

National Court Act (Chapter 38).
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National Court Act (Chapter 38),

Being an Act to implement Subdivision VI.5.D (*the National Court of Justice*) and Section 168 (*qualifications*) of the ***Constitution*** to provide for -

- (a) the qualifications for appointment as a Judge of the National Court; and
- (b) the practice and procedure of the National Court; and
- (c) other related matters¹.

PART I. - QUALIFICATIONS FOR APPOINTMENT AS A JUDGE OF THE NATIONAL COURT.

1. QUALIFICATIONS TO BE HELD BY A CITIZEN.

Subject to Section 4 of the ***Organic Law on the Terms and Conditions of Employment of Judges***, a citizen is qualified for appointment as a Judge if -

- (a) he -
 - (i) is a graduate in law of at least six years standing of a university in Papua New Guinea or of a university of another country the degree in law of which is recognised by the Judicial and Legal Services Commission as a sufficient academic qualification for appointment; and
 - (ii) has practised as a lawyer for not less than four years; or
- (b) he -
 - (i) is a graduate in law of a university in Papua New Guinea or of a university of another country the degree in law of which is recognised by the Judicial and Legal Services Commission as a sufficient academic qualification for appointment; and
 - (ii) has not less than five years' experience in Papua New Guinea as a Magistrate Grade IV. or a Magistrate Grade III., or partly as a Magistrate Grade IV. and partly as a Magistrate Grade III.

2. QUALIFICATIONS TO BE HELD BY A NON-CITIZEN.

Subject to Section 4 of the ***Organic Law on the Terms and Conditions of Employment of Judges***, a non-citizen is qualified for appointment as a Judge if -

- (a) he is or has been a lawyer who has practised as a lawyer -
 - (i) in Papua New Guinea; or
 - (ii) in a country with a legal system that, in the opinion of the Judicial and Legal Services Commission, is substantially similar to the legal system of Papua New Guinea; or
 - (iii) in Papua New Guinea and in a country referred to in Subparagraph (ii), for a total period of not less than five years; or
- (b) he was a Judge or an acting Judge of the pre-Independence Supreme Court; or
- (c) he is or has been a Judge of a court of unlimited jurisdiction in a country with a legal system that, in the opinion of the Judicial and Legal Services Commission, is substantially similar to the legal system of Papua New Guinea.

¹ The original Act was made by the Constituent Assembly as a Provisional Act of the Parliament. See ***Constitution***, Section 266(2).

PART II. - ADMINISTRATION.²

3. PRINCIPAL SEAT OF THE NATIONAL COURT.

The Chief Justice, after consultation with the other Judges, shall determine the Principal Seat of the National Court.

4. SITTINGS AND REGISTRIES OF THE NATIONAL COURT.

The Chief Justice, after consultation with the other Judges, shall determine -

- (a) the place and frequency of sittings of the National Court; and
- (b) the location and number of registries of the Court.

5. SEAL OF THE COURT.

(1) The National Court shall have a seal of the Court for the sealing of all writs and other instruments and documents issued out of the Court and requiring to be sealed.

(2) In addition to the seal provided for by Subsection (1), the Court shall, for the purposes of authentication of Court documents, have a seal or stamp with which any summons, office copy, certificate, report or other document requiring authentication may be sealed or stamped.

6. ANNUAL REPORT.

The Chief Justice shall, during the month of August in each year, forward to the Head of State, for presentation to the Parliament a report by the Judges under Section 187 (*Reports by Judges*) of the *Constitution*.

7. REGISTRAR, DEPUTY REGISTRAR, ASSOCIATES AND OFFICERS.

(1) The Judicial and Legal Services Commission may appoint persons to the following offices of the Court:

- (a) Registrar; and
- (b) Deputy Registrar; and
- (c) Associates to the Judges of the Court; and
- (d) such other offices as the Judicial and Legal Services Commission considers necessary for the proper administration of justice by the Court.

(2) A person appointed under Subsection (1) is an officer of the Court and is not, while acting as such, subject to direction or control by any person other than the Chief Justice and the other Judges.

(3) The terms and conditions of service of a person appointed under Subsection (1) shall be determined by the Judicial and Legal Services Commission, after consultation with the Departmental Head of the Department responsible for personnel management matters within the National Public Service.

²Part II repealed and replaced by No. 9 of 1987, s.1.

PART IIA. - MEDIATION.³

7A. DEFINITION.

In this part, unless the contrary intention appears -

“mediation” includes all forms of dispute resolution other than the formal court process;
“mediator” means a person appointed to facilitate a mediation ordered under Section 7B and conducts a mediation under Section 7C of this Act.

7B. POWER TO ORDER MEDIATION, ETC.

(1) In addition to the jurisdiction vested in the Court by Section 166 of the *Constitution*, and any other law, the Court -

- (a) may order a resolution of a dispute or a matter before it by mediation for an amicable resolution of the dispute; or
- (b) may order or direct a proceeding or any part of the proceeding to be inquired into and resolved by an appropriately qualified and experienced person or an expert in the issue.

(2) At any stage of a proceeding, the Court may, whether with or without the consent of the parties, order that the proceeding or a part of the proceeding before it be referred to mediation.

- (3) Where the Court decides to refer a matter to mediation, the presiding judge may, -
 - (a) with the consent of the parties, conduct the mediation; or
 - (b) with the parties’ consent, appoint a mediator of their choice to conduct the mediation; or
 - (c) failing the consent of the parties, appoint a mediator from the Court’s list of approved mediators.

(4) At the time of ordering mediation, the Court shall stipulate the time frame within which the mediation should be progressed and be finalised and issue such directions or orders as it considers necessary for the purpose of the ordered mediation, including appropriate orders as to the costs of the mediation.

(5) Unless the Court otherwise orders, an order for mediation shall not operate as a stay of the proceedings, nor shall it be a cause for delaying in getting the case ready for trial.

(6) For the purposes of Subsection (3)(c) herein, the Court shall develop and maintain a list of appropriately qualified and experienced mediators.

7C. CONDUCT OF MEDIATION.

(1) The mediation process shall endeavour to identify the issues in dispute, develop options, consider alternatives and endeavour to enable the parties to reach a resolution of the whole or the part of the dispute the subject of the mediation and referral.

³ Part IIA added by No. 4 of 2008.

(2) Except as all the parties who attended the mediation in writing agree, no evidence shall be admitted in the Court proceeding or any other proceedings of anything said or done by any person at the mediation.

(3) A mediator acting *bona fide* shall have the same immunity from prosecution as a judge of the Court.

7D. CONCLUSION OF MEDIATION.

- (1) The mediator shall report to the Court -
 - (a) on the progress of the mediation at any stage of the mediation; and
 - (b) at the termination of the mediation or at the expiry period allowed for the mediation, the outcome of the mediation.

(2) The mediator shall not make any report to the Court other than a report under Subsection (1).

(3) Where a mediation results in a settlement, the Court may, with the consent of the parties, embody the terms of the settlement in a consent order disposing of the proceedings or that part of the proceeding to which it relates.

(4) If the mediation does not result in a settlement of the relevant proceeding, the proceeding shall continue to trial before a judge other than the judge who mediated the dispute.

7E. MEDIATION RULES.

The judges may make rules of the Court to further elaborate and provide for the conduct of mediation, maintaining of appropriate standards and guidelines for mediation, qualification and training of mediators by appropriately qualified mediators and remuneration or fee for members.

PART III. - MISCELLANEOUS.⁴

8. RULES OF COURT OF THE NATIONAL COURT.

Subject to Section 184 (*Rules of Court*) of the *Constitution*, the Judges of the National Court may make Rules of Court of the National Court.

9. PRACTICE AND PROCEDURE.

The practice and procedure in and in relation to a matter in the National Court shall be the practice and procedure provided by law or the Rules of Court in relation to matters of that kind except as directed by the National Court at any stage of the matter.

⁴Part III repealed and replaced by No. 9 of 1987, s.2.