court, sitting in accordance with the pre-Independence law relating to sittings of the Supreme Court, or a decision of law on appeal from a decision of that court, has the same binding force as a decision of law of the Supreme Court; and

(b) a decision of law by a pre-Independence Supreme Court sitting otherwise than as a Full Court, or a decision of law on appeal from a decision of that court, has the same binding force as a decision of law of the National Court.

subject to any decision of law of the Supreme Court or the National Court, as the case may be, to the contrary, but otherwise no decision of law of a court or tribunal that was not established within the National Judicial System is binding on a court within it.

(2) Subsection (1) does not prevent recourse to the decisions of law or the opinions of courts or tribunals outside the National Judicial System (including courts or tribunals of jurisdictions other than Papua New Guinea) for their persuasive value.

PART 6.—THE LAW REFORM COMMISSION.

Sch.2.13. Establishment of the Commission.

(1) An Act of the Parliament shall make provision for and in respect of a Law Reform Commission.

(2) Only citizens may be members of the Commission.

Sch.2.14. Special functions of the Commission.

In addition to its other functions and responsibilities under any law, it is a special responsibility of the Law Reform Commission to investigate and report to the Parliament and to the National Executive on the development, and on the adaptation to the circumstances of the country, of the underlying law, and on the appropriateness of the rules and principles of the underlying law to the circumstances of the country from time to time.

SCHEDULE 3

Sec. Sch.1.2(1).

DECLARATION OF OFFICE.

I, \_\_\_\_\_, do promise and declare that I will well and truly serve the Independent State of Papua New Guinea and its People in the office of \_\_\_\_\_.

SCHEDULE 4.

Sec. Sch.1.2(1).

JUDICIAL DECLARATION.

I, \_\_\_\_\_, do promise and declare that I will well and truly serve the Independent State of Papua New Guinea and its People in the office of \_\_\_\_\_, that I will in all things uphold the Constitution and the laws of the Independent State of Papua New Guinea, and<sup>1</sup> I will do right to all manner of people in accordance therewith, without fear or favour, affection or ill-will.

<sup>1</sup> *Semble*, "that" was omitted

## SCHEDULE 5.

Sec. Sch.2.6,

ADOPTED LAWS OF OTHER COUNTRIES<sup>1</sup>.

## PART 1.—AUSTRALIA.

- Continental Shelf (Living Natural Resources) Act* 1968—Sections 9 and 14 only.  
*Explosives Act* 1901-1973<sup>2</sup>.  
*Judiciary Act* 1903-1969—Section 84 only.  
*Marine Insurance Act* 1909-1966.  
*Navigation Act* 1912-1973.  
*Patents Act* 1903-1973—Section 123 only<sup>3</sup>.  
*Petroleum (Submerged Lands) Act* 1967-1968—Section 11 only.  
*Nationality and Citizenship Act* 1948-1967—Section 5(3) only<sup>4</sup>.  
*Seamen's Compensation Act* 1911-1972—Section 4 only (in relation to a ship registered in the country under the *Merchant Shipping Act* 1894, as amended, of England).  
*Seamen's War Pensions and Allowances Act* 1940-1974.  
*Submarine Cables and Pipelines Protection Act* 1963-1973.

PART 2.—ENGLAND<sup>5</sup>.

- Merchant Shipping Act* 1894.  
*Merchant Shipping Act* 1897.  
*Merchant Shipping (Liability of Ship owners and Others) Act* 1900.  
*Merchant Shipping Act* 1906.

<sup>1</sup> Many of these references are incorrect. On the assumption that the adopted Australian Acts were intended to be adopted as in force immediately before Independence Day (see Section Sch.2.6), and subject to footnotes 2-5 below, it seems that Schedule 5 should read as follows:—

## ADOPTED LAWS OF OTHER COUNTRIES.

## PART 1.—AUSTRALIA.

*Note:* A reference in this Part to an Act of Australia is to be read as a reference to that Act as in force immediately before Independence Day.

- Continental Shelf (Living Natural Resources) Act* 1968—Sections 9 and 14 only.  
*Explosives Act* 1961.  
*Judiciary Act* 1903—Section 84 only.  
*Marine Insurance Act* 1909.  
*Nationality and Citizenship Act* 1948—Section 5(3) only.  
*Navigation Act* 1912.  
*Patents Act* 1952—Section 123 only.  
*Petroleum (Submerged Lands) Act* 1967—Section 11 only.  
*Seamen's Compensation Act* 1911—Section 4 only (in relation to a ship registered in the country under the *Merchant Shipping Act*, 1894, as amended, of England).  
*Seamen's War Pensions and Allowances Act* 1940.  
*Submarine Cables and Pipelines Protection Act* 1963.

## PART 2.—ENGLAND.

- Merchant Shipping Act*, 1894.  
*Merchant Shipping Act*, 1897.  
*Merchant Shipping (Liability of Shipowners and Others) Act*, 1900.  
*Merchant Shipping Act*, 1906.  
*Merchant Shipping Act*, 1911.  
*Maritime Conventions Act*, 1911.  
*Merchant Shipping Act*, 1921.  
*Fees (Increase) Act*, 1923.

<sup>2</sup> *Semble*, "1901" was an error for "1961".

<sup>3</sup> There was a *Patents Act* 1903. However, it was repealed and replaced by the *Patents Act* 1952, which was in fact amended (as shown in Schedule 5) in 1973. However, both the 1903 Act and the 1952 Act contained a Section 123 which dealt with the same subject-matter, although in different ways.

<sup>4</sup> The original "Nationality and Citizenship Act" was re-titled "Citizenship Act" in 1969 and "Australian Citizenship Act" in 1973.

<sup>5</sup> Since the Imperial *Merchant Shipping Acts* included, in 1975, a number of amending Acts that were not listed in Part 2 of Schedule 5, it seems that, in spite of Section Sch.2.6(1)(c), the Constitution was selective in the degree to which it adopted them "as in force immediately before Independence Day".

*Constitution*

Ch. No. 1

*Merchant Shipping Act 1911.*  
*Maritime Conventions Act 1911.*  
*Merchant Shipping Act 1921.*  
*Fees (Increase) Act 1923.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Constitution.*

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APPENDIX.

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CONSTITUTIONAL AMENDMENTS.

Amendment No. 1—Provincial Government.

Amendment No. 2—Provincial Government Elections.

Amendment No. 3—Provincial Government (Consequential amendments).

Amendment No. 4—Leadership Code.

Amendment No. 5—Citizenship.

Amendment No. 6—Benefits and Pensions.

Amendment No. 7—Suspension and Re-establishment of Provincial Governments.

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