

Organic Law on Provincial Governments and Local-level Governments (Consolidated to No 29 of 1998)

Main Menu

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

***The Organic Law on Provincial Governments and Local-level Governments.***

**PREAMBLE.**

We, the representatives of our People in the National Parliament, in responding to the nationwide call of our people to bring about substantive reforms to our Provincial Government system, have resolved—

- (a) to make such changes as are necessary now contained in this *Organic Law* for the purposes of—
  - (i) maintaining our identity as a sovereign united nation; and
  - (ii) promoting equal opportunity and popular participation in government at all levels; and
  - (iii) providing especially the basic human needs for water, health, education, transportation, communication, accommodation and social order through economic self-reliance; and
  - (iv) promoting responsible citizenship through self-management, control and accountability for one's actions; and
- (b) to establish Provincial Governments and Local-level Governments in order to achieve the goals referred to in Paragraph (a).

Being an Organic Law—

- (a) to implement Part VIA (*Provincial Governments and Local-level Governments*) of the *Constitution* by making provision for and in respect of a system of Provincial Governments and Local-level Governments for the provinces pursuant to the Second National Goal (*Equality and Participation*) of the National Goals and Directive Principles of the *Constitution*; and
- (b) to repeal and replace the *Organic Law on Provincial Government*, and for related purposes,

MADE by the National Parliament, to come into operation—

- (a) in so far as relating to all provinces other than Bougainville Province

and the National Capital District—on certification; and

- (b) in so far as relating to Bougainville Province—on 1 January 1999; and
- (c) in so far as relating to the National Capital District—in accordance with a notice published in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

## **PART I.—PRELIMINARY.**

### ***Division 1.—General Principles of Provincial Governments and Local-level Governments.***

#### **1. General Principles.**

- (1) Subject to the *Constitution*, in exercising any power vested by this Organic Law or by any other law, all Provincial Governments and Local-level Governments shall observe the general principles stated in this Division.
- (2) Subject to the *Constitution*, each Provincial Government and Local-level Government or its agent, or public authority or its agent shall, in carrying out its functions, duties and responsibilities, comply with—
  - (a) the principle of—
    - (i) mainly elective (elected directly or indirectly) representative and participatory government; and
    - (ii) appointment on merit to all public offices; and
    - (iii) efficient and effective government; and
    - (iv) ensuring the proper use and care of all public properties; and
    - (v) accountability in the use of public finances, properties and as public power; and
    - (vi) human rights as recognised and enforced by Papua New Guinea law; and
    - (vii) treating all persons as human beings of equal worth and dignity; and
    - (viii) acting honestly and fairly and upholding respect for, and dignity of, government; and
  - (b) the Fourth National Goal (*Natural Resources and Environment*) of the National Goals and Directive Principles of the *Constitution*.
- (3) A public authority shall be adequately resourced in order to perform all or any of its functions conferred by law.

(4) In principle, the elected leaders are responsible for the formulation of policies and the officers are responsible for the implementation of those policies, and in any case the two shall work together for the benefit of the people.

(5) The wealth generated by lawful exploitation of any natural resources must be equitably distributed by the National Government, the Provincial Governments and Local-level Governments for the benefit of resource owners and all levels of governments.

(6) All levels of government and governmental bodies shall recognise traditional land rights and other rights and shall ensure that adequate compensation is made for the loss of such rights.

(7) The general principles in this section are non-justiciable but may be used in the interpretation and implementation of this Organic Law.

***Division 2.—Compliance with Constitutional Requirements, Interpretation and Application.***

**2. Compliance with Constitutional Requirements.**

This Organic Law, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely—

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of information conferred by Section 51 of the *Constitution*,

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

**3. Interpretation.**

- (1) In this Organic Law, unless the contrary intention appears—
  - "Chairman" means the Chairman of a Provincial Assembly in accordance with Section 14;
  - "Deputy Provincial Governor" means a Deputy Provincial Governor of a province elected in accordance with Section 18;
  - "district administrative headquarters" means a district administrative headquarters established under Section 72;
  - "District Administrator" means a District Administrator appointed under Section 73;
  - "Electoral Development Authority" means an Electoral Development

Authority established under the *Electoral Development Authority Act* 1992;

"Interim Chairman" means the person holding the office of Chairman of an Interim Provincial Government in accordance with Section 125(3) or (4);

"Interim Deputy Chairman" means the person holding the office of Deputy Chairman of an Interim Provincial Government in accordance with Section 125(5) or (5A);

"Interim Deputy Governor" means the person holding the office of Interim Deputy Governor of a province in accordance with Section 125(5) or (5A);

"Interim Provincial Assembly" means an Interim Provincial Assembly of a province in accordance with Section 123;

"Interim Provincial Executive Council" means an Interim Provincial Executive Council of a Province in accordance with Section 123(2);

"Interim Provincial Government" means an Interim Provincial Government of a province established by Section 123(1);

"Interim Provincial Governor" means the person holding office as Interim Provincial Governor under Section 125(3) or (4);

"Local-level Government" means a Local-level Government established in accordance with Section 26 and 27;

"Local-level law" means a law made by a Local-level Government in accordance with this Organic Law;

"Mediation and Arbitration Tribunal" means the Mediation and Arbitration Tribunal established under Section 118;

"National Economic and Fiscal Commission" means the National Economic and Fiscal Commission established by Section 117;

"National Investigation Committee" means the National Investigation Committee established by Section 61;

"Provincial Administrative Headquarters" means a Provincial Administrative Headquarters established by Section 72;

"Provincial Administrator" means a Provincial Administrator appointed under Section 73(2);

"Provincial Assembly" means a Provincial Assembly established by Section 10;

"Provincial Audit Service" means a Provincial Audit Service established under Section 113(1);

"Provincial Auditor" means a Provincial Auditor appointed under Section

113(2);

"Provincial and District Treasury" means a Provincial and District Treasury established by Section 112;

"Provincial Executive Council" means a Provincial Executive Council established under Section 23;

"Provincial Government" means a Provincial Government established under Section 10;

"Provincial Governor" means the person holding office as Provincial Governor in accordance with Section 17 or 21;

"provincial law" means a law made or adopted by a Provincial Government in accordance with this Organic Law;

"Provincial and Local-level Service Monitoring Authority" means the Provincial and Local-level Service Monitoring Authority established by Section 110;

"Special Investigating Committee" means a Special Investigating Committee appointed under Section 51(1)(b).

"urban Local-level Government" means a Local-level Government for an area declared as an urban area under the *Local-level Governments Administration Act 1997*.

- (2) Unless the context otherwise requires, a reference in this Organic Law—
- (a) in relation to a province or to a Provincial Government, to a provincial body or provincial office referred to in Subsection (1), is a reference to the provincial body or provincial office established or appointed for or in relation to that province or Provincial Government; and
  - (b) in relation to a district or to a Local-level Government, to a provincial or local-level body or provincial or local-level office referred to in Subsection (1), is a reference to the provincial or local-level body or provincial or local-level office established or appointed for or in relation to that district or Local-level Government.

#### **4. Application.**

(1) The system of Provincial Governments established by this Organic Law applies to the government of the National Capital District and the provisions of this Organic Law relating to Provincial Governments apply to the National Capital District.

(2) For the period on and from the date of coming into operation of this Organic Law until the date fixed for the return of the writs following the next general election held after the date of coming into operation—

- (a) the system of Interim Provincial Governments provided for in Subdivision VI.3.C shall apply; and
  - (b) the provisions of the remainder of this Organic Law shall apply only to the extent necessary to enable the operation of the Interim Provincial Governments in accordance with Subdivision VI.3.C.
- (3) The provisions of Subsection (2) do not apply in relation to Bougainville Province and the National Capital District.

***Division 3.—System of Provincial Governments and Local-level Governments.***

**5. System of Provincial Governments and Local-level Governments.**

(1) A system of Provincial Governments and Local-level Governments is hereby established.

(2) Subject to the *Constitution*, the system of Provincial Governments and Local-level Governments established by Subsection (1), shall be implemented in accordance with this Organic Law and an Act of the Parliament.

***Division 4.—Legal Status of Provincial Governments and Local-level Governments.***

***Subdivision A.—Legal Capacity of Provincial Governments and Local-level Governments.***

**6. Legal capacity.**

A Provincial Government or a Local-level Government—

- (a) may acquire, hold and dispose of property of any kind; and
- (b) may sue and be sued,

and a provincial law or a local-level law may make provision for and in respect of the manner and form in which each respective government may do so.

**7. Service of process.**

Any notice, summons, writ or other process required to be served on a Provincial Government or a Local-level Government may be served on an officer designated by the Provincial Government or the Local-level Government for that purpose.

***Subdivision B.—Recognition of Provincial Government and Local-level Government laws, Public Acts, etc.***

**8. Recognition of Provincial Government and Local-level Government laws, judicial notice, etc.**

Full faith and credit shall be given throughout Papua New Guinea to the laws, the public acts, records and proceedings of all Provincial Governments and Local-level Governments.

**9. Provincial Government and Local-level Government symbols and seat of government.**

(1) Subject to Subsection (3), a provincial law may make provision for and in respect of—

- (a) the seat of government; and
- (b) a Provincial Government flag; and
- (c) a Provincial Government emblem; and
- (d) a Provincial Government motto; and
- (e) a Provincial Government seal,

for the Province.

(2) Subject to Subsection (3), a local-level law may make provision for and in respect of—

- (a) the seat of Government; and
- (b) a Local-level Government flag; and
- (c) a Local-level Government emblem; and
- (d) a Local-level Government motto; and
- (e) a Local-level Government seal,

for the area to which the local-level law applies.

(3) The Minister may, where he considers it is in the national interest so to do, disallow any Provincial or Local-level Government flag, emblem or motto.

**PART II.—INSTITUTIONAL STRUCTURE OF LEGISLATIVE AND EXECUTIVE ARMS OF PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS.**

***Division 1.—Institutional Structure of Legislative and Executive Arms of Provincial Governments.***

**Subdivision A.—Legislative Arm of Provincial Governments.**

**10. Provincial Government and Provincial Legislature.**

- (1) A Provincial Government is hereby established for each province.
- (2) A provincial legislature, to be known as the Provincial Assembly or by whatever local name is considered appropriate, is hereby established for each Provincial Government.
- (3) A Provincial Assembly shall consist of—
  - (a) all Members of the 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 urban Local-level Governments to represent the urban Local-level Governments in the Province; and
  - (d) subject to Subsection (6), where the chieftaincy system is in existence and is accepted in a province, paramount chiefs from the province—
    - (i) not exceeding three in number; or
    - (ii) where the Minister responsible for provincial government and local-level government matters considers that particular circumstances justify it, not exceeding four in number, or their duly appointed nominees, who shall be appointed by the Minister responsible for provincial government and local-level government matters on the recommendation of the Provincial Executive Council; and
  - (e) one woman representative nominated in accordance with an Act of the Parliament and appointed by the Provincial Executive Council; and
  - (f) such other members, not exceeding three in number, as the Provincial Assembly may appoint from time to time.
- (4) An Act of the Parliament shall make provision for the qualifications and disqualifications of the members referred to in Subsection (3)(f).
- (5) All members of a Provincial Assembly have full voting powers and shall be counted towards the quorum of a Provincial Assembly.
- (6) Where there are more than one paramount chiefs in a district only one may be recommended for appointment.

## **11. Roles of Members of Parliament.**

An Act of the Parliament may make provision for and in relation to the roles

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and functions of the members referred in Section 10(3)(a).

## **12. Qualifications and disqualifications of elected members.**

(1) Subject to this section, the qualifications and disqualifications of the members of a Provincial Assembly referred to in Section 10(3)(a) shall be as those prescribed by law relating to Members of the National Parliament.

(2) If a member referred to in Section 10(3)(a)—

- (a) is disqualified or ceases to be a Member of the Parliament; or
- (b) is absent, without leave of the Provincial Assembly, during three consecutive meetings of the Assembly, unless the Assembly waives this provision upon satisfactory reasons being given,

the member shall cease to be a member of the Provincial Assembly.

## **13. Vacation of office.**

(1) This section applies only to the members of a Provincial Assembly referred to in Section 10(3)(d), (e) and (f).

(2) Unless earlier terminated under Subsection (3), the office of a member of the Assembly to whom this section applies becomes vacant on the day the writ is returned following a general election.

(3) Where a member of the Assembly to whom this section applies—

- (a) dies or resigns his office; or
- (b) becomes permanently incapable of performing his duties as certified by two medical practitioners appointed for the purpose by the National Authority responsible for the registration or licensing of medical practitioners; or
- (c) fails to comply with the provisions of this Organic Law; or
- (d) becomes of unsound mind within the meaning of any law relating to the protection of persons and property of persons of unsound mind; or
- (e) is absent without leave of the Provincial Assembly, during the whole of three consecutive meetings of the Assembly, unless the Assembly decides to waive this provision upon satisfactory reasons being given; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remunerations for their benefit; or
- (g) is convicted of a criminal offence punishable by law for which a term

of imprisonment of not less than six months or death are prescribed as a penalty and, as the result of that conviction, is sentenced to imprisonment or is under sentence of death, or is under bond to appear for sentence if called on; or

(h) is dismissed from office for misconduct in office,

the member is deemed to have vacated his office, and the Head of State, acting with and in accordance with, the advice of the National Executive Council, shall terminate his membership.

(4) Where the office of a member of the Assembly becomes vacant under Subsection (3), the vacancy shall be filled as soon as practicable.

(5) The exercise or performance of a power or function of the Assembly is not invalidated by reason only of a vacancy in the membership of the Assembly.

#### **14. Chairman of Provincial Assembly.**

(1) There shall be a Chairman of a Provincial Assembly.

(2) Subject to this Organic Law, the Provincial Governor is the Chairman of the Provincial Assembly.

(3) If the Provincial Governor is—

(a) on leave of absence; or

(b) absent from the province; or

(c) out of speedy and effective communication; or

(d) otherwise unable to perform, or is not readily available to perform the duties of his office,

the Deputy Governor shall perform the functions and responsibilities of the Governor as Chairman of the Provincial Assembly.

#### **15. Procedures of Provincial Assembly.**

(1) The Provincial Governor shall preside at all meetings of the Provincial Assembly at which he is present.

(2) Subject to this Organic Law, the privileges and immunities of members of Provincial Assemblies and the procedures and proceedings, including the number of meetings and quorum for meetings of Provincial Assemblies shall be as determined by an Act of the Parliament.

(3) The number of meetings of a Provincial Assembly shall be not less than four in each calendar year and shall not be held at the same time as the meetings of the National Parliament.

## **16. Remuneration and allowance.**

The salaries, allowances and other terms and conditions of the Provincial Governor, Deputy Provincial Governor, the Chairman and Deputy Chairman of a committee of the Provincial Assembly or the Provincial Executive Council and the other members of the Assembly, shall be as determined by the Salaries and Remuneration Commission.

### **16A. Provincial Assembly Committees.**

- (1) A Provincial Assembly may, in accordance with an Act of the Parliament—
  - (a) establish such number of committees (including permanent committees) as the Assembly considers necessary to carry out its functions; and
  - (b) determine all matters relating to such committees.
- (2) The committees of the Assembly shall consist only of members of the Assembly.

### **Subdivision B.—Executive Arm of Provincial Governments.**

## **17. The Provincial Governor.**

- (1) An office of a Provincial Governor in each province is hereby established.
- (2) Subject to this Organic Law, the Member of the National Parliament representing the provincial electorate shall be the Provincial Governor.

## **18. The Deputy Provincial Governor.**

- (1) An office of Deputy Provincial Governor in each province is hereby established.
- (2) The Deputy Provincial Governor shall be elected by the Provincial Assembly from amongst the members referred to in Section 10(3)(b) and (c).
- (3) If the Deputy Provincial Governor—
  - (a) is dismissed from office in accordance with Section 20; or
  - (b) resigns his office by written notice to the Governor; or
  - (c) is otherwise disqualified by law or ceases to be—
    - (i) the head of a rural Local-level Government in the province; or
    - (ii) the representative of the urban Local-level Governments in the

province,

he shall be deemed to have vacated the office of Deputy Provincial Governor.

(4) If the Deputy Provincial Governor vacates his office in accordance with Subsection (3), the Provincial Assembly shall elect another member referred to in Section 10(3)(b) or (c) to be the Deputy Governor.

## **19. Vacation of office of the Provincial Governor.**

(1) If the Provincial Governor—

(a) is dismissed from office in accordance with Section 20; or

(b) is appointed—

(i) a Minister or a Vice-Minister in the National Government; or

(ii) the Speaker or Deputy Speaker of the Parliament; or

(iii) the Leader or Deputy Leader of the Opposition in the Parliament; or

(iv) the Chairman of the Permanent Parliamentary Public Works Committee; or

(v) the Chairman of the Permanent Parliamentary Public Accounts Committee; or

(vi) to an office which has powers and privileges equivalent to those of a Minister; or

(c) resigns his office by written notice to the Minister responsible for provincial government and local-level government matters; or

(d) is, in the opinion of two medical practitioners appointed for the purpose by the National Authority responsible for the registration or licensing of medical practitioners, unfit, by reason of physical or mental incapacity, to carry out the duties of his office; or

(e) is otherwise disqualified by law or ceases to be a member of the Provincial Assembly or of the National Parliament,

he shall be deemed to have vacated the office of the Governor.

(2) Where the Provincial Governor is a Member of the National Parliament, other than the Member of the Parliament representing the province, he shall be deemed to have vacated the office of the Governor, if he—

(a) is dismissed from office in accordance with Section 20; or

(b) resigns his office in accordance with Subsection 1(c); or

(c) is, in the opinion of two medical practitioners appointed for the

- purpose by the National Authority responsible for the registration or licensing of medical practitioners, unfit, by reason of physical or mental incapacity, to carry out the duties of his office; or
- (d) is appointed to any of the offices referred to in Subsection (1)(b); or
- (e) is otherwise disqualified by law or ceases to be a member of the Provincial Assembly or of the National Parliament.

(3) Where the Provincial Governor vacates his office in accordance with Subsection (1)(b) or (c), or Subsection (2)(a), (b), (c) or (d), he shall continue to hold office as a member of the Assembly, and is eligible to be re-appointed as, but does not automatically become, the Provincial Governor during the balance of his term of office in the Assembly.

(4) Notwithstanding Subsections (1) and (2), the Provincial Governor shall continue in office until the election of the next Provincial Governor.

(5) For the purposes of Subsection (1)(b)(vi), the National Executive Council may determine whether an office is an office to which that subparagraph applies.

## **20. Dismissal of Provincial Governor and Deputy Provincial Governor.**

(1) Subject to this section, if the Provincial Governor or Deputy Provincial Governor—

- (a) deliberately and persistently frustrates or fails to comply with the resolutions of the Provincial Assembly; or
- (b) deliberately and persistently disobeys applicable laws, including the *Constitution*, an Organic Law (including this Organic Law) or any national legislation applying in the province; or
- (c) is negligent in exercising his powers or performing his functions, duties and responsibilities; or
- (d) does an act that is or is likely to bring into disrepute or call into question the integrity of his office,

the Provincial Assembly may, by a two-thirds absolute majority vote, dismiss the Provincial Governor or Deputy Provincial Governor.

(2) The dismissal of the Provincial Governor or the Deputy Provincial Governor shall be by motion—

- (a) which shall be expressed to be a motion to dismiss the Provincial Governor or the Deputy Provincial Governor, as the case may be; and
- (b) of which not less than one week's notice signed by the number of

members of the Provincial Assembly, being not less than one-quarter of the total number of seats in the Assembly, has been given in accordance with the procedures of the Assembly.

## **21. Election of the Provincial Governor in the event of vacancy.**

(1) Subject to Subsection (3), if the Provincial Governor vacates his office in accordance with Section 19(1), or is dismissed from office in accordance with Section 20, the Provincial Assembly shall, from amongst the members of the Assembly who are Members of the Parliament, elect the Provincial Governor.

(2) Subject to Subsection (3), if the Provincial Governor elected under Subsection (1) vacates his office in accordance with Section 19(2), or is dismissed from office in accordance with Section 20, the Assembly shall elect another Member of the Parliament to be the Provincial Governor.

(3) If—

(a) a vacancy exists in the office the Provincial Governor; and

(b) all of the Members of the Parliament—

(i) are appointed to any of the offices referred to in Section 19(1)(b); or

(ii) are otherwise disqualified by law,

the Assembly shall, from amongst the members referred to in Section 10(3)(b) and (c), elect the Provincial Governor.

## **22. Political and executive responsibilities of the Provincial Governor and the Deputy Provincial Governor.**

(1) The Provincial Governor, or in his absence the Deputy Provincial Governor, shall—

(a) be politically responsible to the Provincial Assembly for the overall development and good government of the province; and

(b) be constitutionally responsible to the Minister responsible for provincial government and local-level government matters.

(2) Subsection (1) does not affect the exercise, by a Member of the Parliament, of his functions, powers, duties and responsibilities as a Member of the Parliament.

## **23. Provincial Executive Council.**

(1) There shall be an executive arm of a Provincial Government to be known

as the Provincial Executive Council.

- (2) The Provincial Executive Council shall consist of—
  - (a) the Provincial Governor and the Deputy Provincial Governor; and
  - (b) the Chairman of each of the permanent committees of the Provincial Executive Council appointed by the Governor.

(3) The Provincial Governor shall be the Chairman of the Provincial Executive Council and in his absence the Deputy Provincial Governor shall act as the Chairman.

(4) The total membership of the Provincial Executive Council shall be five or one third (whichever is greater) of the total membership of the Provincial Assembly.

(5) The principal function of a Provincial Executive Council shall be to implement the laws and policies made or adopted by the Provincial Assembly and to implement the laws and policies of the National Government applying to the province.

#### **24. Procedures of Provincial Executive Council.**

The procedures of a Provincial Executive Council shall be as determined by the Provincial Executive Council.

#### **25. Provincial Executive Council Committees.**

(1) A Provincial Executive Council shall, in accordance with an Act of the Parliament—

- (a) establish a Joint Provincial Planning and Budget Priorities Committee; and
- (b) establish such number of committees (including permanent committees) as it considers necessary to carry out its functions; and
- (c) determine all matters relating to such committees.

(2) The Joint Provincial Planning and Budget Priorities Committee shall consist of—

- (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 and Budget Priorities Committee; and
- (c) any other members not exceeding three in number appointed, on an ad

hoc basis, by the Provincial Executive Council.

- (3) The Joint Provincial Planning and Budget Priorities Committee shall have the following functions:—
- (a) to oversee, co-ordinate and make recommendations as to the overall planning in the province, including budget priorities, for consideration by the National Government;
  - (b) to determine and control budget allocation priorities for the Province;
  - (c) to approve Provincial Government Budgets for presentation to the Provincial Assembly;
  - (d) to draw up a rolling five-year development plan and annual estimates for the province;
  - (e) to conduct annual reviews of the rolling five-year development plan.
- (4) The Provincial Administrator shall be the Chief Executive Officer of the Committee.
- (5) A Member of the Parliament who occupies an office referred to in Section 19(1)(b) is not eligible to be a member of a Committee under this section.
- (6) The Governor shall appoint a Chairman for each Committee under this section, but such appointments shall be made so as to ensure fair representation of the various electorates and districts within the province.
- (7) An Act of the Parliament shall make provision for other functions and powers of, and administrative arrangements for, the Committee.

***Division 2.—Institutional Structure of Legislative and Executive Arms of Local-level Governments.***

**Subdivision A.—Form of Local-level Governments.**

**26. Local-level Governments.**

- (1) Subject to the *Constitution* and to this Organic Law, an Act of the Parliament shall make provision for a system of Local-level Governments for rural and urban communities.
- (2) A Local-level Government shall in principle be an elective government whose role shall be to make laws for the purpose of governing the local community.
- (3) A Local-level Government may be—
- (a) an urban Local-level Government; or
  - (b) a rural Local-level Government; or

- (c) a traditional form of government structure; or
- (d) in such other form as is approved by the National Executive Council;  
or
- (e) a combination of one or more of the forms specified in Paragraphs (a) to (d) inclusive.

(4) The number of rural Local-level Governments in each open electorate shall not exceed three, but where special circumstances exist to justify the establishment of additional Local-level Governments, the Minister responsible for provincial government and local-level government matters may make a recommendation to this effect to the National Executive Council, and the National Executive Council may authorize such additional Local-level Government or additional Local-level Governments as it considers necessary.

(5) The number of urban Local-level Governments shall not exceed one in each district but where special circumstances exist to justify the establishment of additional urban Local-level Governments, the Minister responsible for provincial government and local-level government matters may make a recommendation to this effect to the National Executive Council and the National Executive Council may authorize such additional Local-level Government or additional Local-level Governments, as it considers necessary.

(6) An Act of the Parliament shall make provision in respect of any transitional arrangements necessary in relation to the transition from the system of local-level governments which are replaced by Local-level Governments under this Organic Law.

## **27. Establishment of Local-level Governments.**

(1) For the purposes of Section 26(3), (4) and (5), and subject to this section and to this Organic Law, the Head of State, acting on the advice of the National Executive Council, may, by proclamation, establish a Local-level Government in and for the area described in the proclamation.

(1A) In principle, an area in respect of which a Local-level Government will apply will be contained within one open electorate, but an area may extend beyond one or more electoral boundaries where the Head of State, acting on the advice of the National Executive Council, given after considering a recommendation by the Minister, is of the opinion that such an extension is—

- (a) in the interests of administrative convenience due to remoteness or geographic location; and
- (b) to the benefit of the people in the area.

- (2) A proclamation under Subsection (1) shall only be made after the procedure as specified in this section has been complied with.
- (3) Where a Provincial Assembly is of the opinion that a Local-level Government should be established in and for an area in the province, it shall so recommend to the Minister responsible for local-level government matters.
- (4) A recommendation under Subsection (3) shall contain particulars of—
- (a) the area in respect of which the Local-level Government will apply; and
  - (b) where the area extends beyond one or more open electorate boundaries, the reasons for the recommendation of the area; and
  - (c) the form of Local-level Government recommended; and
  - (d) such other particulars as are considered relevant.
- (5) Where the Minister—
- (a) accepts the recommendations made under Subsection (3), he shall bring the recommendations to the National Executive Council as soon as is practicable for consideration as to whether or not a proclamation be made under Subsection (1); or
  - (b) does not accept the recommendations made under Subsection (3) or wishes further information, he shall, as soon as practicable, consult with the Provincial Executive Council.
- (6) The Minister shall, within 90 days of his consulting with the Provincial Executive Council under Subsection (5)(b), whether or not he accepts the recommendations made under Subsection (3), bring the recommendations to the National Executive Council for consideration as to whether or not a proclamation be made under Subsection (1).
- (7) If the Minister fails to bring the recommendations to the National Executive Council for consideration within the 90 days required under Subsection (6), the National Executive Council shall proceed with the recommendations as if they had been accepted by the Minister.

## **28. Abolition of Local-level Governments.**

Subject to the *Constitution*, a Local-level Government shall not be abolished or in any way amalgamated and its area shall not be altered, without the prior consent of the National Executive Council and of the Provincial Assembly.

### **Subdivision B.—Legislative Arm of Local-level Governments.**

## **29. Composition of Local-level Governments.**

- (1) Subject to this Organic Law, the members of the legislative arm of a Local-level Government shall consist of—
- (a) the head of the Local-level Government who shall be elected in accordance with an Organic Law or an Act of the Parliament; and
  - (b) such number of local members, representing local wards, elected in accordance with an an Organic Law or Act of the Parliament; and
  - (c) in the case of a Local-level Government in an urban area, three members of whom—
    - (i) one shall be a representative of workers' organisations nominated by the Papua New Guinea Trade Union Congress; and
    - (ii) one shall be a representative of employers' organisations nominated by the Employers Federation; and
    - (iii) one shall be a representative of womens' organisations nominated in accordance with an Act of the Parliament, appointed by the Local-level Government; and
  - (d) in the case of a Local-level Government in a rural area, two members who shall be representatives of women's organisations nominated in accordance with an Act of the Parliament appointed by the Local-level Government.
- (2) The appointed members shall have full voting power and shall be counted towards the quorum during meetings of the Local-level Government.

### **30. Vacation of office.**

- (1) Where a member of a Local-level Government—
- (a) is disqualified under Section 31; or
  - (b) becomes permanently incapable of performing his duties; or
  - (c) dies or resigns his office; or
  - (d) fails to comply with the provisions of this Organic Law; or
  - (e) becomes of unsound mind; or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors, or makes an assignment of his remuneration for their benefit; or
  - (g) is convicted of a criminal offence punishable by law for which a term

of imprisonment of not less than three months or death are prescribed as a penalty and as the result of that conviction is sentenced to imprisonment or is under sentence of death, or is under bond to appear for sentence if called on; or

- (h) is dismissed from office for misconduct in office; or
- (i) is dismissed from office for neglect of duty in accordance with an Act of the Parliament; or
- (j) is absent without leave of the Local-level Government during the whole of three consecutive meetings of the Local-level Government, unless the Local-level Government decides to waive this provision upon satisfactory reasons being given,

the member is deemed to have vacated his office and the Minister, acting with, and in accordance with, the advice of the Provincial Executive Council, shall terminate his membership.

(2) Where an office of member of a Local-level Government is vacated in accordance with Subsection (1), the vacancy shall be filled as soon as practicable.

(3) The exercise or performance of a power or function of or by a Local-level Government is not invalidated by reason only of a vacancy in the membership of the Government.

### **31. Qualifications and disqualifications.**

An Act of the Parliament shall determine the qualifications and disqualifications of the members of Local-level Governments.

### **32. Procedures of Local-level Governments.**

(1) The head of a Local-level Government shall preside at all meetings of the Local-level Government at which he is present.

(2) Subject to this Organic Law, the privileges and immunities of members of Local-level Governments, including the number of meetings and quorums for meetings of Local-level Governments, shall be as determined by an Act of the Parliament, but the number of meetings of a Local-level Government shall be not less than four in each calendar year, and the procedures shall be consistent with the procedures of a Provincial Assembly.

### **33. System of Committees.**

In addition to the Joint District Planning and Budget Priorities Committee

established in and for each District by Section 33A, a Local-level Government may, in accordance with an Act of the Parliament, establish such number of Local-level Government committees (including permanent committees) as it considers necessary to carry out its functions and determine all matters in relation to such committees.

### **33A. Joint District Planning and Budget Priorities Committee.**

(1) There shall be established, in each district, a Joint District Planning and Budget Priorities Committee.

(2) The Committee shall consist of—

- (a) the Member of the Parliament representing the open electorate who shall be the Chairman of the Committee; and
- (b) [Repealed].
- (c) the heads of Local-level Governments in the district or their nominees; and
- (d) any other members not exceeding three in number appointed by the Member of the Parliament representing the open electorate in consultation with the heads of the Local-level Governments in the district.

(2A) The Member of the Parliament representing the open electorate shall appoint one of the other members of the Committee to act as Chairman of the Committee in the event of the absence of the Member representing the open electorate from a meeting of the Committee.

(3) The Joint District Planning and Budget Priorities Committee shall have the following functions:—

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

(4) The District Administrator shall be the Chief Executive Officer of the Committee.

(5) [Repealed].

(6) [Repealed].

(7) An Act of the Parliament shall make provision for other functions and powers of, and the administrative arrangements for the Committee.

### **34. Duration of office.**

(1) Wherever practicable, the term of a Local-level Government shall be the same as and run concurrently with the term of the Parliament, but in order to ensure the effective conduct of respective elections, this may be varied, provided that the date for the return of writs in a general election to Local-level Governments is fixed for a date not later than three months after the date fixed for the return of the writs of the general election to the Parliament.

(2) Unless sooner ended by resignation, disqualification or death, the term of office—

- (a) in the case of an elected member, begins on the day immediately following the day fixed for the return of the writ for the election and expires on the day fixed for the return of the writ for the election after he last became a member of the Local-level Government; and
- (b) in the case of an appointed member, begins on the day he is appointed and expires on the day the term of office of elected members expires in accordance with Paragraph (a).

(3) Where the Parliament is dissolved and a general election is held in accordance with Section 105(1)(b) or (c) (*general elections*) of the *Constitution*, the term of the Local-level Governments shall be deemed to have expired, but the members shall continue in office until the day fixed for the return of the writs for the general election for the Local-level Governments.

### **35. Remuneration and allowances.**

The salaries, allowances and other terms and conditions of the members of Local-level Governments shall be as are determined by the Salaries and Remuneration Commission.

#### **Subdivision C.—Executive Arm of Local-level Governments.**

### **36. Local-level Government executive arm.**

(1) The executive arm of a Local-level Government shall consist of all the members of the legislative arm of the Local-level Government.

(2) An Act of the Parliament shall make provision for the powers and procedures of the executive arm of a Local-level Government.

***Division 3.—Local-level Government Electoral System.***

**37. Local-level Government elections.**

Elections for the Local-level Governments shall be conducted by the Electoral Commission in accordance with an Organic Law or an Act of the Parliament.

**38. Eligibility of candidates.**

(1) A person shall not stand for election to a Local-level Government unless he is a citizen who—

- (a) was born in the Local-level Government area in which he intends to stand; or
- (b) has lived in the Local-level Government area in which he intends to stand for a period of not less than two years continuously prior to the date of his nomination to stand for election; or
- (c) is a descendant of a parent who was born in the Local-level Government area and is able to speak at least one of the indigenous languages of the Local-level Government area and any one of the following languages, namely:—
  - (i) English; or
  - (ii) Tok Pisin; or
  - (iii) Hiri Motu.

(2) A person is not eligible to contest an election if he is—

- (a) an undischarged bankrupt or insolvent; or
- (b) insane; or
- (c) medically certified alcoholic; or
- (d) convicted of an indictable criminal offence; or
- (e) dismissed from office in accordance with Division III.2 (*Leadership Code*) of the *Constitution* for misconduct in office.

**39. Death of Member not to disrupt elections.**

An election under Section 37 does not fail because of the death of a candidate after his nomination and before the end of the polling period.

**PART III.—LAW MAKING POWERS OF NATIONAL PARLIAMENT,  
PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS.**

***Division 1.—General Division of Powers.***

**40. Principles of division of law-making powers.**

(1) The division of law-making powers between the National Government, Provincial Governments and the Local-level Governments shall be based on the following principles:—

- (a) the National Government, Provincial Governments and Local-level Governments shall respectively have specific powers;
- (b) the powers that are not so specified shall be assumed to remain with the National Government;
- (c) where for any reason, a level of government cannot exercise any of its powers effectively then such powers may be delegated to either of the other levels of governments to exercise on behalf of the first government;
- (d) both Provincial Government and Local-level Government powers are subject to the National Law but only to the extent that the national interest so requires, otherwise they shall have relative autonomy to operate;
- (e) powers of Local-level Governments are subject to the powers of Provincial Governments but only to the extent that the provincial interest requires them to be made subject to the provincial laws.

(2) The general principles in this section are non-justiciable but may be used in the interpretation and implementation of this Organic Law.

***Division 2.—Powers of National Government.***

**41. Law-making powers of the National Parliament, etc.**

(1) A law-making power that is not specified in Section 42 or 44 remains with the National Parliament.

(2) Subject to this section, the National Parliament may make an Act of the Parliament on a matter specified in Section 42 or 44 only where the matter is of national interest.

(3) Subject to Subsection (4), the National Parliament shall not make an Act to which Subsection (2) applies unless there has been consultation between the Minister responsible for provincial government and local-level government matters, and the Provincial Government or the Local-level Government

concerned.

- (4) Subsection (3) does not apply in respect of—
- (a) emergency laws within the meaning of Section 226 (*definition for the purposes of Part X*) of the *Constitution*; or
  - (b) any Act of the Parliament dealing with a matter of urgent national importance when it is in the national interest that the Act be made without delay.

(5) In a case to which Subsection (4)(b) applies, the Minister responsible for provincial government and local-level government matters shall, as soon as practicable, advise any Provincial Government or Local-level Government concerned of the Act and of the reason for urgency.

(6) An Act of the Parliament on a matter specified in Section 42 or 44 shall prevail over any law made under Section 42 or 44, whether such law is made before or after the date of the making of the Act of the Parliament, to the extent of any inconsistency with the Act of the Parliament.

- (7) A question—
- (a) whether an Act of the Parliament complies with Subsection (2); or
  - (b) whether the provisions of this section have otherwise been complied with,

is non-justiciable.

### ***Division 3.—Powers and Functions of Provincial Legislatures.***

#### **Subdivision A.—Law-Making Powers.**

#### **42. Law-making powers of the Provincial Legislatures.**

(1) Subject to the *Constitution* and this Organic Law, a provincial legislature may make laws on the following matters:—

- (a) mobile trading;
- (b) primary, secondary, technical and vocational education, but not curriculum;
- (c) sale and distribution of alcohol;
- (d) public entertainment;
- (e) culture and cultural centres;
- (f) museums and libraries;
- (g) sport and recreation;
- (h) tourism;
- (i) village and urban or community courts (but not jurisdiction);

- (j) community, urban and rural development;
- (k) agriculture;
- (l) fishing and fisheries;
- (m) trade and industry within the province;
- (n) rural health;
- (o) gambling, lotteries and other games of chance;
- (p) transportation and facilities;
- (q) town and urban planning;
- (r) land and land development, including provincial titles and leases provided that the terms of such titles and leases shall not exceed the terms of titles and leases which may be granted by or under National laws;
- (s) forestry and agro forestry;
- (t) renewable and non-renewable natural resources (but not maximum or minimum volume, or quantities, export prices, tax measures or taxation, levies or dues to be levied);
- (u) mediation and arbitration (but not jurisdiction), but not in respect of disputes referred to in Section 118(2);
- (v) commissions of inquiry;
- (w) traditional currencies;
- (x) family law, marriage, adoption and maintenance but not bride or groom wealth;
- (y) parks, reserves, gardens, scenic and scientific centres;
- (z) registration of vehicles;
- (aa) provincial housing (but not State-owned housing).

(2) Subsection (1)(l), (s) and (t) do not apply to large-scale mining, petroleum, forestry, fishing and marine resource ventures declared by the Head of State, acting on advice, to be ventures to which this subsection refers.

(3) A law made under Subsection (1) shall have effect so far as it is not inconsistent with an Act of the Parliament made—

- (a) before the coming into operation of this Organic Law; or
- (b) in accordance with Section 41.

(4) For the purposes of Subsection (2), a question—

- (a) whether or not a law made under Subsection (1) is a law with respect to a matter specified in that subsection; or
- (b) whether or not a law made under Subsection (1) is inconsistent with an Act of the Parliament,

is non-justiciable except at the instance of the National Government or of a Provincial Government.

### **Subdivision B.—Principal Administrative Functions of Provincial Governments.**

#### **43. Principal administrative functions of Provincial Governments.**

Subject to the *Constitution* and this Organic Law, the principal administrative functions of Provincial Governments shall be as provided for in an Act of the Parliament.

### **Division 4.—Powers and Functions of Local-level Governments.**

#### **Subdivision A.—Law-Making Powers.**

#### **44. Law making powers of the Local-level Governments.**

(1) Subject to the *Constitution*, this Organic Law, and a Provincial Government law, a Local-level Government may make laws on the following subject matters:—

- (a) labour and employment (but not industrial relations);
- (b) labour or community industries;
- (c) self-help and tokples schools, but not curriculum;
- (d) cemeteries;
- (e) provision of water supply;
- (f) provision of electricity;
- (g) improvement of villages, towns, cities and communities;
- (h) maintaining peace, good order and law through consultation, mediation, arbitration and community forums;
- (i) dispute settlement;
- (j) town, city, village and community planning;
- (k) cottage industries;
- (l) social services;
- (m) bride and groom wealth;
- (n) general licensing;
- (o) community sport, recreation, cultural and industrial shows;
- (p) local environment;
- (q) local tourist facilities and services;
- (r) housing;

- (s) domestic animals, flora and fauna;
- (t) human settlements;
- (u) census and village or community records;
- (v) traditional barter system;
- (w) control on consumption and use of alcohol, betel nuts, and betel nut related products or any other marketable items;
- (x) hygiene and sanitation;
- (y) local trading (not mobile);
- (z) the protection of traditional sacred sites;
- (aa) community day work or service programmes;
- (ab) the imposition of fines for breaches of any of its laws;
- (ac) village communities;
- (ad) local aid posts and clinics;
- (ae) traditional and customary copyrights.

(2) A law made under Subsection (1) shall have effect so far as it is not inconsistent with an Act of the Parliament made—

- (a) before the coming into operation of this Organic Law; or
- (b) in accordance with Section 41.

(3) For the purposes of Subsection (2), a question—

- (a) whether or not a law made under Subsection (1) is a law with respect to a matter specified in that subsection; or
- (b) whether or not a law made under Subsection (1) is inconsistent with an Act of the Parliament,

is non-justiciable except at the instance of the National Government or of a Local-level Government.

### **Subdivision B.—Principal Administrative Functions.**

#### **45. Principal administrative functions of Local-level Governments.**

Subject to the *Constitution* and this Organic Law, the principal administrative functions of a Local-level Government shall be as provided for in an Act of the Parliament.

### ***Division 5.—Judicial Matters.***

#### **46. Extent of powers as to judicial matters.**

(1) Except as provided in this division and Division 6, a Provincial Government or a Local-level Government has no power to make laws relating to

the establishment or administration of courts, or to the exercise of judicial power.

- (2) Subsection (1) does not prevent—
- (a) an Act of the Parliament from making provision, in accordance with Division 7, for the exercise or performance by a Provincial Government or a Local-level Government, of powers or functions (other than judicial powers or functions) in relation to the administration of courts or tribunals; or
  - (b) the establishment, by or under a provincial law, of tribunals of an administrative or quasi-judicial kind; or
  - (c) a provincial law or a local-level law from making provision for offences and fines and other punishments, penalties and forfeitures for offences against the provincial laws or local-level laws.

***Division 6.—Provincial and Local-level Courts.***

**47. Village Courts.**

(1) Subject to Subsection (2), a provincial law may, as permitted by and subject to Section 42, make provision for or in respect of the establishment and administration of village courts of civil or criminal jurisdiction, or both.

(2) The jurisdiction of village courts established under Subsection (1), is as determined by or under an Act of the Parliament, but in any event such courts shall have the jurisdiction vested, immediately before the coming into operation of this Organic Law, in village courts established under the *Village Courts Act* 1989.

**48. Other Provincial Courts and Tribunals.**

As permitted by, and in accordance with Section 42, a provincial law may make provision for and in respect of the establishment, jurisdiction and administration of other courts and tribunals (including commissions of inquiries) of civil or criminal jurisdiction, or both.

**49. Court fees, fines, etc.**

The powers of Provincial Assemblies under Division 5 and this division and in relation to courts and tribunals extend to matters relating to imposition of fees in, and the disposition of fines, penalties and forfeitures imposed by, such courts and tribunals.

***Division 7.—Delegation of Powers.***

**50. Delegation of powers and functions.**

- (1) This section does not—
  - (a) apply in respect of judicial powers and functions; or
  - (b) affect the operation of Section 209 (*parliamentary responsibility*) of the *Constitution*.
- (2) An Act of the Parliament may make provision for or in relation to the exercise and performance in or in relation to a province—
  - (a) by a Provincial Government or a Local-level Government; or
  - (b) as provided by a provincial law or a local-level law (not inconsistent with any Act of the Parliament) by or by direction of the Provincial Executive Council,of—
  - (c) any legislative power or function of the National Government, including a power to make subsidiary legislation, but not including a power to make—
    - (i) an amendment to the *Constitution*; or
    - (ii) an Organic Law (including this Organic Law); or
    - (iii) a law of a kind that can be made only as an emergency law within the meaning of Section 226 (*definitions for the purposes of Part X*) of the *Constitution*; or
  - (d) any power or function of the National Government under an Act of the Parliament.
- (3) A provincial law may make provision for and in relation to the exercise by the National Government or a Local-level Government of—
  - (a) any legislative power or function of the Provincial Government, including a power to make subsidiary legislation; or
  - (b) any power or function under a provincial law.
- (4) A local-level law may make provision for and in relation to the exercise by the National Government or a Provincial Government of—
  - (a) any legislative power or function of a Local-level Government, including a power to make subsidiary legislation; or
  - (b) any power or function under a local-level law.

***Division 8.—Withdrawal of Powers, Functions and Finances of Provincial Governments and Local-level Governments.***

**51. Withdrawal of powers, functions and finances.**

- (1) Where there are findings by—

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- (a) the Auditor-General—
- (i) of corruption or abuse of power within a Provincial Government or a Local-level Government so as to render the government either ineffective or lacking in public respect and confidence; or
  - (ii) of failure by a Provincial Government or a Local-level Government to keep or cause to be kept proper accounts and records of transactions or dealings; or
  - (iii) that a Provincial Government or a Local-level Government has an ineffective internal control system; or
  - (iv) that a Provincial Government or a Local-level Government has failed to submit reports as required by law; or
- (b) the Minister responsible for provincial and local-level government matters, or a Special Investigating Committee appointed for the purpose by the National Executive Council, that—
- (i) there has been a breakdown in the administration of a province or local-level government area; or
  - (ii) there has been deliberate and persistent frustration of or failure to comply with lawful directions of the National Government; or
  - (iii) a Provincial Government or a Local-level Government has deliberately and persistently disobeyed applicable laws, including the *Constitution*, an Organic Law (including this Organic Law) or any national legislation applicable to the province or local-level government area; or
  - (iv) 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 the Provincial Government or the Local-level Government concerned to rectify the matter and such direction shall specify the manner and time in which such rectification is to be carried out.

(2) Where a Provincial Government or a Local-level Government refuses or fails to comply with a direction issued under Subsection (1), the National Executive Council may—

- (a) withdraw all or any of the powers and functions of; or
- (b) withdraw and withhold all or any finances to; or
- (c) withdraw all or any of the powers and functions of, and withdraw and withhold all or any finances to,

the Provincial Government or the Local-level Government, as the case may be.

(3) This section does not prevent the Auditor-General, the Minister responsible for provincial government and local-level government matters, or the Special Investigating Committee, as the case may be, from referring any person, including members of a Provincial Government, a Local-level Government or any other person, to the Ombudsman Commission, the Public Prosecutor, the Police or any other relevant authority for further investigation and action.

## **52. Return of powers and functions.**

Subject to Section 53, the National Executive Council may, on the recommendation of the Minister responsible for provincial government and local-level government matters, given after receiving a report from the Auditor-General, the Minister responsible for provincial government and local-level government matters or the Special Investigating Committee, recommending the return of the powers and functions, direct that, with effect from a specified date, the Provincial Government or the Local-level Government is authorized to exercise all or any of the powers and functions withdrawn in accordance with Section 51.

## **53. Compliance with certain conditions.**

(1) A Provincial Government or a Local-level Government to which Section 52 applies, for the period specified by the National Executive Council, shall—

- (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 the financial management and other related matters as the Council may, from time to time, require.

(2) In addition to the requirements under Subsection (1), except with the prior approval of the National Executive Council, a Provincial Government or a Local-level Government shall not transfer funds from one activity or project item to another during the period specified in that subsection.

### ***Division 9.—Suspension of Provincial Governments and Local-level Governments.***

#### **Subdivision A.—Suspension Generally.**

## **54. Application of Subdivision A.**

(1) This subdivision applies in relation to the suspension of a Provincial Government or a Local-level Government on a ground set out in Section 187E(1)

*(suspension of Provincial Governments and Local-level Governments) of the Constitution.*

(2) This subdivision does not affect the operation of Section 187E(4) of the *Constitution*.

## **55. Grounds of suspension.**

A Provincial Government or a Local-level Government may be suspended on a ground set out in Section 187E(1) (*suspension of Provincial Governments and Local-level Governments*) of the *Constitution*.

## **56. Powers of Minister where he is of the opinion that a ground for suspension may exist.**

Where the Minister responsible for provincial government and local-level government matters is of the opinion that the ground for suspension of a Provincial Government or a Local-level Government exists or may exist, he may—

(a) require—

- (i) in the case of a Provincial Government, the Provincial Governor; or
- (ii) in the case of a Local-level Government, the Provincial Governor and the head of the Local-level Government concerned,

to appear before him and give an explanation of any matters which have come to the attention of the Minister; and

- (b) report to the National Executive Council on any matters which appear to constitute grounds for suspension of the Provincial Government or the Local-level Government.

## **57. Duties of National Executive Council on submission of report, etc.**

The National Executive Council shall consider any report and comments submitted under Section 56(b) and may—

- (a) cause the Minister to make further inquiries; and
- (b) require—

- (i) in the case of a Provincial Government, the Provincial Governor; or
- (ii) in the case of a Local-level Government, the Provincial Governor and the head of the Local-level Government

concerned,  
to attend before it and make explanations.

**58. National Executive Council may suspend a Provincial Government or a Local-level Government.**

Where, after considering—

- (a) the report and comments submitted under Section 56(b); and
- (b) any further report or explanation which it may have required under Section 57,

the National Executive Council is of the opinion that—

- (c) the ground for suspension exists; and
- (d) the matter can only be put right by suspension,

the National Executive Council may, by notice in the National Gazette, provisionally suspend a Provincial Government or a Local-level Government.

**59. Notification of suspension to Parliament.**

(1) Where a Provincial Government or a Local-level Government has been provisionally suspended under Section 58, the Minister responsible for provincial government and local-level government matters shall—

- (a) forward to the Speaker of the Parliament, for presentation to the Parliament—
  - (i) the report submitted under Section 56; and
  - (ii) any further report or a resume of any explanation obtained under Section 57; and
  - (iii) a copy of the National Executive Council decision; and
- (b) within the first seven sitting days of the Parliament following the provisional suspension under Section 58, move a motion confirming the suspension.

(2) A vote on a motion under Subsection (1)(b) shall—

- (a) be taken within the first seven sitting days following the tabling of a report from the National Investigation Committee as provided in Section 60; and
- (b) be supported on a division, in accordance with the Standing Orders of the Parliament, by an absolute majority vote after opportunity for debate on the merits.

**60. Investigation by National Investigation Committee.**

(1) Where a motion confirming the suspension of a Provincial Government or a Local-level Government has been moved under Section 59(1)(b), the motion, together with the documents presented under Section 59(1)(a) shall stand referred to the National Investigation Committee for investigation into and report on the matters giving rise to the provisional suspension of that Provincial Government or Local-level Government.

(2) A report by the National Investigation Committee under Subsection (1) shall be submitted to the Speaker within 90 days following the date of referral.

(3) A report received under Subsection (2) shall be tabled by the Speaker, immediately if the Parliament is in session, or if the Parliament is not in session, on the next sitting day following its receipt by him.

## **61. National Investigation Committee.**

(1) There is established a National Investigation Committee.

(2) The Committee shall consist of—

(a) a member of the National Security Council, appointed by the National Executive Council, who shall be the Chairman; and

(b) the Departmental Head of the Department responsible for provincial government and local-level government matters; and

(c) the Departmental Head of the Department of the Prime Minister and National Executive Council; and

(d) a member of the National Law and Order Committee, nominated by that Committee; and

(e) the Departmental Head of the Department responsible for finance matters.

(3) The functions of the Committee are, in accordance with Section 60, to investigate into and report on the matters giving rise to the provisional suspension of a Provincial Government or a Local-level Government.

(4) For the purposes of the exercise and performance of its functions, the Committee may—

(a) summon witnesses, by instrument under the hand of the Chairman; and

(b) take evidence on oath or affirmation and administer oaths and affirmations for the purpose; and

(c) by instrument under the hand of the Chairman, require a person to produce a document, book or paper in his possession or control.

- (5) A person who, when summoned or required under this section to give evidence or to produce a document, book or paper in his possession or control, fails without reasonable excuse (proof of which is on him)—
- (a) to attend before the Committee at the time and place appointed in the summons or requirement; or
  - (b) to be sworn or make an affirmation; or
  - (c) to answer any question put to him by a member of the Committee; or
  - (d) to produce a document, book or paper,
- is guilty of an offence.

Penalty: A fine not exceeding K500.00.

- (6) When performing its functions, the Committee shall determine its procedures.

## **62. Passing of suspension motion and circumstances in which provisional suspension lapses.**

- (1) After consideration of a report tabled under Section 60(3), the Parliament may, by an absolute majority vote, confirm the suspension.
- (2) Where a motion under Section 59(1)(b) has not been passed within the first 14 sitting days of the Parliament following the tabling of a report from the National Investigation Committee under Section 60, the suspension lapses.

## **63. Commencement of suspension.**

The suspension of a Provincial Government or a Local-level Government takes effect at such time as is specified in the notice under Section 58, or if no such time is so specified at midnight on the day on which the notice is published in the National Gazette.

### **Subdivision B.—Effect, etc., of Suspension.**

## **64. Application of Subdivision B.**

- (1) This subdivision applies in relation to the suspension of a Provincial Government or a Local-level Government—
- (a) by the National Executive Council, provisionally, under Section 187E(1) (*suspension of Provincial Governments and Local-level Governments*) of the *Constitution*; or
  - (b) by the Parliament in accordance with Subdivision A; or
  - (c) by the National Executive Council in accordance with Section 187E(4) (*suspension of Provincial Governments and Local-level*

*Governments) of the Constitution.*

(2) For the purposes of this subdivision, "suspension" includes provisional suspension.

#### **65. Effect of suspension.**

(1) Subject to Subsection (2), while a Provincial Government or a Local-level Government is suspended its powers and functions are, as provided for by Section 187E of the *Constitution*, divested from it and vested in the National Executive Council, to be exercised and performed in accordance with Sections 66 and 67.

(2) The suspension of a power or function of a Provincial Government or a Local-level Government does not affect—

- (a) any right, privilege, obligation or liability acquired, accrued or incurred under or in respect of the suspended power or function; or
- (b) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation or liability.

#### **66. Exercise of legislative powers, etc., of suspended Provincial Governments and Local-level Governments.**

(1) While a Provincial Government or a Local-level Government is suspended, the National Executive Council has and may exercise and perform, subject to Subsection (2), all the legislative powers, functions, duties and responsibilities of that Provincial Government or Local-level Government.

- (2) A law made in the exercise of the power conferred by Subsection (1)—
- (a) shall be made by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; and
  - (b) shall be tabled in the Parliament as soon as practicable after being made; and
  - (c) unless earlier repealed, expires at the end of the period of seven sitting days of the Parliament after it is tabled, unless within that period the Parliament, by resolution, confirms it.

#### **67. Exercise of executive powers, etc., of Suspended Provincial Governments.**

(1) While a Provincial Government is suspended, the National Executive Council has and may exercise and perform all the executive powers, functions, duties and responsibilities of that Provincial Government.

- (2) The power conferred by Subsection (1) may be exercised—
  - (a) by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; or
  - (b) subject to Subsection (3), and any decision or direction of the National Executive Council, by a Minister authorized by the National Executive Council for the purpose, acting on behalf of the Council.
- (3) In performing his functions and responsibilities under Subsection (2)(b), the Minister shall be assisted—
  - (a) in the case of a province which is also an open electorate, by a Member of the Parliament from the province concerned appointed by the National Executive Council; and
  - (b) in any other case, by two Members of the Parliament from the province concerned, selected by the Members of the Parliament from that province and appointed by the National Executive Council.

**67A. Exercise of executive powers, etc., of Suspended Local-level Governments.**

- (1) While a Local-level Government is suspended, the Head of State, acting on advice, has and may exercise and perform all the executive powers, functions, duties and responsibilities of that Local-level Government.
- (2) The power conferred by Subsection (1) may be exercised—
  - (a) by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; or
  - (b) subject to any decision or direction of the National Executive Council, by—
    - (i) the Minister responsible for provincial government and local-level government matters; or
    - (ii) the Provincial Executive Council; or
    - (iii) the Member of the Parliament representing the open electorate in which the suspended Local-level Government is situated, acting on behalf of the National Executive Council.

**68. Validity and effect of exercise of suspended powers, etc.**

- (1) The exercise or performance of a power, function, duty or responsibility of a suspended Provincial Government or Local-level Government by the National Executive Council is as valid and effectual, and has the same effect, for all purposes as if it had been exercised or performed by the Provincial

Government or the Local-level Government.

(2) All things that might have been done or suffered, or might have continued to be done or suffered, by or in relation to the suspended Provincial Government or Local-level Government may be done or suffered, or may continue to be done or suffered, by or in relation to the State in the name and on behalf of the suspended Government.

(3) The exercise or performance of a power, function, duty or responsibility of a suspended Provincial Government or Local-level Government by the National Executive Council does not affect the identity or existence of the Provincial Government or the Local-level Government and of its separate rights and liabilities, and for those purposes the National Executive Council shall be treated as the agent of the suspended Provincial Government or Local-level Government for all purposes.

### **Subdivision C.—Re-establishment.**

#### **69. Affirmation of power of re-establishment.**

The provisions of this subdivision do not affect the operation of Section 187F (*re-establishment of Provincial Governments and Local-level Governments*) of the *Constitution*.

#### **70. Lifting of suspension.**

(1) The suspension of a Provincial Government or a Local-level Government in accordance with this division—

- (a) in the case of a Provincial Government, may be lifted by the Parliament by an absolute majority vote; and
- (b) in the case of a Local-level Government, may be lifted by the National Executive Council.

(2) The suspension of a Provincial Government or a Local-level Government by the National Executive Council under Section 187E(4) (*suspension of Provincial Governments and Local-level Governments*) of the *Constitution* may be lifted—

- (a) by resolution of the National Executive Council; or
- (b) by resolution of the National Parliament.

(3) A resolution lifting the suspension of a Provincial Government or a Local-level Government may not be rescinded or otherwise altered.

#### **71. Post-suspension conditions.**

(1) Where the suspension of a Provincial Government or a Local-level

Government is lifted or has expired, the Provincial Government or the Local-level Government, as the case may be, shall comply with the requirements of Subsections (2) and (3).

(2) A Provincial Government or a Local-level Government to which Subsection (1) applies, shall, during a period specified by the National Executive Council—

- (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, from time to time, require.

(3) In addition to the requirements under Subsection (2), except with the prior approval of the National Executive Council, a Provincial Government or a Local-level Government shall not, within the period referred to in Subsection (2), transfer funds from one activity or project item to another.

#### **PART IV.—INSTITUTIONAL STRUCTURE OF THE ADMINISTRATIVE SYSTEM OF PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS.**

##### ***Division 1.—Administrative System.***

#### **72. Provincial and Local-level Administrative System.**

- (1) A provincial and local-level administrative system is hereby established.
- (2) A provincial and local-level administrative system shall consist of—
  - (a) the administrative institutions consisting of—
    - (i) the offices of Provincial Administrators and District Administrators; and
    - (ii) an extended service of the National Departments and other agencies; and
    - (iii) Provincial Government and Local-level Government support services; and
  - (b) the staffing as set out in Section 75.
- (3) There shall be established in each province a Provincial Administrative Headquarters and in each district, a district administrative headquarters.
- (4) The boundaries of the district for which each district administrative headquarters is responsible shall be the same as the open electorate of the

Parliament in which the headquarters are situated.

### **73. Provincial and District Administrators.**

- (1) Subject to Subsections (4) and (5) there shall be established—
  - (a) in each province, an office of Provincial Administrator; and
  - (b) in each district, an office of District Administrator.
- (2) The National Executive Council—
  - (a) after considering a list comprising the names of three persons submitted by the Provincial Executive Council concerned; and
  - (b) after consultation with the Public Services Commission,

shall by notice in the National Gazette, appoint from the list submitted under Paragraph (a), the Provincial Administrator.

(3) A District Administrator shall be appointed in the manner and following the same procedure as is applicable to the appointment of officers of the Public Service.

(4) Where a province is also an open electorate, there shall be only one office of an Administrator, who shall be known as the Provincial Administrator.

- (5) An Act of the Parliament shall make provision for—
  - (a) the selection criteria and procedures of appointment; and
  - (b) acting appointments; and
  - (c) terms and conditions of employment,

of Provincial Administrators and District Administrators.

### **74. Functions of the Provincial and District Administrator.**

- (1) The Provincial Administrator of a province—
  - (a) shall be the chief executive officer of the Provincial Government; and
  - (b) shall be the administrative head of the staff in the province; and
  - (c) is responsible for the efficient management of administrative services in the province; and
  - (d) shall maintain 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 (other than the law enforcement agencies unless by special arrangement with these agencies) and the Provincial

Governments and Local-level Governments; and

- (e) shall co-ordinate and monitor the roles and functions of the National Departments and agencies; and
  - (f) may by written instrument, delegate all or any of his powers (except this power of delegation) relating to a district, to the District Administrator of that district; and
  - (g) shall co-ordinate policy formulation, planning and implementation of policies as required by Sections 25 and 106; and
  - (h) shall liaise with the Provincial Government and Local-level Government support services on the overall functions of the Provincial Assembly and the Provincial Executive Council; and
  - (i) shall liaise and consult with the Provincial Treasurer on budget and treasury matters; and
  - (j) shall perform such other functions as are prescribed by this Organic Law or by an Act of the Parliament.
- (2) Subject to Subsection (3), the District Administrator—
- (a) shall be the chief executive officer of the Local-level Governments in a district; and
  - (b) shall be the administrative head of the staff in a district; and
  - (c) is responsible for the efficient management of the administrative service in a district; and
  - (d) shall carry out the roles and functions of the Provincial Administrator, and where appropriate, the roles and functions of the National Departments and agencies, as approved by the Provincial Administrator; and
  - (e) shall co-ordinate the support services for the Local-level Governments within a district; and
  - (f) shall coordinate policy formulation, planning and implementation of Local-level Government policies and plans as required by Sections 33A and 106; and
  - (g) shall liaise and consult with the District Treasurer on budget and treasury matters; and
  - (h) shall perform such other functions as are prescribed by this Organic Law or by an Act of the Parliament.
- (3) In performing the functions under Subsection (2), a District

Administrator shall comply with any—

- (a) policy directions from the Provincial Governments and Local-level Governments; and
- (b) administrative and functional directives from the Provincial Administrator.

#### **75. Provincial Government and Local-level Government staffing.**

The staff of a province and of a district shall consist of—

- (a) the officers of the National Public Service assigned to the province for the purposes by the Departmental Head of the Department responsible for personnel matters under Section 76; and
- (b) the members of the Teaching Service assigned to the province by the Teaching Service Commission to carry out teaching and educational functions; and
- (c) such other personnel as are engaged under Section 78.

#### **76. Assigned officers of the National Public Service.**

(1) Subject to this division, officers of the National Public Service may be assigned on a full time basis to the provinces and districts.

(2) Subject to Subsection (3), the Departmental Head of the Department responsible for personnel matters, after consultation with the Provincial Administrator, may assign or withdraw officers of the National Public Service to perform duties in the provinces and districts.

(3) An Act of the Parliament shall make provision for the terms and conditions and other matters related to the engagement of officers assigned under Subsection (2).

#### **77. Teaching Service.**

An Act of the Parliament shall make provision for—

- (a) the management of the teaching staff in the province; and
- (b) the continued availability of the members of the Teaching Service to teach in—
  - (i) primary schools (including community schools and village self-help and tokples schools); and
  - (ii) other schools subject to the jurisdiction of the Provincial Government or the Local-level Government; and
- (c) the transfer of control over members of the Teaching Service in and

for schools referred to in Paragraph (b).

## **78. Other staff.**

(1) Subject to Subsection (2), the Provincial Administrator may enter into an arrangement with a governmental body other than the National Public Service, or with a non-governmental body for the purpose of engaging other persons to the staff of a province or district.

(2) Prior to entering into an arrangement under Subsection (1), the Provincial Administrator shall consult with the Departmental Head of the Department responsible for provincial government and local-level government matters and the Departmental Head of the Department responsible for personnel matters.

- (3) An Act of the Parliament shall make provision for—
- (a) the manner of appointment of persons referred to in Subsection (1); and
  - (b) the terms and conditions in relation to their appointments.

## **79. General duties of the assigned etc., personnel.**

The personnel assigned or engaged under this Division shall be responsible for—

- (a) implementing the plans and policies of Provincial Governments and Local-level Governments; and
- (b) implementing the policies of the National Government applicable to the province; and
- (c) managing public resources in accordance with law; and
- (d) carrying out such functions and responsibilities required by the Provincial Government or the Local-level Government or prescribed by law; and
- (e) maintaining peace and harmony in the interests of good government.

## **80. National Government functions.**

(1) There shall be established, in a province and in a district, an extended service of the National Departments and agencies to carry out the national government functions and responsibilities, to be headed by the Provincial Administrator and District Administrators.

(2) The role of the Departmental Head of each National Department shall be to—

- (a) formulate the national policies and co-ordinate the implementation of those policies in the provinces and local-level government areas; and
- (b) provide support to the Provincial Administrators and District Administrators with planning, professional service and consultancies, and to maintain standards as prescribed by the national laws; and
- (c) support in research, training and professional development; and
- (d) build up capacity for purposes of carrying out public investment programmes.

(3) An Act of the Parliament shall determine the details of the administrative arrangements, functions and responsibilities between the National Departments, agencies (including law enforcement agencies) and the offices of the Provincial Administrator and District Administrator.

### **81. Provincial Government and Local-level Government support services.**

(1) An Act of the Parliament may make provision for the establishment of support services for Provincial Governments and Local-level Governments.

(2) The functions of the support services established under Subsection (1) shall be to provide professional and executive support services to the Provincial Governments and Local-level Governments.

(3) An Act of the Parliament shall make provision for the extent to which the Provincial Administrator and District Administrator may exercise control over the support services.

#### ***Division 2.—Fiscal Regime.***

##### ***Subdivision A.—Preliminary.***

### **82. Outline of Provincial Government and Local-level Government finances.**

The finances of a Provincial Government and of the Local-level Governments shall consist of—

- (a) receipt from taxation and licensing fees—
  - (i) imposed by provincial laws and local-level laws; and
  - (ii) imposed under delegation from the National Government in accordance with Section 50; and
- (b) grants from the National Government as provided for by Section 91; and

- (c) the proceeds of court fees, fines and penalties as provided for by Sections 49 and 88 and other fees and charges under provincial laws and local-level laws as provided for by Sections 86, 87 and 89; and
- (d) the proceeds of certain borrowings in accordance with Section 101; and
- (e) the proceeds of investments by it (including interest on bank deposits) and income from commercial enterprises conducted by it; and
- (f) such other moneys as are lawfully available to it under this Organic Law or an Act of the Parliament or a provincial law or a local-level law.

***Division 3.—Provincial Government and Local-level Government Taxation.***

**Subdivision A.—Taxation Matters.**

**83. Provincial taxation generally.**

A Provincial Government or a Local-level Government has no power to impose taxation except—

- (a) as provided by this Organic Law; or
- (b) by virtue of a delegation from the National Government.

**84. Government exemptions.**

(1) In this section, "income" includes dividends or other payments in the nature of dividends or returns from investments by the State or a Provincial Government or a Local-level Government in commercial enterprises.

(2) Subject to Subsection (3) and to any agreement between the governments concerned—

- (a) the property and income of the State or of another Provincial Government or a Local-level Government is exempt from taxation under any provincial law or local-level law; and
- (b) any property imported or obtained otherwise in accordance with law by a Provincial Government or a Local-level Government for its own use and not for sale or other disposal is not exempt from customs duties (including import duties) or excise duties imposed by law unless the Provincial Government or the Local-level Government has been exempted by an Act of the Parliament from paying such duties or excise; and
- (c) other property and income of a Provincial Government or a Local-level Government is exempt from taxation under any Act of the

Parliament; and

- (d) a Provincial Government is exempt from stamp duties or similar charges under any Act of the Parliament; and
- (e) the National Government and all Provincial Governments and all Local-level Governments are exempt from retail sales tax imposed under a provincial law or a local-level law so far as goods purchased by the National Government or by a Provincial Government or a Local-level Government for its own use and not for sale are concerned.

(3) Subsection (2) does not apply in relation to property or incomes of, or to property used for the purposes of—

- (a) a commercial enterprise conducted by the State or by a Provincial Government or a Local-level Government; or
- (b) an instrumentality of the National Government or of a Provincial Government or a Local-level Government.

(4) This section does not limit the power of the National Government or a Provincial Government or a Local-level Government to grant any exemption from taxation imposed by it.

#### **Subdivision B.—Provincial and Local-level Taxes.**

### **85. Exclusively Provincial taxes.**

(1) Subject to this Organic Law, a provincial law may impose or provide for the imposition of taxation of all or any kinds referred to in Section 86.

(2) The National Government may not impose or provide for the imposition of tax of any kind referred to in Section 86 except by virtue of a delegation under Section 50 or for those taxes or fees specified in Section 86 as taxes and fees in respect of which the National Government has concurrent power.

### **86. Kinds of Provincial Government taxes and fees.**

(1) A Provincial Government has power to impose all or any of the following taxes and fees:—

- (a) sales and service tax;
- (b) fees for the licensing of places where intoxicating liquor is sold;
- (c) fees for licences to operate or carry on gambling, lotteries and games of chance;
- (d) developed property tax;
- (e) motor vehicle registration licences;

(f) provincial road-users tax.

(1A) The National Government has concurrent power to impose sales and services taxes.

- (2) An Act of the Parliament shall make provision for—
- (a) the manner of imposition of; and
  - (b) details of management and collection of; and
  - (c) any arrangements between the National Government and Provincial Governments; and
  - (d) any arrangements between Provincial Governments and between Provincial Governments and Local-level Governments concerning; and
  - (e) any arrangements between Provincial Governments and between Local-level Governments concerning,

the taxes and fees referred to in Subsection (1).

(3) An Act of the Parliament shall make provision for the rate of taxes and fees and shall ensure that the rates are uniform throughout all provinces.

#### **87. Kinds of Local-level Government taxes and fees.**

(1) A Local-level Government has power to impose all or any of the following taxes and fees:—

- (a) community services taxes, fees and charges;
- (b) taxes on public entertainments for which admission is charged and on places kept for the purposes of such entertainment;
- (c) fees for licences for general trading (other than banks within the meaning of the *Banks and Financial Institutions Act 2000*);
- (d) domestic animal licence fees;
- (e) corporation and personal head tax.

(2) A Local-level Government may impose such other tax or fees by virtue of a delegation from the National Government or a Provincial Government.

- (3) An Act of the Parliament shall provide for—
- (a) the manner of imposition of; and
  - (b) details of management and collection of; and
  - (c) any arrangements between the National Government and Provincial Governments concerning; and
  - (d) any arrangements between Provincial Governments and Local-level Governments concerning; and
  - (e) any arrangements between Provincial Governments and between

Local-level Governments concerning,  
the taxes and fees referred to in Subsection (1).

(4) An Act of the Parliament shall make provision for the rate of taxes and fees imposed under this section and shall ensure that the rates are uniform throughout all Local-level Governments areas.

**Subdivision C.—Other taxes and fees, etc.**

**88. Court fees and fines.**

(1) Where a provincial law or a local-level law provides for the imposition of fines or penalties, or of forfeitures for any offence against any provincial law or local-level law, the amount of fines or penalties shall be paid, or the forfeitures shall be made, as the case may be, to the appropriate Provincial Government or Local-level Government.

(2) Where a provincial law or a local-level law provides for fees to be payable in any court, the amount of the fee shall be paid to the appropriate Provincial Government or Local-level Government.

**89. Other taxes, charges, etc.**

(1) Subject to Subsection (2), a provincial law or a local-level law may impose other taxes, fees or charges.

(2) All taxes, fees or charges referred to in Subsection (1) shall not be imposed unless prior written approval has been obtained from the Commissioner General of Internal Revenue.

**90. Anti-discrimination.**

(1) A provincial law or a local-level law shall not impose a tax, fee or charge under this division that—

- (a) discriminates unjustly between any persons; or
- (b) discriminates against persons who are not residents of the province; or
- (c) discriminates against products originating or coming from outside the province; or
- (d) is set, wholly or partially, at an unreasonably high level; or
- (e) unreasonably uses cross-border sales tax and service fees or charges which disadvantage any other Provincial Government or Local-level Government; or
- (f) is imposed without proper consultation and arrangements with the National Government, and other Provincial Governments and

**Local-level Governments.**

(2) Where the Parliament is of the opinion that a tax, fee or charge imposed under a provincial law or a local-level law contravenes Subsection (1), an Act of the Parliament, that is expressed to be made for the purpose, may make such provision as seems to the Parliament proper to remove or correct the reasons for the contravention of Subsection (1).

(3) The powers of the Parliament under Subsection (2) include power—  
(a) to repeal or otherwise amend the contravening law; or  
(b) to order compensation or restitution to be made by the Provincial Government or Local-level Government.

(4) A question—  
(a) whether or not a provincial law or a local-level law is discriminatory or unreasonable for the purposes of this section; or  
(b) as to the propriety of any Act of the Parliament made for the purpose of this section,

is non-justiciable.

**Subdivision D.—Financial Grants and Assistance.**

**91. Types of provincial and local-level grants.**

(1) The National Government shall make the following grants, in accordance with this Organic Law, to Provincial Governments and Local-level Governments in the form of—

- (a) administrative support grants in accordance with Section 92; and
- (b) development grants in accordance with Section 93; and
- (c) town and urban services grants in accordance with Section 94; and
- (d) economic grants as provided for in Section 97.

(2) The grants specified under Subsection (1) are guaranteed annually to the Provincial Governments and Local-level Governments.

**92. Administration Support Grants.**

(1) For each fiscal year, the National Government shall, out of the moneys lawfully available for the purpose, make unconditional grants to the Provincial Governments and Local-level Governments through the Provincial and District Treasury in the form of—

- (a) provincial and local-level administration grant; and

(b) provincial and local-level staffing grant.

(2) The minimum amount of the provincial and local-level administration grant shall be as calculated in accordance with Schedule 2.

(3) The amount of provincial and local-level staff grant shall be an amount equal to the sum of the salaries and allowances, and the cost of other conditions of employment as prescribed by an Act of the Parliament, for the—

- (a) offices of Provincial and District Administrators as provided for in Section 73; and
- (b) extended service of the National Departments and agencies as provided for in Section 80; and
- (c) Teaching Service as provided for in Section 77; and
- (d) other staff as provided for in Section 78; and
- (e) Provincial Government and Local-level Government Secretariats as provided in Section 81.

(4) This section does not limit the right of a Provincial Government or a Local-level Government to apply any revenues raised by the Provincial Government or the Local-level Government to the cost of their staffing.

### **93. Development Grants.**

(1) For each fiscal year, the National Government shall, out of moneys lawfully available for the purpose, make conditional grants to Provincial Governments and Local-level Governments, through the Provincial and District Treasury for the following purposes:—

- (a) provincial infrastructure development grants;
- (b) local-level government and village services grants;
- (c) other support grants in accordance with Section 95.

(2) The minimum amount of the grants for the purposes of Subsection (1) shall be calculated in accordance with Schedules 3 and 5.

(3) The grants to which Subsection (1)(b) refers shall be paid directly to the Local-level Governments by the Provincial and District Treasury in accordance with an Act of the Parliament.

### **94. Town and Urban Service Grants.**

(1) For each fiscal year, the National Government shall, out of moneys lawfully available for the purpose, make conditional grants to Provincial Governments and Local-level Governments through the Provincial and District Treasury, consisting of—

- (a) town and urban services grants; and
- (b) other support grants in accordance with Section 95.

(2) The minimum amount of the town and urban services grants shall be calculated in accordance with Schedule 4.

(3) The grants to which this section refers shall be paid directly to appropriate Local-level Governments by the Provincial and District Treasury in accordance with an Act of the Parliament.

#### **95. Other Conditional Complementary Support Grants.**

(1) The National Government, on its own initiative or at the request of a Provincial Government or a Local-level Government, may make complementary support grants from the Consolidated Revenue Fund to Provincial Governments and Local-level Governments to support any specific or contingency need in accordance with the terms and conditions as agreed upon by the National Executive Council and any such grant shall be expended only for the purpose for which it was made available, and in accordance with the terms and conditions.

(2) Subject to Subsection (3), in determining the amount of conditional grant in relation to a province and to a year of grant, the following factors shall be taken into account:—

- (a) the Provincial Government and Local-level Government estimates;
- (b) the social and economic indicators of a province or local-level government areas;
- (c) the internal revenues of a Provincial Government and a Local-level Government;
- (d) the financial benefits derived from natural resources;
- (e) the other grants and sharing arrangement of revenues with the National Government and the other Provincial Governments and Local-level Governments;
- (f) the physical infrastructures of a province or a local-level government area;
- (g) the geographical location and the other physical factors of a province or a local-level government area.

(3) The minimum amount of grant under Subsections (1) and (2) shall be determined by the National Economic and Fiscal Commission in consultation with the Departmental Head of the Department responsible for finance matters.

(4) The National Economic and Fiscal Commission shall provide details of the complementary support grants to the Minister responsible for finance matters by 31 March of the year preceding the year in which the grant is to be made.

## **95A. District Support Grants.**

- (1) For each year the National Government shall out of monies lawfully available for the purpose, make a District Support Grant in respect of each open electorate—
- (a) one half of which shall be made to the Joint District Planning and Budget Priorities Committee in the open electorate, for the purpose of funding—
    - (i) the rural action programme; and
    - (ii) the urban rehabilitation programme; and
  - (b) one half of which shall be made to the Member representing the open electorate to be used in accordance with District Support Grant Guidelines issued under Subsection (7).
- (2) The minimum amount of District Support Grant shall not be less than K300,00.00 per Open Electorate and shall be determined by the National Economic and Fiscal Commission in consultation with the Departmental Head of the Department responsible for finance matters and the Departmental Head of the Department responsible for planning matters.
- (3) In determining the amount to which Subsection (1) and (2) refer, the National Economic and Fiscal Commission shall take into consideration the details of other grants made available to the Provincial Governments and Local-level Governments.
- (4) The minimum amount of the District Support Grant for each year for each open electorate shall be determined by the National Executive Council but shall be not less than—
- (a) K300,000.00 for the fiscal year commencing 1 January 1998; and
  - (b) K500,000.00 for each succeeding fiscal year, for each open electorate.
- (5) The National Government shall, within the first month of each quarter of each fiscal year, make a payment of all monies due for the purposes of the District Support Grant for that quarter to the Joint District Planning and Budget Priorities Committee and to the Member representing the open electorate respectively.
- (6) The monies referred to in Subsection (4) shall be—
- (a) paid through the District Treasury; and
  - (b) in the case of—
    - (i) the Joint District Planning and Budget Priorities Committee, paid directly to that Committee by the District Treasury; and

- (ii) the Member representing the open electorate, paid on his behalf in accordance with the District Support Grant Guidelines issued under Subsection (7).

- (7) The National Executive Council shall, from time to time, issue District Support Grant Guidelines relating to the District Support Grant specifying—
- (a) the purposes for which the portion of it payable under Subsection (3)(b) may be used; and
  - (b) the manner in which it shall be disbursed and accounted for; and
  - (c) other administrative arrangements pertaining to it.

### **95B. Provincial Support Grants.**

- (1) For each fiscal year the National Government shall out of the monies lawfully available for the purpose, make a Provincial Support Grant in respect of each provincial electorate—

- (a) one half of which shall be made to the Joint Provincial Planning and Budget Priorities Committee in the provincial electorate; and
- (b) one half of which shall be made to the Member representing the provincial electorate, to be used in accordance with the Provincial Support Grant Guidelines issued under Subsection (5).

- (2) The minimum amount of the Provincial Support Grant for each year for each provincial electorate shall be determined by the National Executive Council but shall be not less than—

- (a) K300,000.00 for the fiscal year commencing 1 January 1998; and
- (b) K500,000.00 for each succeeding fiscal year, for each provincial electorate.

- (3) The National Government shall, within the first month of each quarter in each fiscal year make a payment of all the monies available for the purposes of the Provincial Support Grant under Subsection (1) for that quarter to the Joint Provincial Planning and Budget Priorities Committee and to the Member representing the provincial electorate respectively.

- (4) The monies referred to in Subsection (4) shall be—

- (a) paid through the Provincial Treasury; and
- (b) in the case of—
  - (i) the Joint Provincial Planning and Budget Priorities Committee, paid directly to that Committee by the Provincial Treasury; and
  - (ii) the Member representing the provincial electorate, paid on his behalf in accordance with the Provincial Support Grant

Guidelines issued under Subsection (5).

- (5) The National Executive Council shall, from time to time, issue Provincial Support Grant Guidelines specifying—
- (a) the purposes for which a Provincial Support Grant may be used; and
  - (b) the manner in which it shall be disbursed and accounted for; and
  - (c) other administrative arrangements pertaining to it.

**96. Equitable factor.**

(1) Where a Provincial Government or a Local-level Government is severely disadvantaged or excessively advantaged by the formula components of any of the grants provided for in this subdivision, its rate of funding shall be adjusted respectively by an amount to be determined by the National Economic and Fiscal Commission in consultation with the Departmental Head of the Department responsible for finance matters and the Departmental head of the Department responsible for provincial government and local-level government matters.

(2) In determining the amount to which Subsection (1) refers, the National Economic and Fiscal Commission and the Departmental Heads shall take into consideration the factors as provided for in Section 95(2).

**97. Economic grants.**

(1) For each fiscal year the National Government shall pay to a Provincial Government or a Local-level Government, through the Provincial and District Treasury, conditional economic grants in the form of—

- (a) derivation grants; and
- (b) portion of the Special Support Grants as are provided for in the existing agreements relating to the development of natural resources; and
- (c) any other funds established or appropriated for that purpose.

(2) Derivation grants shall be calculated in accordance with Schedule 6 and the rate shall not exceed 5% of the export value of goods calculated at the Free on Board (F.O.B.) price.

(3) The goods included in the calculation of derivation grants shall exclude royalty products and those products from which the development levies and other grants are paid.

(4) For the purpose of the grant as provided for in Subsection (1) the following shall not be included in the calculation of the derivation grant:—

- (a) goods exported as passengers' baggage or personal effects;
- (b) ships or aircraft stores for the use of the vessel or aircraft on which they are exported;
- (c) imported goods not released from bond for re-export;
- (d) goods comprising or including imported components where the value attributable to those components (exclusive of any increment value due to processing in Papua New Guinea) exceeds 70% of the export value.

**Subdivision E.—Benefits from Natural Resources.**

**98. Benefits derived from natural resources.**

- (1) In this section, unless the contrary intention appears—
  - "developer" means a person who, in accordance with an agreement with the State or with the consent of the State, undertakes the development of a natural resource;
  - "natural resource" includes minerals, petroleum, gas, marine products, water, timber (including forest products), fauna, flora and any other product determined by law to be a natural resource;
  - "own cost" means monies expended by a developer for the purpose of development of a natural resource.
- (2) Subject to Subsection (7), for each fiscal year, a developer of a natural resource, shall pay out of its own cost—
  - (a) to the Provincial Governments and the Local-level Governments of the province or area in which the development is situated, development levies in the form of—
    - (i) infrastructural development levies; and
    - (ii) economic development and land use follow-up levies; and
    - (iii) community and social development levies; and
    - (iv) any other levies as are from time to time determined by national law or by agreement; and
  - (b) to the National Government, Provincial Governments or Local-level Governments, land owners benefits in respect of natural resources obtained, for payment to the owners of the land from which the natural resources were obtained.
- (3) The development levies shall be controlled through a trust fund which shall be managed and administered in accordance with an Act of the Parliament.

(4) A developer shall provide to the National Government, Provincial Governments and Local-level Governments, expertise and professional support as to the use of the development levies.

(5) All land owners benefits in the form of royalties, land owners premiums, compensation and other assistance, established by law or in accordance with an agreement, shall be paid to the land owners less deduction only for nominal tax (if applicable) and any recoveries for the cost incurred by the National Government, Provincial Governments or Local-level Governments, as the case may be.

(6) An Act of the Parliament shall make provision for the rates, management, sharing arrangement, and application of the development levies.

(7) The provision of this section do not affect existing arrangements relating to natural resources which are in force before the coming into operation of this Organic Law.

#### **Subdivision F.—National Government Incomes.**

##### **99. Sharing of National Government Incomes.**

(1) The National Government or its statutory agencies may, in accordance with an Act of the Parliament or by contract, share with Provincial Governments and Local-level Governments the revenues of the National Government generated from the sources within a province and a local-level government area.

(2) An Act of the Parliament shall make further provision for the revenues referred to in Subsection (1), and for the sharing arrangement between the National Government and Provincial Governments and Local-level Governments.

#### **Subdivision G.—Investments.**

##### **100. Investment by Provincial Governments and Local-level Governments.**

Investments by the Provincial Governments and the Local-level Governments shall be regulated by an Act of the Parliament.

#### **Subdivision H.—Loans, Borrowings and Guarantees.**

##### **101. Loans, borrowings and guarantees by Provincial Governments and Local-level Governments.**

Subject to national laws, Provincial Governments and Local-level Governments may borrow or obtain loans and give guarantees in relation to such

borrowings and loans in accordance with an Act of the Parliament.

### **Subdivision I.—Accounting and Internal Control System.**

#### **102. Accounting records.**

(1) A Provincial Government and a Local-level Government shall keep or cause to be kept proper accounts and records of their transactions and affairs, in accordance with an Act of the Parliament.

(2) The annual audited financial and other reports of a Provincial Government and a Local-level Government for each fiscal year shall be submitted to the Provincial Executive Council no later than 30 April in the year succeeding.

(3) An Act of the Parliament shall make provision for the internal organisation, accounting procedures, financial reports and financial management of Provincial Governments and Local-level Governments.

#### **103. Internal control system.**

(1) A Provincial Government shall set up an internal control and audit unit to ensure that, in respect of the Provincial Government and the Local-level Governments within the province—

- (a) financial control mechanisms are in place; and
- (b) proper records are kept for receipts and payments of money and of all other revenue earned but not received, and of all expenditure incurred but unpaid; and
- (c) all transactions adhere strictly to the established procedures of internal control and of accepted accounting practices; and
- (d) all expenditure including unpaid commitments do not exceed budgetary allocations during the fiscal year; and
- (e) there is continuous consultation between the Provincial Treasury and the Provincial Audit Service.

(2) An Act of the Parliament shall make provision for the internal control procedures for Provincial Governments and Local-level Governments.

### **Subdivision J.—Inspection of Accounts.**

#### **104. Inspection of financial records.**

An Act of the Parliament shall make provision for the rights and powers of the Departmental Head of the Department responsible for finance matters and persons authorized by him to inspect and report on accounts and records of a Provincial Government or a Local-level Government.

**Subdivision K.—Financial autonomy and responsibility.**

**105. Financial responsibility.**

(1) Subject to this Organic Law and other Constitutional Laws, a province shall exercise full autonomy within the powers and functions as provided for in this Organic Law including financial responsibility.

(2) An Act of the Parliament shall make provision for the details of financial autonomy of a Provincial Government and a Local-level Government.

**105A. Financial responsibility.**

(1) For each fiscal year there shall be a Provincial Government and a Local-level Government Budget comprising—

(a) estimates of—

- (i) finances proposed to be raised; and
- (ii) expenditure proposed for the provincial and district administration; and
- (iii) expenditure proposed for the rural services; and
- (iv) expenditure proposed for the urban services; and

(b) appropriation for the services of that year in respect of Subsection (1); and

(c) such other supplementary Budgets and Appropriations as are necessary.

(2) For the purposes of Subsection (1), the Chairman of each Joint District Planning and Budget Priorities Committee shall, before 30 November in each year, submit to the Head of Local-level Government and the Governor of the Province, estimates of—

- (a) the expenditure for district administration; and
- (b) the expenditure for the rural action programme; and
- (c) the expenditure for the urban-rehabilitation programme.

(3) Before any Budget or any appropriation is proposed for submission to the Provincial Assembly, the Provincial Executive Council shall, through the Joint Provincial Planning and Budget Priorities Committee, consult with any appropriate Provincial Permanent Committees, 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 by the Provincial Executive Council.

(4) If, at the beginning of a fiscal year, the Provincial Government and Local-level Government have not made provision for public expenditure for their

respective services for that year, the Provincial Executive Council and Local-level Government, as the case may be, may, without authorization other than this Section but in accordance with an Act of the Parliament, expend amounts appropriated out of the General Revenue Fund for the purpose not exceeding in total one-third of its respective budgeted expenditure during the immediately preceding fiscal year.

(5) The authority conferred by Subsection (3) lapses when the Provincial Government and Local-level Government 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.

(6) An Act of the Parliament shall make provision for the details of the financial responsibility of a Provincial Government and Local-level Government.

### **Subdivision L.—Planning and Data System.**

#### **106. Provincial Planning and Data System.**

(1) There shall be established in each province an extended service of the Department responsible for planning matters and of the National Statistical Office.

(2) The functions of these services are to establish and maintain an effective and efficient provincial and local-level planning and data system.

(3) There shall be a census or the count of all natural persons in each province in the year proceeding a general election, other than—

(a) the general election held next after certification of this Organic Law; and

(b) a general election following a dissolution of Parliament under Section 105(1)(b) or (c) (*General Elections*) of the *Constitution*.

(4) An Act of the Parliament shall prescribe the types of records or data to be kept and details of the planning and data control system for the Provincial governments and Local-level Governments.

### **PART V.—CONSTITUTIONAL SUPERVISION, CONTROL AND ACCOUNTABILITY.**

#### ***Division 1.—Leadership Control.***

#### **107. Disclosure of interest by Members of Provincial Governments and Local-level Governments.**

(1) A member of the Provincial Government or the Local-level Government who is, or whose immediate family is, in any way directly or indirectly interested—

- (a) in a contract made or proposed to be made by the Provincial Assembly or Local-level Government, or under consideration by the Provincial Assembly or Local-level Government; or
- (b) in any other matter whatsoever which falls to be considered by the Provincial Assembly or Local-level Government,

shall disclose the nature of the interest at a meeting of the Provincial Assembly or Local-level Government.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Provincial Assembly or Local-level Government, and the member shall not—

- (a) in the case of a contract, take part after the disclosure in the deliberation or decision of the Provincial Assembly or Local-level Government with respect to that contract; and
- (b) in the case of any other matter, take part in any deliberation or decision of the Provincial Assembly or Local-level Government with respect to the matter if the Provincial Assembly or Local-level Government decides that the interest in question might affect prejudicially the member' s interest or consideration of the matter.

### **108. Misconduct in office.**

A member of a Provincial Government or a Local-level Government who contravenes or fail to comply with the requirements of Section 107 is guilty of misconduct in office.

#### ***Division 2.—Administrative Control.***

##### **Subdivision A.—Personnel Management.**

### **109. The assigned personnel.**

The personnel matters including administrative arrangements relating to—

- (a) members of the National Public Service shall be regulated by an Act of the Parliament to be administered by the Departmental Head of the Department responsible for personnel matters and the Public Services Commission; and
- (b) members of the Teaching Service shall be regulated by an Act of the Parliament to be administered by the Teaching Service Commission; and
- (c) other personnel shall be regulated by—

- (i) an Act of the Parliament where applicable; or
- (ii) a contractual arrangement as governed by the national laws.

**Subdivision B.—Provincial and Local-level Service Monitoring Authority.**

**110. Establishment of Provincial and Local-level Service Monitoring Authority.**

- (1) There is established a Provincial and Local-level Service Monitoring Authority within the Department responsible for provincial government and local-level government matters.
- (2) The Authority shall consist of—
  - (a) a representative of each of the following Departmental Heads and National Agencies:—
    - (i) the Department responsible for provincial government and local-level government matters who shall be the Chairman of the Authority;
    - (ii) the Department responsible for personnel matters;
    - (iii) the Department of the Attorney-General;
    - (iv) the Departments responsible for law and order and national security;
    - (v) other Departments and national agencies as determined by the National Executive Council from time to time; and
  - (b) a representative of the Chairman of the Teaching Service Commission; and
  - (c) the Director of the National Training Council; and
  - (d) such other persons (other than officers of the National Public Service) not exceeding three in number appointed by the National Executive Council, by notice in the National Gazette.
- (3) The Authority shall establish in each province an Inspectorate to carry out the functions of the Authority to be administered by the Department responsible for provincial government and local-level government matters.
- (4) The principal functions of the Authority are—
  - (a) to co-ordinate 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 the performance audit of the Provincial Government and Local-level Government affairs; and
  - (d) to develop, co-ordinate 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 the Provincial Governments and the Local-level Governments; and
  - (f) to execute powers and functions that are delegated to it by law; and
  - (g) to make recommendations to the Minister responsible for provincial government and local-level government matters in the strengthening of the decentralisation of government; and
  - (h) to ensure that all appointments to offices in a Provincial Government and a Local-level Government are based on merit.

(5) An Act of the Parliament may make provision for other functions and powers of, and the administrative arrangements for and other matters relating to the Authority and the Inspectorates.

#### **Subdivision C.—Administrative Appeal System.**

##### **111. Provincial and Local-level Administrative Appeal System.**

- (1) The Public Services Commission shall establish and administer an administrative appeal system.
- (2) An Act of the Parliament shall make provision for all matters relating to the administrative appeal system.

#### **Subdivision D.—Provincial Treasury.**

##### **112. Establishment of Provincial and District Treasury.**

- (1) There shall be established in a province an extended service of the National Department responsible for finance matters to be known as the Provincial and District Treasury, to be headed by a Provincial Treasurer.
- (2) The Provincial Treasurer shall be appointed by the Departmental Head of the Department responsible for finance matters after consultation with the Departmental Head of the Department responsible for personnel matters.
- (3) A person shall not be appointed as a Provincial Treasurer unless he is professionally qualified in accounting or economics and has substantial working experience in financial matters or is considered by the Departmental Head of the

Department responsible for finance matters to be a suitably qualified person.

(4) The Departmental Head of the Department responsible for finance matters may assign such additional officers and employees as he considers necessary for purposes of adequately carrying out the functions of financial control under this Organic Law and in accordance with an Act of the Parliament.

(5) The role of the Provincial and District Treasurer is to ensure that public moneys are managed and released strictly in accordance with law.

(6) The Departmental Head of the Department responsible for finance matters shall oversee the affairs of the Provincial and District Treasury.

(7) An Act of the Parliament shall make provision for the specific functions, duties and the administrative arrangements of a Provincial and District Treasury.

(8) An Act of the Parliament shall make provision for the management of public moneys in the provinces.

### **Subdivision E.—Provincial Audit Service.**

#### **113. Provincial Audit Service.**

(1) The Auditor-General, may, in accordance with an Act of the Parliament, establish a Provincial Audit Service in a province.

(2) The Head of a Provincial Audit Service shall be the Provincial Auditor who shall be appointed by the Auditor-General.

(3) The Auditor-General shall assign additional auditors and other officers and employees as he considers necessary for purposes of adequately carrying out audit functions under this Organic Law and in accordance with an Act of the Parliament.

- (4) The functions of the Provincial Audit Service are to—
- (a) maintain an effective and efficient audit service within a province; and
  - (b) extend the provisions of Section 214 (*functions of the Auditor-General*) of the *Constitution*, and of any Act of the Parliament relating to the inspection and audit of the accounts of governmental bodies including commercial statutory authorities in Papua New Guinea and of transactions referred to in Section 214(1) of the *Constitution*; and
  - (c) extend the audits to the accounts, moneys and properties of Provincial Governments and Local-level Governments; and
  - (d) carry out performance audit of the officers of the Public Service and members of the Teaching Service and other State Services assigned to Provincial Governments and Local-level Governments.

- (5) The accounts of Provincial Governments and Local-level Governments are to be audited annually and their accounts may be inspected at any time without notice by the Provincial Audit Service.
- (6) A Provincial Auditor may take such action as he thinks necessary to satisfy himself that all the functions and the operations carried out by the Provincial Governments and the Local-level Governments are being carried out in an efficient and effective manner in accordance with law.
- (7) An Act of the Parliament may make further provisions in relation to the functions and the duties of the Provincial Audit Service not inconsistent with the functions and duties conferred by the relevant provisions of the *Constitution*, this Organic Law and any other law.
- (8) The annual audit report on a Provincial Government and a Local-level Government for a fiscal year shall be prepared by 30 April in the year succeeding and be submitted to—
- (a) the Minister responsible for provincial government and local-level government matters who shall table it in Parliament at its meeting immediately following the receipt by him of the report; and
  - (b) the Minister responsible for finance matters; and
  - (c) the Provincial Government and Local-level Governments concerned; and
  - (d) the National Economic and Fiscal Commission.
- (9) The Provincial Audit Service shall be adequately funded by the National Government.
- (10) The Auditor-General may prosecute any person or persons for any unlawful acts in connection with the affairs of the Provincial Governments and the Local-level Governments concerned.

### **Subdivision F.—Year-end Accounts.**

#### **114. Submission of provincial accounts.**

- (1) Each Provincial Government and Local-level Government is required to submit to the Minister responsible for provincial government and local-level government matters, and the Minister responsible for finance matters, a full statement of the financial position and of the affairs of the province and the local-level government area for each fiscal year in such a form and detail, and containing such other information as is regulated by an Act of Parliament, or as the Ministers require, before the final year sitting of the Parliament during the next fiscal year.

(2) Non-compliance with the provisions of Subsection (1) shall empower the Minister responsible for finance matters in consultation with the Minister responsible for provincial government and local-level government matters, to withhold, from payment to a Provincial Government or Local-level Government until compliance is secured, half of the funds appropriated for that fiscal year for the province or local-level government area.

(3) The statement referred to in Subsection (1) shall be accompanied by a full audit report.

(4) A copy of the statement referred to in Subsection (1) and of the audit report shall be made available to the National Economic and Fiscal Commission.

### ***Division 3.—Control of Natural Resources.***

#### **115. Control of natural resources.**

(1) Where there is a proposal to develop a natural resource in a province or provinces, the appropriate National Minister designated by the National Executive Council shall consult with the Provincial Government in the province or provinces where the natural resource is situated.

(2) The National Government, and the Provincial Governments and the Local-level Governments in the province or provinces where the natural resource is situated, shall liaise fully with the landowners in relation to the development of the natural resources.

(3) In this section, unless the contrary intention appears, "natural resource" has the same meaning as it has in Section 98.

#### **116. Resource development process.**

(1) For the purposes of Section 115, an Act of the Parliament shall make provision for—

- (a) the type or types of development to which Section 115 applies; and
- (b) the consultation process; and
- (c) the establishment of natural resource development forums and the procedures of the forums; and
- (d) the extent to which the parties may participate in the development of the natural resources; and
- (e) such other matters relating to the subject as are necessary.

(2) The National Economic and Fiscal Commission shall carry out a cost and benefit analysis for and in relation to the development of natural resources.

### ***Division 4.—Inter-Government Relationship.***

## **Subdivision A.—Fiscal Relationship.**

### **117. National Economic and Fiscal Commission.**

- (1) There is established a National Economic and Fiscal Commission.
- (2) The Commission shall consist of—
  - (a) a Chairman who shall be a working Chairman; and
  - (b) a qualified accountant with a minimum of 10 years' experience; and
  - (c) an economist; and
  - (d) a lawyer nominated by the Papua New Guinea Law Society; and
  - (e) a qualified engineer nominated by the Society of Professional Engineers; and
  - (f) a social researcher from the National Research Institute; and
  - (g) the Governor of the Bank of Papua New Guinea; and
  - (h) the Departmental Head of the Department responsible for planning matters; and
  - (i) such other persons, not exceeding two, who shall be nominated by the Minister responsible for the National Economic and Fiscal Commission.
- (3) The members of the Commission shall be appointed by the Head of State acting on the advice of the National Executive Council, by notice in the National Gazette.
- (4) The members of the Commission shall appoint one of their number to be the Deputy Chairman of the Commission.
- (5) The Commission shall have the power to summon a person or persons to provide relevant information, reports and other documents for the purposes of the Commission.
- (6) In the exercise and performance of its powers, functions, duties and responsibilities, the National Economic and Fiscal Commission shall not be subject to direction or control by any person or authority.
- (7) The Commission shall meet not less than three times a year in accordance with an Act of the Parliament.
- (8) In addition to the functions as defined by Section 187H(1) of the *Constitution*, the Commission shall perform the following functions:—
  - (a) in relation to economic and fiscal matters, shall—

- (i) provide assessment and views on national macro and micro economic issues and their relevance on the overall development of the rural and urban communities; and
  - (ii) consider and co-ordinate requests by Provincial Governments and Local-level Governments for foreign grants, loans and other financial assistance for development purposes; and
  - (iii) ensure that Provincial Governments and Local-level Governments obtain a fair share of national wealth and make recommendations to the National Executive Council on the allocation of grants to Provincial Governments and Local-level Governments; and
  - (iv) recommend suitable economic development strategies and sound fiscal management policies to the Minister responsible for finance matters; and
  - (v) carry out cost and benefit analysis on the development of all natural resources and the impact of such development on the national development and make such analysis available to the National Executive Council; and
  - (vi) review public accounting and related practices; and
  - (vii) make yearly reports and recommendations to the National Executive Council through the Minister responsible for finance matters; and
- (b) in relation to social, administrative and planning matters, shall—
- (i) assist the Provincial and Local-level Service Monitoring Authority with assessment and views on the planning and implementation systems of the Provincial Governments and Local-level Governments; and
  - (ii) establish and maintain a gradation system for the purpose of classifying provinces and districts according to the stages of development of each; and
  - (iii) assist the Provincial and Local-level Service Monitoring Authority in carrying out its other functions; and
  - (iv) provide advice to the Minister responsible for provincial government and local-level government matters as and when required; and
- (c) any other functions given to it by law.
- (9) The Commission shall at the end of each fiscal year furnish to the

Minister responsible for finance matters a report on the working of the Commission for that year.

(10) The Minister shall cause a copy of the report furnished under Subsection (9) to be tabled in the Parliament at its next sitting and shall give copies of the report to other relevant Ministries and the Provincial Governments and the Local-level Governments.

(11) An Act of the Parliament shall make provision for the terms and conditions of appointment of members and shall establish an office of the Secretariat to the National Economic and Fiscal Commission.

### **Subdivision B.—Mediation and Arbitration Power.**

#### **118. Mediation and Arbitration Tribunal.**

(1) There is established a Provincial and Local-level Government Mediation and Arbitration Tribunal for the purposes of this Organic Law.

(2) All disputes between—

(a) the National Government and one or more Provincial Governments;

or

(b) the National Government and one or more Local-level Governments;

or

(c) a Provincial Government and one or more Local-level Governments;

or

(d) between Provincial Governments; or

(e) between Local-level Governments,

shall be referred to the Provincial and Local-level Government Mediation and Arbitration Tribunal.

(3) An Act of the Parliament shall make provision for the composition, powers, functions and responsibilities of the Tribunal and of the mediation and arbitration process.

(4) A party or parties to a dispute which has been mediated or arbitrated by the Tribunal, shall not have access to any court for further hearing of the dispute, unless it is shown that the process of mediation and arbitration has been exhausted and that there is no possibility of settling the dispute as provided under this section.

### **PART VI.—FACILITATIVE PROVISIONS.**

#### ***Division 1.—Report on the Workings of the Provincial Governments and Local-level Governments.***

## **119. Reports on the affairs of Provincial Governments and Local-level Governments.**

(1) Each Provincial Government shall, by 30 June of each year, furnish to the Minister responsible for provincial government and local-level government matters, a report for the year ending 31 December preceding on the affairs of the Provincial Government and the Local-level Governments in the province.

(2) The Minister shall cause a copy of the report furnished under Subsection (1) to be laid before the Parliament before 31 December of the year in which it is furnished to him.

(3) A copy of the report furnished under Subsection (1) shall be furnished to the Minister responsible for financial matters, the relevant heads of all National Government Departments and national agencies, the National Economic and Fiscal Commission, the Provincial Government and any other relevant public bodies.

(4) An Act of the Parliament shall make provision for the form and contents of a report under Subsection (1).

(5) Failure to submit a report as required by this section shall constitute a ground for withdrawal of functions, powers and finances as provided by this Organic Law.

### ***Division 2.—Repeal.***

## **120. Repeal.**

- (1) Subject to this Part, the following laws are repealed:—
- (a) *Organic Law on Provincial Government*;
  - (b) *Organic Law on Provincial Government (Amendment No. 1) Law*;
  - (c) *Organic Law on Provincial Government Amendment No. 2 (Suspension and Re-establishment) Law*;
  - (d) the Constitutions of all previous Provincial Governments.
- (2) Subject to this Part, the repeal effected by Subsection (1) 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 operations of the repealed provisions or anything duly done or suffered under them; or
  - (c) affect any right, privilege, obligation or liability acquired or incurred or offence committed against the repealed provision; or

- (d) 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.
- (3) In particular, the repeal effected by Subsection (1) does not:—
  - (a) affect any liability under Division III.2 (*Leadership Code*) of the *Constitution*; or
  - (b) prevent the Ombudsman Commission or any tribunal established for the purpose of that Division from investigating any act, to which the repeal provisions were relevant.
- (4) A reference in any law to the Organic Laws repealed by Subsection (1)(a), (b) and (c) or to any provision in these laws shall, insofar as is appropriate, be read as a reference to this Organic Law and to the corresponding provision of this Organic Law.

***Division 3.—Interim, Savings and Transitional Arrangements.***

**Subdivision A.—Interpretation.**

**121. Interpretation.**

In this Division and in Section 120, unless the contrary intention appears—

"interim period" means the period on and from the date of coming into operation of this Organic Law in relation to all provinces other than Bougainville Province and the National Capital District until the date fixed for the return of the writs following the next general election held after that date of coming into operation;

"previous Provincial Assembly" means a Provincial Assembly established under the repealed laws and in existence immediately before the coming into operation of this Organic Law;

"previous Provincial Government" means a Provincial Government established under the repealed laws and in existence immediately before the coming into operation of this Organic Law, and includes a Provincial Government which was immediately before that coming into operation, under suspension;

"repealed laws" means the Organic Laws repealed by Section 120(1)(a), (b) and (c).

**Subdivision B.—Abolition of Provincial Governments Constituted**

**under the repealed Laws.**

**122. Abolition of Provincial Governments as constituted under the Repealed Laws and seats of members of those Provincial Governments.**

- (1) All the Provincial Governments as constituted under the repealed Organic Law cease to exist upon the coming into operation of this Organic Law.
- (2) In all Provinces, whether or not the Provincial Government is suspended, the seat of each member of the previous Provincial Government shall cease to exist upon the coming into operation of this Organic Law.
- (3) Each member of a previous Provincial Government shall be paid, as compensation for loss of office—
  - (a) such amount; and
  - (b) for such period of the incompleting term of office, not exceeding six months,as determined by the Salaries and Remuneration Commission.

**Subdivision C.—Interim Provincial Assembly.**

**123. Interim Provincial Government.**

- (1) There is established in each province an Interim Provincial Government for the purposes of governing the province in accordance with the provisions of this Subdivision for the interim period.
- (2) An Interim Provincial Government shall comprise an Interim Provincial Assembly and an Interim Provincial Executive Council.

**124. Powers of the Head of State.**

- (1) Until the Interim Provincial Assembly is constituted in accordance with Section 125, the legislative powers, functions and duties of a Provincial Assembly under this Organic Law are vested in and exercised by the Head of State acting on the advice of the National Executive Council.
- (2) Until the Interim Provincial Executive Council is constituted in accordance with Section 128, the executive powers and functions of the Provincial Executive Council under this Organic Law shall be vested in and exercised by the Head of State acting on the advice of the National Executive Council.

**125. Composition of Interim Provincial Governments.**

- (1) An Interim Provincial Government established under Section 123 which

succeeds a previous Provincial Government shall comprise—

- (a) all members of the National Parliament from that province; and
  - (b) such number of—
    - (i) members of the previous Provincial Government; or
    - (ii) heads of Local-level Governments; or
    - (iii) prominent persons, selected in accordance with Subsection (2) and appointed by the Head of State, acting on the advice of the National Executive Council; and
  - (ba) one representative of the urban Local-level Governments, nominated by the Papua New Guinea Urban Authorities Association, appointed by the Head of State acting on the advice of the National Executive Council; and
  - (c) three persons—
    - (i) from a list comprising not less than five names of persons submitted by the Provincial Executive Council concerned; and
    - (ii) appointed by the Head of State acting on the advice of the National Executive Council; and
  - (d) the person occupying the office of Premier in the previous Provincial Government.
- (2) For the purposes of Subsection (1)(b), where—
- (a) the members of the previous Provincial Government are heads of Local-level Governments, the Open Member, in consultation with the Member of Parliament representing the province, shall select such number from the members of the previous Provincial Government to become members of the Interim Provincial Government; and
  - (b) there are no Local-level Governments in an open electorate, or part of an open electorate, the Open Member shall, in consultation with the member of the Parliament representing the provincial electorate, select—
    - (i) such number from the members of the previous Provincial Government; and
    - (ii) any other person with high standing, from within that open electorate or part of that open electorate as the case may be, to be members of the Interim Provincial Government; and
  - (c) there are Local-level Governments existing in an open electorate, and the members of the previous Provincial Government are not heads of

the Local-level Government, the Open Member shall, in consultation with the member of the Parliament representing the provincial electorate, select such number from amongst the heads of Local-level Governments to be members of the Interim Provincial Government.

(3) The member of the Parliament representing the provincial electorate who is not disqualified by virtue of Section 19 shall be the Interim Governor of the Province and Chairman of the Interim Provincial Assembly, unless he decides not to take up the position within 21 days from the date of the establishment of the Interim Provincial Assembly in which case the Assembly shall elect from among the other Members of Parliament an Interim Governor of the Province who shall also be the Chairman of the Interim Provincial Assembly.

(4) In the event that the other Members of Parliament referred to in Subsection (3) are disqualified by virtue of Section 19 or are otherwise unwilling or unable to take up the position of Interim Governor and Chairman of the Interim Provincial Assembly, the members of the Interim Provincial Assembly shall elect from among their members referred to in Subsection (1)(b), an Interim Governor of the Province who shall also be the Chairman of the Interim Provincial Assembly.

(5) Subject to Subsection (5A), the Premier of the previous Provincial Government shall become the Interim Deputy Governor of the Province and the Interim Deputy Chairman unless he decides not to be a member within 21 days from the date of establishment of the Interim Provincial Assembly in which case, the Interim Provincial Government shall elect the Interim Deputy Governor of the Province who shall also be the Interim Deputy Chairman, from amongst the members referred to in Subsection (1)(b).

(5A) An Interim Provincial Assembly may, by a two-thirds absolute majority vote, resolve that the Premier of the previous Provincial Government shall not continue to hold the offices of Interim Deputy Governor and Interim Deputy Chairman and where an Interim Provincial Assembly so resolves the Premier ceases to hold such offices and the Interim Provincial Assembly shall elect an Interim Deputy Governor, who shall be Interim Deputy Chairman, from amongst the members referred to in Subsection (1)(a) and (b).

(6) The total number of members of an Interim Provincial Government shall not exceed the total membership of the previous Provincial Government.

(7) The remuneration, privileges and other benefits of office of the members of the Interim Government shall be as determined by the Salaries and Remuneration Commission.

(8) The Interim Provincial Government shall determine its own procedures, quorums and number of meetings.

(9) The Member of the Parliament representing the provincial electorate who holds a position mentioned in Section 19(1)(b) may resign that position to become the Interim Governor and Chairman of an Interim Provincial Government.

## **126. Functions and powers of Interim Provincial Government.**

(1) The Interim Provincial Government shall perform the functions and exercise all or any of the powers of a Provincial Government under this Organic Law during the interim period.

(2) An Interim Provincial Government shall exercise in particular all the powers that are necessary for the purpose of establishing an administrative base to facilitate the operation of this Organic Law.

(3) An Interim Provincial Government may exercise all or any of the powers in Division III.4 during the interim period.

## **127. Meetings.**

The Head of State, acting on advice, shall call the first meeting of an Interim Provincial Government within 60 days immediately following the coming into force of this Organic Law, and there shall be not less than four meetings of the Interim Provincial Government in each period of 12 months calculated on and from the date of coming into operation of this Organic Law.

## **128. Interim Provincial Executive Council.**

- (1) An Interim Provincial Executive Council shall consist of—
- (a) the Interim Chairman; and
  - (b) the Interim Deputy Chairman; and
  - (c) the Chairman of each of the permanent committees of the Interim Provincial Executive Council; and
  - (d) not less than two Open Members, who are not disqualified under Section 19(1)(b), elected by the Interim Provincial Assembly.

(2) An Interim Provincial Executive Council shall exercise and perform all the powers and functions of the Provincial Executive Council under this Organic Law.

- (3) For the purposes of Subsection (2), the Interim Chairman and the Interim

Deputy Chairman shall exercise and perform all the powers and functions of the Governor and Deputy Governor, respectively.

(4) The total membership of the Interim Provincial Executive Council shall not exceed one-third of the total membership of the Interim Provincial Assembly.

**128A. System of Committees for Interim Provincial Executive Councils.**

- (1) An Interim Provincial Executive Council may—
  - (a) establish an Interim Joint Provincial Planning and Budget Priorities Committee; and
  - (b) establish such number of other interim committees (including interim permanent committee) as it considered necessary to carry out its functions; and
  - (c) determine all matters relating to such interim committees.
- (2) The interim committees of the Interim Provincial Executive Council—
  - (a) in the case of the Interim Joint Provincial Planning and Budget Priorities Committee—shall consist of the members referred to in Section 25(2); and
  - (b) in any other case—shall consist of the members of the Interim Provincial Assembly.
- (3) Subject to any directions of the Interim Provincial Executive Council—
  - (a) the Interim Joint Provincial Planning and Budget Priorities Committee, has and may exercise all or any of the powers and functions of the Joint Provincial Planning and Budget Priorities Committee; and
  - (b) all the other interim committees of the Interim Provincial Executive Council have and may exercise all or any of the powers and the functions of the committees of the Provincial Executive Council,

constituted in accordance with Section 25.

**128B. Interim Joint District Planning and Budget Priorities Committee.**

(1) There shall be established, in each district, an Interim Joint District Planning and Budget Priorities Committee.

(2) The composition, functions and powers of an Interim Joint District Planning and Budget Priorities Committee shall be the same as the composition, functions and powers of a Joint District Planning and Budget Priorities Committee constituted in accordance with Section 33A.

### **129. Administrative system.**

(1) Subject to this section, the administrative system (including staff) which provided professional and technical services to the previous Provincial Government under the laws repealed by Section 120 shall continue to provide the same services to the Interim Provincial Government.

(2) The existing administrative and financial system (including staff and financial arrangements) shall cease to operate after one year following the coming into force of this Organic Law or when the new administrative system is in place, whichever shall first happen.

### **130. Provincial Government and Local-level Government Properties, Assets and Liabilities.**

(1) Subject to this Organic Law, all assets and obligations and liabilities of the Provincial Government established under the repealed Laws immediately before the coming into operation of this Organic Law are, on that coming into operation, transferred to and become assets, obligations and liabilities of the Interim Provincial Government.

(2) Subject to this Organic Law, all assets and obligations and liabilities of a Local-level Government which was in existence under the *Local Government Act* (Chapter 57) or by or under a provincial law, are, on the coming into operation of this Organic Law, transferred to and become assets, obligations and liabilities of a Local-level Government continued in existence in accordance with the *Local-level Government System (Interim and Transitional Arrangements) Act* 1995.

### **131. Continuity of Government.**

(1) For all intents and purposes, the Interim Provincial Government continues to operate as a successor of the former Provincial Government as if the latter body had been constituted as the former body in accordance with the provisions of this Organic Law.

(2) Nothing in this Division affects the continued existence and operation, during the interim period, of Local-level Governments in whatever form at the date of the coming into force of this Organic Law.

(3) Notwithstanding Subsection (2), an Interim Provincial Assembly shall

within the interim period, take all action necessary to ensure compliance with the requirements of Section 26(4) and (5).

### **132. Adoption of former Provincial and other laws.**

(1) Subject to this section, notwithstanding the repeal of the laws referred to in Section 120, the laws of a previous Provincial Government (other than the Constitution of a previous Provincial Government) in force immediately before the coming into operation of this Organic Law shall continue in force up to and including 60 days after the commencement of this Organic Law.

(2) Any references in laws continued in operation under Subsection (1) to offices or bodies established under the laws repealed by Section 120 shall be read as references to corresponding offices or bodies established under this Organic Law.

(3) An Interim Provincial Government may adopt or re-enact the laws of a previous Provincial Government to the extent that they comply with the provisions of this Organic Law.

#### **Subdivision D.—Savings, etc.**

### **133. Saving of contracts etc.**

All contracts and agreements, other than contracts of employment, entered into, made with or addressed to the previous Provincial Government are, to the extent that they were immediately before the date of coming into operation of this Organic Law binding on and enforceable against the previous Provincial Government binding on and of full force and effect against or in favour of the Interim Provincial Government as fully and effectually as if the Interim Provincial Government had been a party to them or bound by them or entitled to the benefit of them.

### **134. Registration of title of land.**

(1) Where any property vested in the previous Provincial Government is land registered under the *Land Registration Act* 1981 the Registrar of Titles, shall, without formal transfer, on application in that behalf by the Interim Provincial Government, enter the Interim Provincial Government on the register kept under that Act, and on entry or registration, grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

(2) No stamp duty or other duty, tax or fee is payable on a registration made under Subsection (1).

### **135. Ending legal proceedings.**

Where, immediately before the commencement date, any arbitration, action or proceeding was pending or existing by, against or in favour of the previous Provincial Government, it does not, on the commencement date, abate or discontinue but it may be prosecuted, continued or enforced by, against or in favour of the Interim Provincial Government.

### **136. Transfers etc., from Interim Provincial Government to Provincial Government.**

On the expiration of the interim period, the savings and transitional provisions of this Division as applying between previous Provincial Governments and Interim Provincial Governments shall apply as appropriate between Interim Provincial Governments and Provincial Governments and the provisions shall be read to give effect to this.

#### **136A. Application of other laws.**

Where—

- (a) any Organic Law (other than this Organic Law), Act or subordinate enactment; or
- (b) any instrument or document wherever made or executed,

contains a reference, express or implied, to—

- (c) a provision of; or
- (d) an office established by or under, the repealed laws,

that reference shall, except where the context otherwise requires, be read as a reference to the equivalent provision or office under this Organic Law.

### **137. Directions.**

The Head of State, acting on advice, may, by notice in the National Gazette, issue such directions not inconsistent with any express provision of this Organic Law, as the National Executive Council considers are necessary or desirable for giving effect to the interim arrangements provided by this Part.

#### ***Division 4.—Interpretation of Provincial Laws and Local-level Laws.***

### **138. Interpretation of Provincial Laws and Local-level Laws.**

All provincial laws and local-level laws shall be read and construed subject to this Organic Law and to the other Constitutional Laws, and so as not to exceed the authority to make them properly given, to the extent that where any such law would, but for this section, have been in excess of the authority so given it is nevertheless a valid law to the extent to which it is not in excess of that authority.

***Division 5.—Consultation Generally.***

**139. Consultation generally.**

(1) The Minister responsible for provincial government and local-level government matters shall, if so requested by the Head of a Provincial Executive, consult with the Provincial Executive Council on any proposed Act of the Parliament relating to subjects to which Section 42 and 44 apply.

(2) Failure to comply with Subsection (1) in relation to a law does not invalidate the law.

***Division 6.—Notice of Provincial Laws and Local-level Laws.***

**140. Notice of Provincial Laws and Local-level Laws.**

(1) Failure to comply with this section in relation to a law does not invalidate the law.

(2) If—

(a) a Provincial Government or a Local-level Government asks the Minister responsible for provincial government and local-level government matters that the provisions of this section be waived in relation to any proposed provincial law or local-level law, or to any proposed amendments to a proposed provincial law or a local-level law; and

(b) the Minister thinks that it is in the public interest to do so,

the Minister may, in writing, waive the requirements of this section in relation to the proposed law or to all or any amendments to the proposed law.

(3) Before a provincial law or a local-level law is made, the Provincial Government or the Local-level Government shall give to the Minister responsible for provincial government and local-level government matters by registered post, or otherwise in the quickest practicable manner, copies of the text of the proposed law and of any amendments made or proposed to be made to the proposed law.

***Division 7.—Commencement of Provincial Laws and Local-level Laws.***

**141. Commencement of Provincial Laws and Local-level laws.**

(1) For the purposes of this section, "law relating to fiscal matters" means a law authorizing the appropriation of monies.

(2) Notwithstanding anything in any provincial law or local-level law, a

Provincial Government or a Local-level Government has full powers to make laws as provided for in this Organic Law.

- (3) The—
- (a) Provincial Government, in the case of a provincial law; and
  - (b) Local-level Government, in the case of a local-level law,

shall serve a copy of the law, physically, on—

- (c) the Minister—
  - (i) responsible for provincial government and local-level government matters in the case of a law not relating to fiscal matters; or
  - (ii) responsible for finance matters in the case of a law relating to fiscal matters; or
- (d) the Attorney-General; or
- (e) both the appropriate Minister under Paragraph (c) and the Attorney-General.

(4) Subject to Subsection (5), a provincial law or a local-level law shall not take effect until it is approved—

- (a) in the case of a provincial law or local-level law not relating to fiscal matters—by the Minister responsible for provincial government and local-level government matters; or
- (b) in the case of a provincial law or local-level law relating to fiscal matters—by the Minister responsible for finance matters.

(5) Where—

- (a) in the case of a provincial law or local-level law not relating to fiscal matters—the Minister responsible for provincial government and local-level government matters; or
- (b) in the case of a provincial law or local-level law relating to fiscal matters—the Minister responsible for finance matters,

has not made a decision as to whether or not to approve a provincial law or local-level law within 60 days on and from the date on which the law was served on him or on the Attorney-General, the law shall be deemed to have been approved by him.

## **SCHEDULE 1**

### **MINIMUM BASE FIGURES FOR PROVINCIAL GOVERNMENT AND LOCAL-LEVEL GOVERNMENT GRANTS.**

#### **Sch. 1.1 Interpretation of Schedules 1 to 6.**

In these schedules—

- "Provincial Government or Local-level Government function" means an activity or a programme being carried out by a Provincial Government or a Local-level Government as required by this Organic Law, or an activity or programme being delegated or transferred to the Provincial Government or the Local-level Government to carry out by the National Government or by contract;
- "the base year" for purpose of calculating a base figure, in relation to an annual grant for a Provincial Government or a Local-level Government activity, shall be the year immediately following the National Census;
- "the minimum base figure" in relation to an annual grant for a Provincial Government or a Local-level Government activity, shall be an amount calculated—
- (a) in accordance with the schedules for the base year; and
  - (b) for any subsequent year of grant, the adjusted base figure for the preceding year of grant;
- "the adjusted base figure" in relation to an annual grant for a Provincial Government and a Local-level Government activity, shall be an amount calculated in accordance with the formula for the base year and as adjusted by the percentage increase or decrease in the cost of living or by the percentage increase or decrease in the payments to the Consolidated Revenue Fund, in the year two years before the year of grant;
- "the population figure" for purposes of calculating the minimum base grants shall be the most recent national census figures;
- "the effective land mass" for purposes of calculating the minimum base grants shall be the square kilometre of certified land mass of the province;
- "the effective sea area" for the purpose of calculating the minimum grants shall be 25,000 square kilometres, applicable only to provinces with the population less than 100,000;
- "maritime provinces" shall be the provinces of Manus, New Ireland, West New Britain, East New Britain, Milne Bay and Bougainville;
- "adjusted minimum grant figure", for activities of the Provincial Governments and the Local-level Governments in relation to a year of grant means the adjusted base figure calculated for that year for each Provincial Government and Local-level Government in accordance

with the following schedules:—

Schedule 2 Minimum Provincial Government and Local-level Government Administration Grant;

Schedule 3 Minimum Provincial Infrastructure Development Grant;

Schedule 4 Minimum Town and Urban Service Grant;

Schedule 5 Minimum Local-level Government and Village Services Grant;

Schedule 6 Derivation Grant.

### **Sch. 1.2 Serious Down-turn in the National Economy.**

Where there is serious down-turn in the National Economy, the National Executive Council in consultation with the National Economic and Fiscal Commission shall determine the level of funding for the Provincial Governments and the Local-level Governments in accordance with the formula of the schedules.

### **Sch. 1.3 Cost of Living.**

The cost of living is obtained by averaging the Consumers Price Index and the Statisticians Import Price Index, adjusted (if the National Statistician thinks it proper to do so for the purpose of comparison) to make allowance for any changes in the bases of calculation.

### **Sch. 1.4 Price Index.**

If the Consumers Price Index or the Statistician's Price Index is not available at any time, the National Statistician shall calculate the increase in the cost of living for the purpose of providing information to the Minister responsible for finance matters and the National Economic and Fiscal Commission for the purpose of determining the minimum figure for the year grant.

### **Sch. 1.5 National Statistician not subject to Control.**

The National Statistician is not subject to the control by any person or authority as to the manner in which calculations are to be made for determining the adjusted minimum base figure.

### **Sch. 1.6 Consolidated Revenue Fund.**

The Consolidated Revenue Fund shall consist of—

- (i) income tax and corporate taxes; and
- (ii) customs and excise duties; and

- (iii) monies paid into the Consolidated Revenue Fund from the Mineral Resources Stabilisation Fund in accordance with the *Mineral Resources Stabilisation Act* (Chapter 194); and
- (iv) non-repayable grants (conditional and unconditional) from foreign governments.

### **Sch. 1.7 Increase in the Cost of Living or Change in Consolidated Revenue Fund.**

Adjustment to the base figure shall only be adjusted proportionate to the decrease or increase in the cost of living or the Consolidated Revenue Fund, by the Minister responsible for finance matters after due consultation with National Economic and Fiscal Commission.

Sec 92(2)

## **SCHEDULE 2 THE CALCULATION OF THE MINIMUM BASE FIGURE FOR PROVINCIAL GOVERNMENT AND LOCAL-LEVEL GOVERNMENT ADMINISTRATION GRANT.**

### **Sch. 2.1 Minimum Base figure for Provincial Government and Local-level Government Administration Grant.**

The base figure for a Provincial Government and a Local-level Government administration activities, in relation to a province means the amount calculated in accordance with the formula:

- (F) + (AB + YZ + SR) multiply by 1 + C; or
- (F) + (AB + YZ + SR) plus or minus D.

Where:—

- F = Conditional Complementary Support Grant as provided for in Section 95; and
- A = Total population of the province; and
- B = Minimum figure of K15.00 per head of the population; and
- Y = Square kilometre of total land mass in the province; and
- Z = Minimum figure of K15.00 per square kilometre of the land mass; and
- S = Effective sea area expressed in square kilometres; and
- R = Minimum figure of K20.00 per square kilometre of the effective sea area in the province; and
- C = The equitable factor, as provided for in Section 96, expressed as percentage; and

D = The equitable factor, as provided for in Section 96 expressed as an absolute kina amount.

### **Sch. 2.2 Purpose of the Grant.**

This grant shall be applied to the cost of provincial and district administration excluding the costs of salaries and allowances, and other conditions of employment of staff.

### **Sch. 2.3 Administration Cost.**

For the purpose of fair distribution, the cost of maintaining provincial headquarters administration shall not exceed the average cost of maintaining administrative service in all districts.

Sec. 93(2)

## **SCHEDULE 3 THE CALCULATION OF THE MINIMUM BASE FIGURE FOR PROVINCIAL INFRASTRUCTURE GRANT.**

### **Sch. 3.1 Base figure for Provincial Infrastructure Grant.**

The base figure for provincial infrastructure development activities, in relation to a province means the amount calculated in accordance with the formula:—

(F) + (AB + YZ + SR) multiply by 1 + C; or

(F) + (AB + YZ + SR) plus or minus D.

Where:—

F = Conditional Complementary Support Grant as provided for in Section 95; and

A = Total population of the province; and

B = Minimum figure of K20.00 per head of the total population of the province; and

Y = Square kilometre of total land mass in the province; and

Z = Minimum figure of K20.00 per square kilometre of the land mass in the province; and

S = Effective sea area expressed in square kilometres; and

R = Minimum figure of K20.00 per square kilometre of the effective sea area in the province; and

C = The equitable factor, as provided for in Section 96 expressed as a percentage; and

D = An equitable factor, as provided for in Section 96 expressed as an absolute kina amount.

### **Sch. 3.2 Purpose of the Grant.**

The grant shall be applied by a Provincial Government according to the priorities of a province in the development of administrative and physical infrastructure within the province according to the following:—

- (a) 50% to social services and administrative infrastructure;
- (b) 50% to land and other physical infrastructure development.

Sec. 94(2).

## **SCHEDULE 4 THE CALCULATION OF THE MINIMUM BASE FIGURE FOR TOWN AND URBAN SERVICES GRANT.**

### **Sch. 4.1 Minimum base figure for Urban and Town Services Grant.**

The base figure for provincial towns and urban authorities activities, in relation to a province means the amount calculated in accordance with the formula—

- (F) + (AB) multiply by 1 + C; or
- (F) + (AB) plus or minus D.

Where:—

- F = Conditional Complementary Support Grant as provided for in Section 95; and
- A = The population of the Town or Urban District; and
- B = Minimum figure of K20 per head of the urban population; and
- C = The equitable factor, as provided for in Section 96 as a percentage; and
- D = An equitable factor, as provided for in Section 96, expressed as an absolute kina amount.

### **Sch. 4.2 Purpose of the Grant.**

The grant shall be applied by the Town and Urban Authorities according to their planned priorities and shall be distributed according to the following:—

- (a) 50% to social service infrastructure development;
- (b) 50% to improvement to general city services.

Sec. 93(2)

## **SCHEDULE 5 THE CALCULATION OF THE MINIMUM BASE FIGURE FOR LOCAL-LEVEL GOVERNMENT AND VILLAGE SERVICES GRANT.**

### **Sch. 5.1 Minimum base figure for Local-level Government and Village Services Grant.**

The grant figure for Local-level Government activities, in relation to a province and to a year of grant, means the amount calculated in accordance with the formula—

- (F) + (AB + YZ + SR) multiply by 1 + C; or
- (F) + (AB + YZ + SR) plus or minus D.

Where:—

- F = Conditional Complementary Support Grant as provided for in Section 95; and
- A = The population of the province; and
- B = Minimum figure of K20 per head of population; and
- Y = Square kilometre of total land mass in the province; and
- Z = Minimum figure of K20.00 per square kilometre of the land mass; and
- S = Effective sea area expressed in square kilometres; and
- R = Minimum figure of K20.00 per square kilometre of the effective sea area in the province; and
- C = The equitable factor, as provided for in Section 96, expressed as a percentage; and
- D = An equitable factor, as provided for in Section 96, expressed as an absolute kina amount.

### **Sch. 5.2 Application of the Grant.**

This grant shall be applied by the Local-level Government according to its planned priorities and shall be distributed to the following:—

- (a) 50% development of village and social services;
- (b) 50% land and other physical infrastructure development.

Sec. 97

## **SCHEDULE 6. VALUATION OF GOODS AND APPORTIONMENT BETWEEN PROVINCES FOR DERIVATION GRANT.**

### **Sch. 6.1 Interpretation of Schedule 6.**

In this Schedule—

- "export value", in relation to any goods exported from Papua New Guinea, means, subject to Section Sch.6.2, the F.O.B, value at the port

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- or airport of export;
- "goods" does not include natural resources exported as raw material and negotiable instruments or the like;
- "port or airport of export", in relation to any goods, means the port or airport at which the goods are entered for export;
- "processing", in relation to any goods, includes any package, or submission to any process of manufacture, by which the export value of the goods is increased;
- "province of production" means—
- (a) in the case of goods imported into Papua New Guinea and subsequently re-exported after processing, the province in which they were processed; and
  - (b) in the case of any other goods, other than imported goods, the province in which they were originally produced.

### **Sch. 6.2 Export values assessed under other laws.**

Where for the purposes of the calculation of the amount of tax payable under any Act of the Parliament an export value is attributed to or determined for any goods, the value so attributed or determined (or if there is more than one such value the higher or highest of them) shall be deemed to be the export value of the goods for the purposes of this Schedule.

### **Sch. 6.3 Export of goods from province of production.**

In the case of goods exported from Papua New Guinea without processing in any province other than the province of production, the export value of the goods shall be attributed to the province of production.

### **Sch. 6.4 Processed goods.**

(1) In the case of any goods exported from Papua New Guinea that have been processed, before export, in a province other than the province of production, the export value of the goods shall be apportioned between the province of production and the province in which the processing took place, in accordance with the amounts of proportions of that value that are attributed to the unprocessed goods and to the processing, respectively.

(2) For the purpose of the application of Subsection (1) to goods that are processed more than once, the reference in that subsection to the amount or proportion of the export value that is attributable to the processing shall be read as a reference to the amount or proportion of that value that is attributable to any re-processing, and the balance of the value shall be apportioned as if—

- (a) the goods were exported immediately before the re-processing; and
- (b) that balance was the export value of the goods.

**Sch. 6.5 Origins or Value of Goods not Identified.**

Where the origins or value of goods, including fish, cannot be identified or where the goods were taken or processed, the National Executive Council, in consultation with National Economic and Fiscal Commission shall, for the purposes of this Schedule, apportion the export value of the goods in such reasonable manner as seems to it just and in accordance with the purposes of Section 97 and of this Schedule.

**Sch. 6.6 Purpose of the Grant.**

For the purpose of grant, the amount shall be used exclusively by the provinces for promoting the export of their primary and secondary industries.