

*Constitutional Amendment No. 47 (Court Restructure) Law 2024.*

Certified on : 13/08/2024



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INDEPENDENT STATE OF PAPUA NEW GUINEA.

*Constitutional Amendment No. 47 (Court Restructure) Law 2024,*

Being a Law to alter the *Constitution* to include the Court of Appeal, the Appointment of Judges, the seniority of Judges, and for related matters,

MADE by the National Parliament.

**1. PURPOSE OF SCHEDULE 2 (AMENDMENT OF SECTION 21).**

Section 21 of the *Constitution* is amended in Subsection (2) by repealing the words “Supreme Court and the National Court” and replacing them with the following words:

“Higher Courts of Justice”.

**2. REASONABLY JUSTIFIABLE IN A DEMOCRATIC SOCIETY, ETC (AMENDMENT OF SECTION 39).**

Section 39 of the *Constitution* is amended in Subsection (2) by repealing the words “Supreme Court or the National Court” and replacing them with the following words:

“Higher Courts of Justice”.

**3. LIBERTY OF THE PERSON (AMENDMENT OF SECTION 42).**

Section 42 of the *Constitution* is amended in Subsection (7), Paragraph (b) by repealing the words “Supreme Court or the National Court” and replacing them with the following words:

“Higher Courts of Justice”.

**4. ENFORCEMENT OF GUARANTEED RIGHTS AND FREEDOMS (AMENDMENT OF SECTION 57).**

Section 57 of the *Constitution* is amended in Subsection (1) by repealing the words “Supreme Court or the National Court” and replacing them with the following words:

“Higher Courts of Justice”.

**5. STRUCTURE OF GOVERNMENT (AMENDMENT OF SECTION 99).**

Section 99 of the *Constitution* is amended in Subsection (2), Paragraph (c) by repealing the words “a Supreme Court of Justice and a National Court of Justice” and replacing them with the following words:

“the Higher Courts of Justice”.

**6. THE NATIONAL JUDICIAL SYSTEM (AMENDMENT OF SECTION 155).**

Section 155 of the *Constitution* is amended -

- (a) in Subsection (1) by inserting immediately after Paragraph (a) the following new paragraph:

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“(aa) the Court of Appeal; and”; and

- (b) in Subsection (2) by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) has an inherent power to review all judicial acts of the National Court and the Court of Appeal; and”; and

- (c) by inserting immediately after Subsection (2) the following new subsection:

“(2A) The Court of Appeal -

(a) is a court of appeal; and

(b) has an inherent power to review all judicial acts of the National Court; and

(c) has such other jurisdiction and powers as are conferred on it by this *Constitution*, except where -

(i) jurisdiction is conferred upon the Supreme Court to the exclusion of the Court of Appeal; or

(ii) the Supreme Court assumes jurisdiction under Subsection (5); or

(iii) the power of review is removed or restricted by a Constitutional Law or an Act of Parliament.”; and

- (d) in Subsection (3) by repealing Paragraphs (c) and (d) and replacing them with the following new paragraphs:

“(c) jurisdiction is conferred upon the Supreme Court or the Court of Appeal to the exclusion of the National Court; or

(d) the Supreme Court or the Court of Appeal assumes jurisdiction under Subsection (4); or”; and

- (e) in Subsection (4) by repealing the words “Both the Supreme Court and the National Courts” and replacing them with the following words:

“The Higher Courts of Justice”.

**7. THE NATIONAL GOVERNMENT (AMENDMENT OF PART VI).**

Part VI of the *Constitution* is amended in Division 5 -

- (a) by repealing Subdivision C and replacing it with the following new subdivision:

*“Subdivision C. - The Higher Courts of Justice.”; and*

- (b) by repealing *“Subdivision D. - The National Court of Justice.”*.

**8. COMPOSITION OF THE SUPREME COURT (AMENDMENT OF SECTION 161).**

Section 161 of the *Constitution* is amended by repealing Subsection (3) and replacing it with the following new subsection:

“(3) In a hearing that consists of at least three Judges, the Chief Justice, the Deputy Chief Justice or the most senior Judge of the Supreme Court in accordance with Section 171A (*seniority among Supreme Court Judges*) available shall preside over the Court.”.

**9. NEW SECTIONS 162A, 162B AND 162C.**

The *Constitution* is amended by inserting immediately after Section 162 the following new sections:

**“162A. ESTABLISHMENT OF THE COURT OF APPEAL.**

(1) The Court of Appeal is established.

(2) The Court of Appeal is a superior court of record and subject to any Act of the Parliament, has the power to punish the offence against itself commonly known as contempt of court.

**162B. COMPOSITION OF THE COURT OF APPEAL.**

(1) The Court of Appeal shall consist of -

(a) the President of the Court of Appeal appointed by the Judicial and Legal Services Commission who shall be the head of the Court of Appeal; and

(b) such other number of Judges as is determined by or under an Act of the Parliament and appointed by the Judicial and Legal Services Commission as Judges of the Court of Appeal.

(2) Subject to Section 162C(2) and for the purposes of any hearing, the Court of Appeal shall consist of at least three Judges.

(3) In a hearing that consists of at least three Judges under Subsection (2), the President of the Court of Appeal or the most senior Judge of the Court available shall preside over the Court.

**162C. JURISDICTION OF THE COURT OF APPEAL.**

(1) The jurisdiction of the Court of Appeal is as set out -

(a) in Subdivision III.3.D (*enforcement*); and

(b) in Section 155 as provided by this *Constitution* or any other law.

(2) The jurisdiction of the Court of Appeal may be exercised -

(a) by a single Judge of that Court or by a number of Judges sitting together as provided by or under an Act of the Parliament or the Rules of Court of the Court of Appeal; or

(b) by a Judge or Judges of the Court notwithstanding it being exercised at the same time by another such Judge or Judges;  
or

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- (c) either in Court or in chambers, as provided for by an Act of the Parliament or the Rules of Court of the Court of Appeal.”.

### 10. REPEAL AND REPLACEMENT OF SECTION 164.

The *Constitution* is amended by repealing Section 164 and replacing it with the following new section:

#### “164. COMPOSITION OF THE NATIONAL COURT.

- (1) The National Court shall consist of -
  - (a) the Principal Judge who is the head of the National Court; and
  - (b) such other number of Judges as is determined by an Act of the Parliament and appointed by the Judicial and Legal Services Commission as Judges of the National Court; and
  - (c) a Judge of the National Court who is appointed as a Judge of the Supreme Court or the Court of Appeal.
- (2) A Judge of the National Court under Subsection (1)(c) remains a Judge of the National Court until his date of commencement as a Judge of the Supreme Court or the Court of Appeal is determined by his instrument of appointment.”.

### 11. REPEAL AND REPLACEMENT OF SECTION 165.

The *Constitution* is amended by repealing Section 165 and replacing it with the following new section:

#### “165. ACTING JUDGES.

- (1) A person who is qualified under Section 168 for appointment may be appointed to be an acting Judge of a Higher Courts of Justice -
  - (a) to fill temporarily a vacancy; or
  - (b) in the case of the absence from duty for any reason of a Judge of that Court; or
  - (c) to meet a temporary unexpected workload or other exigencies of the business of the Court.
- (2) An appointment under Subsection (1) may be made without reference to the numerical limit imposed for each Court.
- (3) Subject to Subsection (4), except for the salary, remuneration and benefits of employment as determined by the authority responsible for the administration of the Higher Courts, an Acting Judge shall be subject to the same qualifications, powers, functions, duties and responsibilities as any other Judge of the Court to which he is appointed.
- (4) The authority responsible for the administration of the Higher Courts shall, in consultation with the Salaries and Conditions Monitoring Committee established under the *Salaries and Conditions Monitoring Committee Act 1988*, determine the salary, remuneration and benefits of employment of an Acting Judge.”.

**12. REPEAL AND REPLACEMENT OF SECTION 167.**

The *Constitution* is amended by repealing Section 167 and replacing it with the following new section:

**“167. ASSISTANT JUDGES.**

Subject to this section, an Organic Law may make provision for and in respect of -

- (a) the appointment of Assistant Judges of the National Court; and
- (b) their qualifications, privileges, powers, functions, duties and responsibilities; and
- (c) their terms and conditions of employment.”.

**13. QUALIFICATIONS (AMENDMENT OF SECTION 168).**

Section 168 of the *Constitution* is amended by repealing the words “Act of the Parliament” and replacing them with the following:

“Organic Law”.

**14. APPOINTMENT, ETC., OF THE CHIEF JUSTICE (AMENDMENT OF SECTION 169).**

Section 169 of the *Constitution* is amended -

- (a) by inserting immediately after Subsection (1) the following new subsection:

“(1A) The Chief Justice is the overall administrator of the Higher Courts of Justice.”; and

- (b) in Subsection (3) by repealing the words “Supreme Court and the National Court” and replacing them with the following words:

“Higher Courts of Justice”; and

- (c) by inserting immediately after Subsection (3) the following new subsection:

“(3A) In respect of the appointment of other Judges, consultation shall be subject to Section 170.”.

**15. APPOINTMENT OF OTHER JUDGES (AMENDMENT OF SECTION 170).**

Section 170 of the *Constitution* is amended -

- (a) by repealing Subsection (2) and replacing it with the following new subsection:

“(2) The Judicial and Legal Services Commission shall, on recommendation of the Chief Justice, after consultation with the other Judges of the Supreme Court and any other relevant authorities, appoint the Deputy Chief Justice and other Judges of the Supreme Court, in accordance with an Organic Law.”; and

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(b) by inserting immediately after Subsection (2) the following new subsections:

“(2A) Where -

- (a) there is a vacancy in the office of Deputy Chief Justice; or
- (b) the Deputy Chief Justice is absent from the country or is absent from duty; or
- (c) the Deputy Chief Justice is unable or unavailable to act; or
- (d) the Deputy Chief Justice so directs,

the powers, functions, duties and responsibilities (other than as acting Chief Justice) of the Deputy Chief Justice may be exercised and performed by the next most senior Judge who is available.

(2B) The Judicial and Legal Services Commission shall, on recommendation of the Chief Justice after consultation with the Judges of the Court of Appeal and any other relevant authorities, appoint the President and the other Judges of the Court of Appeal, including Acting Judges, in accordance with an Organic Law.

(2C) Where -

- (a) there is a vacancy in the office of the President of the Court of Appeal; or
- (b) the President of the Court of Appeal is absent from the country or is absent from duty; or
- (c) the President of the Court of Appeal is unable or unavailable to act; or
- (d) the President of the Court of Appeal so directs,

the powers, functions, duties and responsibilities of the President of the Court of Appeal may be exercised and performed by the next most senior Judge who is available.

(2D) The Judicial and Legal Services Commission shall, on recommendation of the Chief Justice after consultation with the Judges of the National Court and any other relevant authorities, appoint the Principal Judge and the other Judges of the National Court, including Acting Judges and Assistant Judges, in accordance with an Organic Law.

(2E) Where -

- (a) there is a vacancy in the office of the Principal Judge of the National Court; or
- (b) the Principal Judge of the National Court is absent from the country or is absent from duty; or
- (c) the Principal Judge of the National Court is unable or unavailable to act; or

(d) the Principal Judge of the National Court so directs, the powers, functions, duties and responsibilities of the Principal Judge of the National Court may be exercised and performed by the next most senior Judge who is available.

**16. REPEAL AND REPLACEMENT OF SECTION 171.**

The *Constitution* is amended by repealing Section 171 and replacing with the following new sections:

**“171. SENIORITY OF JUDGES.**

(1) The Chief Justice is the most senior Judge and the Deputy Chief Justice is the second most senior Judge.

(2) The Chief Justice and the Deputy Chief Justice have seniority over all other Judges.

(3) The Judges of the Supreme Court have seniority over Judges of the Court of Appeal and Judges of the National Court.

(4) The Judges of the Court of Appeal have seniority over the Judges of the National Court.”.

**17. NEW SECTIONS 171A, 171B AND 171C.**

The *Constitution* is amended by inserting immediately after Section 171 the following new sections:

**“171A. SENIORITY AMONG SUPREME COURT JUDGES.**

(1) In this section, “date of appointment” in relation to a Judge of the Supreme Court means -

- (a) if the Judge has been appointed to the Supreme Court on one occasion only, the date of his appointment; and
- (b) if the Judge has been appointed to the Supreme Court on more than one occasion and has a continuous period of service as a Judge of the Supreme Court, the date of his first appointment to the Supreme Court; and
- (c) in the case of two or more of the other Judges of the Supreme Court appointed as Judges of the Supreme Court in the same date, have precedence assigned to them by the date of admission under the *Lawyers Act 1986*; and
- (d) in any other case, the date of his most recent appointment as a Judge of the Supreme Court.

(2) The Chief Justice and the Deputy Chief Justice have seniority over the other Judges of the Supreme Court.

(3) The other Judges of the Supreme Court have seniority among themselves according to their dates of appointment as Judges of the Supreme Court.

**171B. SENIORITY AMONG COURT OF APPEAL JUDGES.**

(1) In this section, “date of appointment” in relation to a Judge of the Court of Appeal means -

- (a) if the Judge has been appointed to the Court of Appeal on one occasion only, the date of his appointment; and

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- (b) if the Judge has been appointed to the Supreme Court on more than one occasion and has a continuous period of service as a Judge of the Court of Appeal, the date of his first appointment to the Court of Appeal; and
- (c) in the case of two or more of the other Judges of the Court of Appeal appointed as Judges of the Court of Appeal on the same date, have seniority according to the precedence assigned to them by the date of admission under the *Lawyers Act 1986*; and
- (d) in any other case, the date of his most recent appointment as a Judge of the Court of Appeal.

(2) The President of the Court of Appeal has seniority over the other Judges of the Court of Appeal.

(3) The other Judges of the Court of Appeal have seniority among themselves according to their dates of appointment as Judges of the Court of Appeal.

### **171C. SENIORITY AMONG NATIONAL COURT JUDGES.**

(1) In this section, "date of appointment" in relation to a Judge of the National Court means -

- (a) if the Judge has been appointed to the National Court on one occasion only, the date of his appointment; and
- (b) if the Judge has been appointed to the National Court on more than one occasion and has a continuous period of service as a Judge of the National Court, the date of his first appointment to the National Court; and
- (c) in the case of two or more of the other Judges of the National Court (excluding the acting Judges) appointed as Judges of the National Court on the same date, have seniority according to the precedence assigned to them by the date of admission under the *Lawyers Act 1986*; and
- (d) in any other case, the date of his most recent appointment as a Judge of the National Court.

(2) The Principal Judge of the National Court has seniority over the other Judges of the National Court.

(3) The other Judges of the National Court have seniority among themselves according to their dates of appointment as Judges of the National Court.

(4) The seniority of the acting Judges and Assistant Judges of the National Court shall be provided for by an Act of Parliament."

### **18. ESTABLISHMENT OF OTHER COURTS (AMENDMENT OF SECTION 172).**

Section 172 of the *Constitution* is amended in Subsection (1) by repealing the words "Supreme Court and the National Court" and replacing them with the following words:

"Higher Courts of Justice".

**19. FUNCTIONS OF THE PUBLIC PROSECUTOR AND THE PUBLIC SOLICITOR (AMENDMENT OF SECTION 177).**

Section 177 of the *Constitution* is amended -

- (a) in Subsection (1) Paragraph (a) by repealing the words “Supreme Court and the National Court” and replacing them with the following words:

“Higher Courts of Justice”.

- (b) in Subsection (2) Paragraph (b) by repealing the words “Supreme Court or the National Court” and replacing them with the following words:

“Higher Courts of Justice”.

**20. CONSTITUTION, ETC., OF TRIBUNALS (AMENDMENT OF SECTION 181).**

Section 181 of the *Constitution* is amended -

- (a) in Subsection (1) Paragraph (a) by repealing the words “Supreme Court and the National Court” and replacing them with the following words:

“Higher Courts of Justice”; and

- (b) by repealing Paragraph (b).

**21. RULES OF COURT (AMENDMENT OF SECTION 184).**

Section 184 of the *Constitution* is amended -

- (a) in Subsection (1) by repealing the words “Supreme Court or the National Court” appearing twice and replacing them with the following words:

“Higher Courts of Justice”; and

- (b) in Subsection (2) -

- (i) Paragraph (a) by repealing the words “Supreme Court and the National Court” and replacing them with the following words:

“Higher Courts of Justice”; and

- (ii) Paragraph (b) by repealing the words “Supreme Court and the National Court” and replacing them with the following words:

“Higher Courts of Justice”; and

- (iii) Paragraph (d) by repealing the words “Supreme Court or the National Court” appearing twice and replacing them with the following words:

“Higher Courts of Justice”; and

- (iv) Paragraph (e) by repealing the words “Supreme Court or the National Court” and replacing them with the following words:

“Higher Courts of Justice”.

**22. REPEAL AND REPLACEMENT OF SECTION 187.**

The *Constitution* is amended by repealing Section 187 and replacing it with the following new section:

**“187. REPORTS BY THE CHIEF JUSTICE.**

(1) The Chief Justice shall, as soon as practicable after 30 June in each year, after consultation with other Judges, prepare and give to the Head of State for presentation in Parliament, a report on the work of the National Judicial System, with such recommendations as to the improvement as he thinks proper.

(2) Nothing in Subsection (1) prevents the Chief Justice from making, on his own initiative or at the request of the Parliament or of the National Executive Council, other reports on any aspect of the work of the National Judicial System.”.

**23. PARLIAMENTARY RESPONSIBILITY (AMENDMENT OF SECTION 209).**

Section 209 of the *Constitution* is amended in Subsection (2A) by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) “the services of the Judiciary” include -

- (i) the salaries and allowances (financial and otherwise) of Judges of the Higher Courts of Justice, including Judges who are on pensions; and
- (ii) the maintenance of the Higher Courts of Justice; and
- (iii) the body established to service the national Judiciary under an Act of the Parliament; and
- (iv) the salaries and allowances (financial and otherwise) of all persons appointed under the *Supreme Court Act* (Chapter 37), the *National Court Act* (Chapter 38), the *Sheriff Act* (Chapter 55) and any Act of Parliament pertaining to the Court of Appeal.”.

**24. THE OMBUDSMAN COMMISSION (AMENDMENT OF SECTION 217).**

Section 217 of the *Constitution* is amended -

- (a) in Subsection (3) by repealing the words “Judge other than the Chief Justice and the Deputy Chief Justice” and replacing them with the following words:

“Judge of the National Court”; and

- (b) in Subsection (6) by repealing the words “Supreme Court or the National Court” and replacing them with the following words:

“Higher Courts of Justice”.

**25. SCH.1.2. MEANING OF CERTAIN EXPRESSIONS (AMENDMENT OF SCHEDULE 1).**

Schedule 1 of the *Constitution* is amended in Schedule 1.2 -

- (a) by inserting immediately after the definition of “governmental body” the following new definition:

“Higher Courts of Justice” means the Supreme Court, the Court of Appeal and the National Court;” and

- (b) by repealing the definition of “Judge” and replacing it with the following new definitions in alphabetical order:

“Judge” means a Judge of the Supreme Court, a Judge of the Court of Appeal or a Judge of the National Court and includes an acting Judge; and

“Judge of the Court of Appeal” means the President of the Court of Appeal or a Judge of the Court of Appeal;” and

- (c) by repealing the definition of “Judge of the National Court” and “Judge of the Supreme Court” and replacing them with the following new definitions in alphabetical order:

“Judge of the National Court” means the Principal Judge of the National Court or a Judge of the National Court; and

“Judge of the Supreme Court” means the Chief Justice, the Deputy Chief Justice or a Judge of the Supreme Court;”.

**26. SCH.2.3. DEVELOPMENT, ETC., OF THE UNDERLYING LAW (AMENDMENT OF SCHEDULE 2).**

Schedule 2 of the *Constitution* is amended in Schedule 2.3 -

- (a) Subsection (1) by repealing the words “the Supreme Court and the National Court” and replacing them with the following words:

“Higher Courts of Justice”; and

- (b) Subsection (2) by repealing Paragraph (a) and replacing it with the following new paragraph:

“(a) in the case of the Court of Appeal or the National Court - the court may; and”.

**27. SCH.2.4. JUDICIAL DEVELOPMENT OF THE UNDERLYING LAW (AMENDMENT OF SCHEDULE 2).**

Schedule 2 of the *Constitution* is amended in Schedule 2.4 by repealing the words “Supreme Court and the National Court” and replacing them with the following words:

“Higher Courts of Justice”.

**28. SCH.2.5. REPORTS ON THE DEVELOPMENT OF THE UNDERLYING LAW (AMENDMENT OF SCHEDULE 2).**

The *Constitution* is amended by repealing Schedule 2.5 and replacing it with the following new schedule:

**“Sch.2.5. REPORTS ON THE DEVELOPMENT OF THE UNDERLYING LAW.**

In his reports under Section 187(1) (*reports by the Chief Justice*) and in any report under Section 187(2) (*reports by the Chief Justice*), if in his opinion it is desirable to do so, the Chief Justice shall comment on the state, suitability and development of the underlying law, with any recommendation as to improvements that he thinks it proper to make.”.

**29. SCH.2.9. SUBORDINATION OF COURTS (AMENDMENT OF SCHEDULE 2).**

Schedule 2 of the *Constitution* is amended in Schedule 2.9 -

- (a) Subsection (2) by inserting immediately after the words “the Supreme Court” the following words:

“or the Court of Appeal”; and

- (b) Subsection (3) by repealing the words “Supreme Court or the National Court” and replacing them with the following words:

“Higher Courts of Justice.”.

**30. SCH.2.10. CONFLICT OF PRECEDENTS (AMENDMENT OF SCHEDULE 2).**

Schedule 2 of the *Constitution* is amended in Schedule 2.10 Section (1) by repealing the words “Supreme Court or the National Court” and replacing them with the following words:

“Higher Courts of Justice.”.

**31. SCH.2.12. OUTSIDE DECISIONS (AMENDMENT OF SCHEDULE 2).**

Schedule 2 of the *Constitution* is amended in Schedule 2.12 Subsection (1) by repealing the words “Supreme Court or the National Court” appearing twice and replacing them with the following words:

“Higher Courts of Justice.”.

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I hereby certify that the above is a fair print of the *Constitutional Amendment No. 47 (Court Restructure) Law 2024* which has been made by the National Parliament.

Clerk of the National Parliament.

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**CERTIFICATE UNDER SECTION 14.**

I, **JOB POMAT**, Speaker of the National Parliament, after consultation with the Chief Justice of Papua New Guinea hereby certify that the requirements of Section 14(1), (2) and (3) of the *Constitution* were complied with in respect of the *Constitutional Amendment No. 47 (Court Restructure) Law 2024* and that the law was made by the National Parliament as follows: -

- (a) the first vote was taken on 15 February 2024 when the number of seats in the National Parliament was 118 and those voting for the proposal were 94 and none voted against the proposal; and
- (b) the second vote was taken on 29 May 2024 when the number of seats in the National Parliament were 118 and those voting for the proposal were 94 and 1 voted against the proposal.

Speaker of the National Parliament.