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HANDBOOK ON PROVINCIAL GOVERNMENT

A publication of the Department of Provincial and Local Government Affairs
P O Box 1287
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National Capital District

Foreword

This handbook has been published as part of the reform process brought about by the Organic Law on Provincial Governments and Local Level Governments, which came into operation in 1995. The publication is for our Provincial Governors, Provincial Assembly Members and Councilors.

This handbook helps politicians, public servants and the general public understand the roles and responsibilities of Governors, Provincial Assembly members and Provincial Administrator, Provincial Assembly procedures, functions of the Provincial Government and its committees, the functions of the Provincial Administration.

The handbook has been prepared in “question and answer” format making it easier for the reader to understand.

Happy reading

Gei Ilagi MBE
Secretary

INTRODUCTION

Why a handbook on roles and responsibilities of Provincial Governments?

In 1995 National Parliament passed a law known as “The Organic Law on Provincial Governments and Local-level Governments.” This Law brings about important changes to administration of Provincial Governments and Local Levels of Government.

At the heart of the reform is a major shifting of powers, functions and responsibilities from national and provincial levels. The changes of administration of Provincial Governments under the Organic Law need to be explained clearly so that people understand the changes. This handbook also challenges the reader to take a fresh look at the role of Government as a whole and their role in it.

Who is this Handbook for?

Governors as the political heads of provinces have performed their roles and responsibilities to the best of their abilities without much guidance. The *Organic Law on Provincial Governments and Local Level Governments (Organic Law)* with other legislation states specific roles and responsibilities of a Governor but does not affect the exercise, by a Governor as member of the Parliament, of his functions, powers, responsibilities. Governors need a handbook stating their roles and responsibilities to assist them perform their duties more effectively..

Will this handbook provide answers to practical questions I have?

This handbook answers commonly asked questions of those within and outside the Government. These include:

1. What is the legal basis for Provincial Governments?
2. Who are the members of Provincial Assembly?
3. Who are the members of Provincial Executive Council?
4. What are the roles and responsibilities of a Governor?
5. What are the roles and responsibilities of Provincial Assembly Members who are National Parliamentarians?
6. What are the procedures for Provincial Assembly?
7. What types of committees does the Provincial Assembly establish?
8. What are the committees of the Provincial Executive Council?
9. Who are the members of other committees?
10. What are the functions of committees?
11. How is a Provincial law passed?
12. Can Provincial Assembly members claim compensation?
13. What are the functions of Provincial Administration?
14. What are the roles and responsibilities of a Provincial Administrator?

How was this Handbook developed?

This Handbook was developed upon the direction of the Governors to the Hon. Sir Peter Barter, Kt., OBE, MP, Minister for Inter Government Relations, during the second Governors Consultative Meeting of 3 March 2003 at the National Parliament.

This Handbook draws from the following sources:

- The Organic Law on Provincial Governments and Local Level Governments
- Provincial Governments Administration Act 1997
- Public Services Management Act
- Public Finance (Management) Act
- National Health Administration Act 1997

The Handbook provides directions for leaders to consult relevant sections of Laws and Acts of Parliament if they want more clarification on the topics.

Where can you get copies?

You can contact Reforms Coordination and Monitoring Division of the Department of Provincial and Local Government Affairs, P. O. Box 1287 BOROKO, National capital District. Fax: 3250553. Telephone: 3011016.

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SECTION ONE

Provincial Government structure and system

This section briefly describes:

- . *Establishment of Provincial Government structure and system*
- . *Provincial Assembly*
- . *Composition of the Provincial Assembly*
- . *Provincial Assembly processes*
- . *Appointment of nominated members*
- . *Provincial Executive Council*
- . *Composition of the Provincial Executive Council*
- . *Function of the Provincial Executive Council*
- . *Appointment of Provincial Governor or Deputy Governor*
- . *Dismissal of Provincial Governor or Deputy Governor*
- . *Election of Provincial Governor*

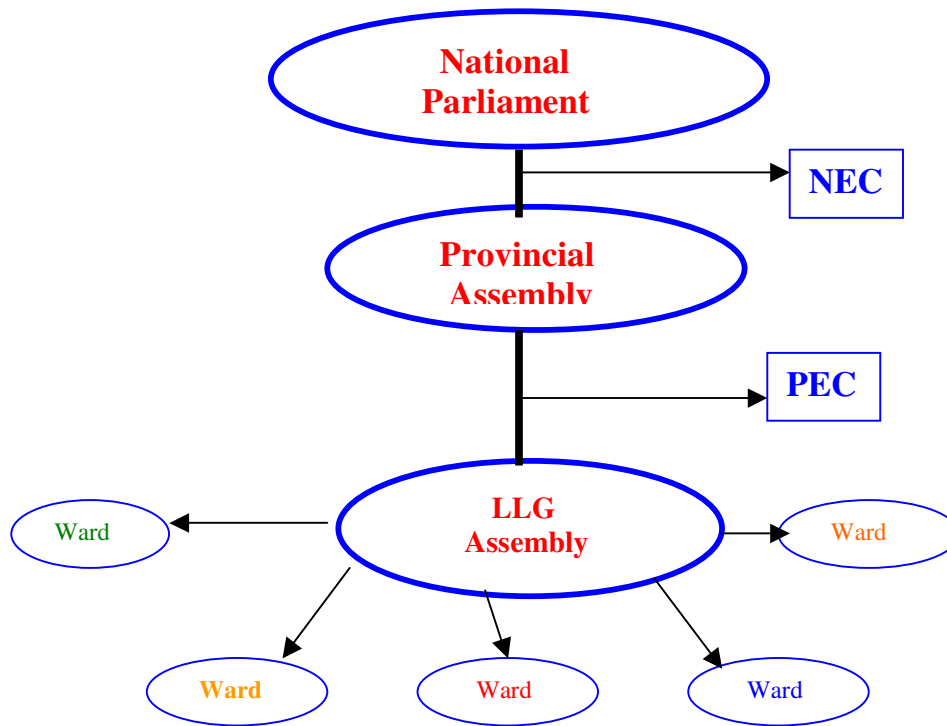
What is the legal basis for a system of Provincial Government?

Section 5(1) of the **Organic Law** established the system of provincial governments.

What is a Provincial Assembly?

Section 10(2) Of the **Organic Law** states the Provincial Assembly is the legislative arm of the Provincial Government. In most provinces it is called a provincial assembly but in a few provinces it is known by other names. However, the roles and functions are the same.

What does the Provincial Government Structure look like?



Who are the members of the Provincial Assembly?

Section 10(3) Of the **Organic Law** spells out membership of the Provincial Assembly:

- a) All Members of the National Parliament representing electorates in the province; and
- b) Heads of the rural Local-level Governments in the province; and
- c) One representative of the heads of the urban Local-level Governments; and
- d) Three paramount chiefs or, subject to the approval of the Minister for provincial government and local government matters, four paramount chiefs or their duly appointed nominees if a chieftaincy system is in existence and acceptable in the province; and
- e) One women representative; and
- f) Three other members appointed by the Provincial Assembly from time to time.

Section 10(6) of the **Organic Law** says if there are more than one paramount chief in a district only one may be recommended for appointment.

How are the nominated members appointed?

The Sections 10(3) (e & f) of the **Organic Law** requires appointed representatives from the women groups and three other persons from the community to be members of the Provincial Assembly. Accordingly, Section 4(1) of the *Provincial Government*

Administration Act shows the manner in which these persons are appointed as members of the Provincial Assembly.

1. Woman Representative

The Provincial Council of Women (PCW) or the Joint Provincial Planning and Budget Priority Committee nominate three nominees for consideration by the Provincial Executive Council (PEC) for appointment. The Provincial Governor is then notified of the nominations and is satisfied with the nominations; and When the appointment is made the Minister responsible for Provincial and Local Government matters is given the notice of the appointment; and, if satisfied that procedures have been followed, gives direction for gazettal.

2. Other community representatives

three other persons from the Province will be appointed as members of the Provincial Assembly. The Provincial Executive Council makes appointments through the Provincial Assembly.

What are the procedures for Provincial Assembly?

1. Standing Orders

Section 7(1) of *Provincial Governments Administration Act* states the Provincial Assembly shall make Standing Orders to provide for:

- ♣ the meetings of the Provincial Assembly and its committees,
- ♣ authentication or approval of all documents requiring to be sealed by the Provincial Assembly seal and
- ♣ such other matters relating to the procedures of the Provincial Assembly and committees or as are directed by the Minister responsible for provincial and local-level government matters.

Section 7(2) of the *Provincial Governments Administration Act* stipulates that a copy of the Standing Orders including any amendmenst made by the Provincial Assembly is to be submitted to the Minister responsible for provincial and local-level government matters for approval.

2. Quorum and voting of meetings

Section 8 of the *Provincial Governments Administration Act* stipulates the quorum for a meeting for the Provincial Assembly shall be half of the total membership of the Provincial Assembly.

If the quorum is not reached for starting a meeting the presiding person shall adjourn the meeting for an hour. After the one hour has expired and the quorum is present the meeting shall proceed. However, if after one hour the quorum is still not present the presiding person shall adjourn the meeting for a period of time determined by presiding person for not less than a day or more than a week.

All decisions made on matters or issues before a meeting of a Provincial Assembly shall be passed by majority of the members present at the meeting and voting. The presiding person can cast his or her vote in the event of equality of votes on a matter.

3. Vacancy in membership of Provincial Assembly

Section 9 of the *Provincial Government Administration Act* states the proceedings of a Provincial Assembly or its committees shall not be invalid because of absence of a member.

4. Minutes

The minutes of all meetings of the Provincial Assembly or its committees shall be taken, preserved and made available at the next meeting. Section 10 of the *Provincial Governments Administration Act* refers.

1. Disclosure of interest

- ♣ Section 11 (1) (a) & (b) of the Act says, a person presiding over a meeting of a Provincial Assembly, committee, board or authority of a Provincial Assembly or established under any other Act shall declare his or her interest at the meeting on a matter that is before the meeting. The presiding person shall not continue presiding over the meeting,
- ♣ Section 11 (2) (a) & (b) says, a member of a Provincial Assembly, committee or board or authority established by a Provincial Assembly shall declare the interest at the meeting on a matter. Subject to the presiding person's direction the concerned member shall not be part of the final decision of the meeting on the matter debated on. However, if it is a financial or economic interest of the community he/she resides the member concerned shall be part of the final decision of the matter
- ♣ Section 11 (5) says, the penalty for failing to comply with Subsection (1), (2) or (3) is guilty of misconduct in office and the provisions of the Leadership Code shall apply.

What is Provincial Executive Council?

Section 23(1) of the **Organic Law** states the Provincial Executive Council (PEC) is the implementing arm of the Provincial Government.

Who are the members of the Provincial Executive Council?

Section 23(1) also states the members of the PEC as follows:

- a) The Provincial Governor and the Deputy Governor; and
- b) Chairman of each of the permanent committees of the PEC appointed by the Governor.

Section 23(2) of the **Organic Law** says the Provincial Governor shall be Chairman of the PEC and in his absence the Deputy Governor shall act as Chairman.

What is the function of the Provincial Executive Council?

Section 23 (5) of the *Provincial Government Administration Act* states that the main function of the PEC is to implement the laws and policies made or adopted by the Provincial Assembly and to implement the laws and policies of the National Government. The provincial laws and policies to be implemented by the PEC relate to areas spelled out in Section 42 of the **Organic Law**. The laws and policies that can be carried out by PEC on behalf of the National Government are as directed by the National Government from time to time.

When is the Provincial Governor and Deputy Governor appointed?

Section 17(2) of the Organic Law says the Member of the National Parliament representing the provincial electorate shall be the Governor. Section 18(2) says the Deputy Provincial Governor shall be a Head of Rural Local Level Government elected by the Provincial Assembly at its first meeting following the National Government Election.

When can a Provincial Governor or Deputy Governor vacate his office?

Section 19 gives grounds for vacation of office as follows:

- } Governor is appointed a Minister in the National Government; or
- } Governor is appointed the Speaker or Deputy Speaker of the Parliament; or
- } Governor is appointed the Leader or Deputy Leader of the Opposition of the Parliament; or
- } Governor is appointed Chairman of the Permanent Parliamentary Public Accounts Committee; or
- } Governor is appointed Chairman of the Permanent Parliamentary Public Works Committee; or
- } Governor is appointed to an office which, has powers and privileges equivalent to those of a Minister; or
- } Governor or Deputy Governor resigns; or
- } Governor or Deputy Governor is unfit to exercise powers or carry out functions, duties and responsibilities because of health problem; or
- } Governor or Deputy Governor is disqualified by law

What are the reasons on which a Provincial Governor or Deputy Governor is dismissed?

Section 20 of the Organic Law says a Provincial Governor or Deputy Governor could be dismissed by a two-thirds majority vote by the Provincial Assembly on the following grounds:

The Governor or Deputy Governor

- } deliberately and persistently frustrates or fails to comply with the resolutions of the Provincial Assembly; or
- } deliberately and persistently disobeys applicable laws that affects province; or

- } neglects exercising his powers or performing his functions, duties and responsibilities; or
- } commits an act that may bring into question the credibility of his office.

How is a vacancy for Provincial Governor or Deputy Governor filled?

Section 21 states vacancy shall be filled in the following manner:

- 1) The Provincial Assembly members who are members of National Parliament amongst themselves elect the Provincial Governor if vacancy resulted because of reasons stipulated under Section 19(1) or 20; and
- 2) The Provincial Assembly shall elect another Member of Parliament to be the Provincial Governor if the vacancy resulted because of reasons stipulated under Section 19(2) or 20; and
- 3) If all Members of Parliament are appointed to offices in the Parliament then the Provincial Assembly members who are Heads of Rural and Urban Local Level Governments elect the Provincial Governor.

(Check on this : are eligible to be elected Provincial Governor. See case of Louis Ambane

SECTION TWO

Roles and responsibilities of the Governor and Members of Parliament in the Provincial assembly

This section briefly describes:

- . *Political and Executive responsibilities*
- . *Constitutional responsibilities*
- . *Responsibilities of a Governor in Public Service matters*
- . *Responsibilities of a Governor in financial matters*
- . *Responsibilities of a Governor in health matters*
- . *Roles and responsibilities of National Parliamentarians in the Provincial Government*

The **Organic Law** states that the Governor is:

- (a) politically responsible to the Provincial Assembly for overall development and good Government of the Province; and
- (b) Constitutionally responsible to the Minister responsible for provincial government matters.

However, the Organic Law did not define the phrases “politically responsible” and “constitutionally responsible”. Therefore, to understand their meaning it is necessary to look at some of the specific powers of the Governor under the **Organic Law**.

What are the Political and Executive responsibilities of a Governor?

1) Political and Executive responsibilities of a Governor are:

- ♣ An elected representative of the people of the province in the National Parliament; and
- ♣ Legislator (votes in Provincial Assembly to pass laws or repeal laws)
- ♣ Chairman of Provincial Assembly
- ♣ Chairman of the Provincial Executive Council
- ♣ Appoints Chairman of Provincial Assembly Committees.

What are the Constitutional responsibilities of a Governor?

2) Constitutional responsibilities of a Governor are:

- ♣ to answer to the Minister responsible for provincial government matters on exercise of constitutional powers. The constitutional powers include suspension of Provincial Government, withdrawal of powers and functions, law making powers and disallowance of laws.

What are the responsibilities of a Governor in Public Service matters?

3) A Governor's responsibilities in Public Service matters are:

♣ Appointment and removal of Provincial Administrator

- } The Governor in his capacity as chairman of the PEC can submit a list of preferred candidates to NEC via Secretary for Department of Personnel Management as provided for in Section 2.7 of the General Order 1
- } Governor can make his intentions known to the Minister for Provincial and Local Governments to remove the Provincial Administrator and also make recommendations to NEC through the Minister for Public Service to remove the Provincial Administrator as provided for in Sections 3.4 and 53 of the General Order 1 & 8.
- } Governor can agree with the Minister for Public Service to appoint Provincial Administrator on a short-term basis as provided for in Section 4.5 of General Orders 1.
- } Submission of Performance Report on Provincial Administration as provided for in Section 42 of the General Order 8.

It is also important for Governors to note the Provincial Government Law-making powers at Section 42 of the *Organic Law*.

What are the responsibilities of a Governor in financial matters?

4) A Governor's responsibilities in finance matters are:

- } Ensure preparation and submission of provincial budget to the Minister responsible for financial matters on a date fixed as provided for in Section 65A (1) & (2) of the Public Finances (Management) Act of 1995.
- } Ensure keeping a proper accounts and records of financial transactions as provided for in Section 68.
- } Ensure maintaining a bank account in accordance with Financial Instructions as provided for in Section 70A.
- } Ensure preparation of cash flow of expenditure and revenue for each activity or project as provided for in Part 5 Division 4 (19) & (23) of the Public Finance Management Manual.
- } Ensure requesting Provincial Supply and tenders Board to invite tenders as provided for in Part 8 Division 10 (45) of the Public Finance Management Manual.

SECTION THREE

Provincial Government Committees

This chapter briefly describes:

- . *Provincial Assembly Committees*
- . *Provincial Executive Council Committees*
- . *Functions of Committees*

Under the Provincial Government reforms there will be no Provincial Ministers to be responsible for different sectors. In its place both the Provincial Assembly and Provincial Executive Council shall establish committees, as they consider necessary, to carry out their functions.

The Governor or the PEC depending on which arm of the Provincial Government committees fall under will either appoint the Chairman. Those appointed as chairman of committees are members of the Provincial Assembly and PEC. It is also important when Governor appoints chairman of committees is to ensure fair representation of the various electorates and districts in the province.

How many Committees should the Provincial Assembly have?

Section 14 (1) (a) of the *Provincial Government Administration Act* does not specify the committees. However, the Act states the Provincial Assembly can establish such committees it considers necessary to assist in carrying out the Assembly functions. However, it is most likely that the Provincial Assembly would establish sector committees to assist in carrying out the Assembly functions.

Who are the members of the Provincial Assembly committees?

Section 14 (1) (b) of the Act says the Provincial Assembly appoints members of the Assembly to be members of a committee.

How long can a member serve in a committee?

Section 14 (4) of the Act says the Provincial Assembly shall determine the term of office for a member and the functions of a committee.

What is the quorum and place for a meeting?

Section 14 (5) & (6) say the quorum for a meeting shall be half of the total membership of the committee and meetings of a committee shall be held at such times and places as are determined by the Provincial Assembly. The chairman shall convene the meeting of a committee.

How many committees should the Provincial Executive Council have?

Section 15 of the Act says:

- PEC shall establish the Joint Provincial Planning & Budget Priority Committee as required in Section 25 of the **Organic Law**;
- PEC shall establish other committees it considers necessary to assist carry out its functions;
- PEC shall determine the number of members to be in a committee, term of office and the functions of the committee;
- PEC or a committee shall determine meeting places and times in which a meeting to be held. The chairman shall convene the meeting of a committee.

What is Joint Provincial Planning & Budget Priorities Committee?

The Joint Provincial Planning & Budget Priorities Committee (JPP & BPC) is a planning body, which ensures that a development plan is executed according to the budget. The Governor is chairman of the Committee.

Who are members of the JPP&BPC?

Section 25 (2) of the **Organic Law** specifies the membership of the Committee. They are:

- a) A member of the Provincial Executive Council appointed by the Governor, who shall be the Chairman; and
- b) The Chairman (or his nominee) of each Joint District Planning & Budget Priorities Committee; and
- c) Any other members not exceeding three in number appointed, on an ad hoc basis, by the PEC.

What are the functions of the JPP&BPC?

Section 25 (3) of the **Organic Law** spells out the functions of the Committee. They are:

- a) to oversee, coordinate and make recommendations as to the overall planning in the province, including budget priorities, for consideration by the National Government; and
- b) to determine and control budget allocation priorities for the Province; and
- c) to approve Provincial Government Budgets for presentation to the Provincial Assembly; and

- d) to draw up a rolling five-year development plan and annual estimates for the province; and
- e) to conduct annual reviews of the rolling five-year development plan.

What is Joint District Planning & Budget Priorities Committee?

Section 33A (1) of the **Organic Law** established the Joint District Planning & Budget Priority Committee (JDP & BPC).

The Committee is a planning body, which ensures that a development plan is executed according to the budget for a district. The Member representing the open electorate is the chairman of the Committee.

Who are members of the JDP&BPC?

Sub-section (2) specifies the membership of the Committee. They are:

- a) the Member of Parliament representing the open electorate; and
- b) the Member of Parliament representing the province;
- c) the heads of Local-level Governments in the districts (or their nominees)
- d) any other members not exceeding three appointed on an ad hoc basis by the Member of Parliament representing the open electorate in consultation with heads of Local-level Governments in the district.

What are the functions of the JDP&BPC?

As provided for in Sub-section 3 the functions of the Committee are:

- a) to oversee, coordinate and make recommendations as to the overall planning in the district, including budget priorities, for consideration by the Provincial Government and the National Government; and
- b) to determine and control budget allocation priorities for the Local-level Governments in the district; and
- c) to approve Local-level Government Budgets for presentation to the Local-level Governments and make recommendations concerning them; and
- d) to draw up a rolling five-year development plan and annual estimates for the district; and
- e) to conduct annual reviews of the rolling five-year development plan.

Sub-sections (4)(5) and (6) provide for the following:

- a) the District Administrator is the Chief Executive Officer to the Committee; and
- b)** the National Government is required by law to make payments within the first month of each quarter to the Committee through Provincial and District Treasury the all monies for the purpose of Rural Action Program and District Support Grant as provided for under Section 95A.

SECTION FOUR

Provincial Government Principal Functions

This section describes:

- . *Principal administrative functions*
- . *Powers and delegated functions*

It is important to identify the functions of Provincial Governments to avoid confusion with the administrative functions of other levels of governments.

What are principal administrative functions?

Section 16 of the Act spells out the principal administrative functions of Provincial Government. They are:

- a) establish the basic minimum needs for the development of rural and urban areas and maintaining minimum standards as required by law in relation -
 - 1) maintenance of roads, bridges and infrastructures; and
 - 2) urban roads, public facilities and environment; and
 - 3) health facilities, health programs and hygiene; and
 - 4) education facilities; and
 - 5) safe housing; and
 - 6) safe accessible water; and
 - 7) safe environment and proper rubbish disposal; and
 - 8) family values and community relationships; and
- b) provide support to the activities of the extended services of the National Departments and other State Services in the province; and
- c) provide support and assistance to the Local-level Governments and to other public bodies in the province to enable them to carry out their functions effectively; and
- d) maintaining peace and harmony and good-will in the province; and
- e) assist churches within the province by promoting spiritual values; and
- f) provide support to non-government agencies in carrying out the development programs in the province; and
- g) maintain standards of performance of public servants; and
- h) provide advice to land owners in relation to the development and control of their traditional land.

What National functions can be delegated?

Section 17 of the Act says any legislative power or function of the National Government under an Act of the Parliament delegated to Provincial Government under Section 50 of the **Organic Law** shall be exercised and performed as prescribed.

SECTION FIVE

Withdrawal of powers, functions and finances

This section describes:

- . *Withdrawal of powers, functions and finances*
- . *Return of powers, functions and finances*

This section has been developed for information only as it is the responsibility of the National Government to carry out the tasks mentioned above.

Who has powers and functions to withdraw financial powers of a Provincial Government?

The National Government may withdraw powers and functions that are exercised and performed by Provincial Government. It also may withhold all or any finances for Provincial Government.

Section 51(1) of the **Organic Law** spells out such action may be taken based on the following:

- (a) the Auditor-General finds that:
 - (1) corruption or abuse of power within a provincial government so as to render the government either ineffective or lacking in public respect and confidence; or
 - (2) failure by a provincial government to keep or cause to be kept accounts and records of transactions or dealings; or
 - (3) a provincial government has an ineffective internal control system
 - (4) a provincial government has failed to submit reports as required by law; or
- (b) the Minister responsible for provincial and local government matters, or a Special Investigating Committee appointed by the National Executive Council to investigate the affairs of Provincial Government finds that:
 - (1) there has been a breakdown in the administration of a provincial government; or
 - (2) there has been deliberate and persistent frustration of or failure to comply with lawful directions of the National Government; or
 - (3) a provincial government has deliberately and persistently disobeyed applicable laws including the **Constitution**, an **Organic Law** or any other legislation applicable to the province; or
 - (4) there has been a failure to carry out functions in accordance with the development policies and standards of the National Government, the National

Executive Council shall direct a provincial government to rectify the matter and such direction shall specify the manner and time in which such rectification is to be carried out.

Section 51(3) Of the **Organic Law** empowers the Auditor-General, the Minister responsible for provincial government and local-level government matters or a Special Investigating Committee to refer any person, including members of provincial government to the Ombudsman Commission, Public Prosecutor, the Police or any other relevant authority for further investigation and action depending on the case in hand.

When can the withdrawn powers and functions be returned?

Section 52 of the **Organic Law** stipulates that the National Executive Council can give direction to authorize a provincial government to exercise all or any of the powers or functions withdrawn effective from a specified date. This direction to authorize exercise of powers and functions that have been withdrawn under Section 51 of the **Organic Law** is possible only upon the recommendation of the Minister responsible for provincial government and local-level government matters after receiving a report from the Auditor-General or the Minister responsible for provincial government and local level government matters or the Special Investigation Committee to return of powers and functions.

Section 53 of the **Organic Law** says a provincial government shall submit all its financial estimates, including any Bill appropriating monies and provide reports on financial management and other related matters to the National Executive Council during the time specified.

Furthermore, a provincial government shall not transfer funds from one activity or project item to another during the period specified unless the National Executive Council has granted approval.

SECTION SIX

Suspension of Provincial Governments

This section briefly describes:

- . *Grounds for suspension of Provincial Government*
- . *Powers of Minister*
- . *Duties of the National Executive Council*
- . *Duties of the National Parliament*
- . *Special Investigation Committee*
- . *Passing of suspension Motion*
- . *Commencement of suspension*
- . *Effect of suspension*
- . *Exercise of legislative and executive powers*
- . *Lifting of suspension*

What are the grounds for suspending a provincial government?

Sections 187E (1) & (4) of the **Constitution** spell out the grounds for suspending a provincial government by the National Government. They are:

- 1) Where a provincial government undermines or attempts to undermine the authority of the National Parliament or national unity; and
- 2) When there is a war or a declaration of national emergency.

What are the powers of the Minister responsible for provincial government and local government matters on suspension?

Sections 56 & 59 of the **Organic Law** and Section 187E (6)(a)&(b) of the **Constitution** empowers the Minister to:

- (a) require the Provincial Governor to explain any matters which have come before his attention; and
- (b) report to the National Executive Council on any matters which constitute grounds for suspension of a provincial government; and

The Minister then should:

- (c) table the report on the suspension, the reasons for it and circumstances of it as soon as practicable or on the first meeting of the National Parliament; and
- (d) report at each session of the National Parliament on the measures taken to re-establish the Provincial Government.

What are the duties of the National Executive Council on suspension of a provincial government?

Sections 57 & 58 of the **Organic Law** say the National Executive Council can do the following:

- 1) request the Minister to make further enquiries; and
- 2) request the Provincial Governor to explain; and
- 3) provisionally suspend the Provincial Government concerned by notice in the National Government Gazette.

What happens during a provisional suspension of a provincial government?

In accordance with Section 60 of the **Organic Law**, during the provisional suspension of a provincial government the Special Investigation Committee established under Section 61(1) of the **Organic Law** is given the task to carry out investigation into provisional suspension and report on matters, which resulted in the provisional suspension.

The investigation report by the Committee is to be submitted to the Speaker of the National Parliament within 90 days following the date of referral.

The Speaker of the National Parliament shall table the report immediately if the Parliament is in session. If not the Speaker shall table it in the next Parliament session following the receipt.

What are the duties of the National Parliament on suspension of a provincial government?

The responsibility of the National Parliament with regard to suspension of a provincial government is stated in Sections 59 (1)(2) and 62 of the **Organic Law**. These say **that** the National Parliament within seven sitting days by an absolute majority vote after opportunity for debate on the merits may confirm the suspension.

What happens if the motion to suspend a provincial government has not been passed by the National Parliament?

Section 62 (2) of the Organic Law says if the National Parliament has not confirmed the motion to suspend a provincial government within first 14 sitting days of the Parliament following the tabling of the report from the Special Investigation Committee under section 60, the suspension lapses.

When does the suspension start?

Section 63 says, suspension of a provincial government effectively starts at such time as specified in the National Government Gazette or if no such time is specified then at midnight on the day on which the notice to suspend a provincial government is published in the National Gazette.

Who performs powers and functions of a suspended provincial government?

When a provincial government is suspended on the grounds of Section 187E(1), 187E(4) of the **Constitution** or Subdivision A, its powers and functions are vested in the National Executive Council. Sections 66 & 67 of the **Organic Law** say:

- I. the National Executive Council has and may exercise and perform all the legislative and executive powers, functions, duties and responsibilities of a suspended provincial government except a law made in the exercise of the power; or
- II. the Head of State acting with, and in accordance with the advice of the National Executive Council exercise and perform the executive powers, functions, duties and responsibilities of suspended provincial government; or
- III. a Minister authorized by the National Executive Council acting on behalf of the Council to be assisted by three other Members of Parliament from that province appointed by the Council.

When can suspension of a province lifted?

Sections 69 and 70 of the **Organic Law** make provision for lifting of suspension and when it can be lifted. Section 187F of the **Constitution** specifies the period of suspension for a provincial government.

- a) The Parliament or National Executive Council may lift the suspension at the end of the nine months from the effective date of suspension if the suspension was on the grounds of undermining or attempting to undermine the authority of the national Parliament or national unity by a absolute majority vote.
- b) The National Executive Council or the National Parliament by a resolution lift the suspension at the end of nine months after the end of the war or national emergency (Section 187E(4) of the Constitution refers).

If the suspension is extended, such extension must be for six months by a simply majority vote. The review is taken after the six months to lift the suspension by absolute majority vote.

The resolution to lift the suspension may not be rescinded or otherwise altered.

What are the post-suspension conditions for a provincial government?

Section 71(2) and (3) of the Organic Law specify the following conditions:

- a) Submit all its proposed financial estimates, including any Bill appropriating monies to the National Executive Council for approval; and
 - b) Provide such reports to the National Executive Council on its financial management and other related matters as the Council may require from time to time; and
- ⇒ Transfer funds from one activity or project item to another unless the Council grants prior approval.

SECTION SEVEN

Provincial Administration System

This section briefly describes:

- . *Establishment of Provincial Administrative System*
- . *Functions of Provincial Administrator*

There are other important areas that can be covered in this section but it is strongly felt that the three areas mentioned are most crucial for Governors to know.

What is the legal basis for the Provincial Administrative system?

Section 72(1) of the **Organic Law** stipulates the establishment of a provincial administrative system.

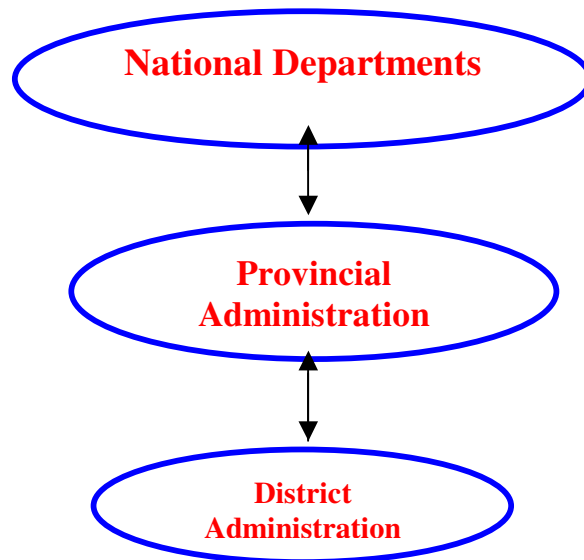
What makes up a provincial administrative system?

Subsection 72(2) specifies the make up of a provincial administrative system as follows:

- the office of Provincial Administrator; and
- an extended service of the National Departments and other agencies; and
- Provincial Government support services.

Subsection 72(3) establishes a Provincial Administrative Headquarters in each province. Section 73 establishes the office of Provincial Administrator in each province.

What does the Provincial Administrative structure look like?



What functions does the Provincial Administrator have?

Section 74 of the **Organic Law** specifies Provincial Administrator's functions as follows: The Provincial Administrator:

- } is the chief executive officer of the Provincial Government; and
- } is the administrative head of the staff in the province; and
- } Is responsible for the efficient management of administrative services in the province; and
- } maintains overall supervision and direction in accordance with an Act of Parliament, over all officers and employees assigned or otherwise employed to carry out the functions of the National Government with the exception law enforcing agencies unless special arrangement has been made with a provincial administration; and
- } coordinates and monitors the roles and functions of the National Departments and agencies; and
- } may by written instrument, delegate all or any of his powers (except this of delegation) relating to a district, to the District Administrator of that district; and
- } coordinates policy formulation, planning and implementation of policies as required by Section 25 and 106; and
- } liaises with the Provincial Government and Local-level Government support services on the overall functions of the Provincial assembly and the Provincial Executive Council; and
- } liaises and consults with the Provincial Treasurer on budget and treasury matters; and
- } performs such other functions as are prescribed by the **Organic Law** or by an Act of the Parliament.

SECTION EIGHT

Miscellaneous

This section briefly describes:

- . *Making of Provincial Laws*
- . *Compensation to a Member of a Provincial Assembly*

Part VI of the *Provincial Government Administration Act* makes provision for miscellaneous issues, which are crucial and are explained below. The other

provisions are important but are considered not necessary for inclusion in this Handbook.

When does a provincial law become operational?

The process of making a provincial law is specified in the Standing Orders of a Provincial Assembly. Section 18(1) of the Act and Section 141(4) of the **Organic Law** specifies the commencement of a provincial law as follows:

An Act of a Provincial Assembly is effective

- a) when made by a Provincial Assembly; and
- b) it has been certified by the Assembly Clerk and the Chairman; and
- c) It has been sealed with the Seal of the Assembly in accordance with the Standing Orders of the Assembly; and
- d)
 - (1) it has been approved by the Minister for provincial government and local-level government matters (for a provincial law not relating to money) or Minister for Finance (for a provincial law relating to money); or
 - (2) when the respective Ministers have not made a decision as to whether or not to approve a provincial law within 60 days from the date on which the law was served on respective Ministers or the Attorney General.

Section 18(2) of the Act says an Act of a Provincial Assembly may have retrospective or retroactive effect. This means an Act of a Provincial Assembly can be effectively operational from the date it was approved or it can be effectively operational by back dating it to another date.

Can a Member of a Provincial Assembly be compensated upon death or injury?

The Provincial Assembly members like any other workers are entitled to compensation upon death or injury. The immediate family members can claim compensation under **the Workers' Compensation Act (Chapter 179)**.

SECTION NINE

National Monitoring Authority

This section briefly describes:

- ♣ *Establishment of National Monitoring Authority*
- ♣ *Membership of the National Monitoring Authority*
- ♣ *Functions of the National Monitoring Authority*

Is the National Monitoring Authority legal?

Section 110(1) of the Organic Law provides for the establishment of Provincial and Local-level Service Monitoring Authority or National Monitoring Authority, as it is commonly known within the Department responsible for provincial government and local government matters.

The enabling Act on National Monitoring Authority is being developed.

Who are the members of the Authority?

a) Section 110 (2) provides for the following members:

- 1) Department of Provincial & Local Government Affairs whose representative shall be the Chairman; and
- 2) Department of Personnel Management; and
- 3) Department of the Attorney General; and
- 4) Department of Police; and
- 5) Department of Correctional Services Institution; and
- 6) Department of Defense; and
- 7) Other Departments and national agencies as determined by the National Executive Council from time to time; and
- 8) Teaching Services Commission; and
- 9) Director of National Training Council; and
- 10) National Council of Women; and
- 11) A representative of Chamber of Commerce; and
- 12) A representative of a higher education institution

b) The **Organic Law** requires that representation be at Heads of Department and heads statutory Body level and National Agencies.

How would the National Monitoring Authority operate in the provinces?

Subsection (3) provides for the Authority to establish an Inspectorate in each province to carry out the functions of the Authority. The Department of Provincial and Local Government Affairs shall administer and supervise the Inspectorate.

What are the main functions of the Authority?

Subsection (4) provides for the main functions as follows:

- a) to coordinate and monitor the implementation of the national policies at the provincial and local-level; and
- b) to establish minimum development standards and to monitor maintenance of those standards in the overall development of the rural and urban communities; and,

- c) to assist the Auditor-General carry out performance audit of the Provincial Governments and Local-level Governments; and
- d) to develop, coordinate and monitor the training and professional needs of the officers of the National Public Service assigned to the provinces and districts; and
- e) to assess the effectiveness and efficiency of Provincial Governments and Local-level Governments; and
- f) to execute powers and functions that are delegated to it by law; and
- g) to make recommendation to the Minister responsible for provincial governments and local-level governments matters in strengthening of the decentralization of government; and
- h) to ensure that all appointments to offices in a Provincial Government and Local-level Government are based on merit.

Summary

This Handbook is a first step to developing several simple manuals for our elected and appointed leaders at Provincial Local-level Governments. Readers outside of this targeted clients can find the information useful as they work with their elected leaders.

Please do not hesitate to contact us when you find certain improvements be made to any section of the handbook. We will wait in anticipation for your kind assistance

Where can you get further help for topics in this handbook, which you may not fully understand?

You can contact the Department of Provincial & Local Government Affairs by writing to:

- a) Secretary, Department of Provincial and Local Government Affairs, P.O. Box 1287, BOROKO, National Capital District. Telephone: 3011016. Facsimile: 3250553
- b) Secretary, Department of Attorney General & Justice, P.O. Box 591, WAIGANI, National Capital District. Telephone: 3230138. Facsimile: 3230241.