

PNG CONSTITUTION- PROVISIONS RELEVANT TO THE
REFERENDUM

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Division 7. Bougainville Referendum.

338. REFERENDUM TO BE HELD.

(1) Subject to this section, a Referendum on the future political status of Bougainville shall be held in accordance with this Division.

(2) Subject to Subsection (7), the Referendum shall be held on a date agreed after consultation by the Bougainville Government with the National Government, which date shall be not earlier than 10 years and, notwithstanding any other provision, not more than 15 years after the election of the first Bougainville Government.

(3) The date referred to in Subsection (2) shall be determined after considering whether -

- (a) weapons have been disposed of in accordance with the Agreement; and
- (b) in accordance with Subsection (4), it has been determined that the Bougainville Government has been and is being conducted in accordance with internationally accepted standards of good governance.

(4) The question whether the Bougainville Government has been and is being conducted in accordance with internationally accepted standards of good governance shall be determined in accordance with the review and the dispute resolution procedure.

(5) For the purposes of Subsection (4), the internationally accepted standards of good governance, as they are applicable and implemented in the circumstances of Bougainville and Papua New Guinea as a whole include democracy, the opportunity for participation by Bougainvilleans, transparency, accountability, and respect for human rights and the rule of law, including this Constitution.

(6) The National Government and the Bougainville Government shall co-operate in ensuring progress towards achieving and maintaining the standards referred to in Subsection (5).

(7) The Referendum shall not be held where the Bougainville Government decides, in accordance with the Bougainville Constitution, after consultation with the National Government, that the Referendum shall not be held.

339. THE QUESTION OR QUESTIONS TO BE PUT.

The question or questions to be put at the Referendum –

- (a) shall be agreed to by the National Government and the Bougainville Government; and
- (b) shall be formulated to avoid a disputed or unclear result; and
- (c) shall include a choice of separate independence for Bougainville.

340. MANNER OF CONDUCTING REFERENDUM.

- (1) An Organic Law shall make provision for the manner in which the Referendum is to be conducted and in particular shall make provision for and in relation to –
- (a) the authorities to be jointly responsible for preparing for and conducting the Referendum and for the arrangements whereby they shall exercise joint authority; and
 - (b) electorates and polling places; and
 - (c) electoral rolls, enrolment, objections to enrolment and appeals relating to enrolment; and
 - (d) postal voting; and
 - (e) polling and scrutiny; and
 - (f) interpreters; and
 - (g) offences; and
 - (h) polling and scrutiny; and
 - (i) communicating the results of the Referendum to the National Government and to the Bougainville Government; and
 - (j) the invitation of international observers to observe the conduct of the Referendum; and
 - (k) such other matters as may be required effectively to conduct the Referendum.
- (2) The Referendum may be held in conjunction with an election.

341. REFERENDUM TO BE FREE AND FAIR.

The National Government and the Bougainville Government shall co-operate to ensure that the Referendum is free and fair.

342. REFERENDUM RESULTS AND IMPLEMENTATION.

(1) The National Government and the Bougainville Government shall consult over the results of the Referendum.

(2) Subject to the consultation referred to in Subsection (1), the Minister responsible for the Bougainville Referendum shall table the results of the Referendum in the National Parliament and the Speaker of the National Parliament shall furnish to the Bougainville Executive a copy of the minutes of the relevant proceedings and of any decision made in the National Parliament regarding the Referendum.

343. RESOLUTION OF DIFFERENCES ON REFERENDUM.

Any differences between the National Government and the Bougainville Government in relation to the Referendum shall be resolved in accordance with the dispute resolution procedure.

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Division 9. – Miscellaneous.

345. REQUIREMENT FOR AMENDMENT OF THIS PART, ETC.,

(1) The provisions of this section are in addition to and are not in derogation of the provision of Section 14 (*making of alterations to the Constitution and Organic Laws*).

(2) Where the National Government or the Bougainville Government seeks to present or have presented in the Parliament an amendment to this Part or to an Organic Law authorized by this Part, it shall –

- (a) consult with the other Government concerning the proposed amendments; or
- (b) submit the proposed amendment to a review, before presenting it or having it presented in the Parliament.

(3) Where an amendment to this Part or to an Organic Law authorized by this Part is proposed to be presented in the Parliament, the Minister responsible for Constitutional Law matters in relation to Bougainville shall, as soon as practicable after the proposed amendment is published in the National Gazette (or earlier if the Minister has notification of the proposed amendment) send a copy of the proposed amendment to the Bougainville Government and the two Governments shall consult with each other concerning the proposed amendment.

(4) An amendment referred to in Subsection (2) or (3) cannot become law unless

- (a) it is passed by the National Parliament in accordance with Section 14 (*making of alterations to the Constitution and Organic Laws*); and
- (b) before the second vote in the National Parliament on the amendment in accordance with Section 14 (*making of alterations to the Constitution and Organic Laws*), on a motion in the Bougainville Legislature for approval of the amendment as presented to the Parliament, there is –
 - (i) in the case of an amendment to Division 7 or to this Subsection – a two-thirds absolute majority vote of members of the Bougainville Legislature in favour of the amendment; and
 - ii) in the case of an amendment to this Part, other than to Division 7 or to this Subsection a simple majority vote of the members of the Bougainville Legislature in favour of the amendment.

(5) The person presiding over the Bougainville legislature on the occasion of a vote taken under Subsection (4)(b)(i) or (ii) shall, as soon as practicable after the vote has been taken, send to the Speaker of the National Parliament details of the result of the vote.

346. PRESCRIBED MAJORITY OF VOTES REQUIRED FOR THIS PART, ETC.,

(1) For the purposes of Section 14 (*making of alterations to the Constitution and Organic Laws*), the prescribed majority of votes for this Part is a two-thirds absolute majority vote.

(2) For the purposes of Section 14 (5)(b)(i) (*making of alterations to the Constitution and Organic Laws*) the prescribed majority of votes for an Organic Law authorized by this Part is a two thirds absolute majority.