



**Papua New Guinea**

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**CONSTITUTIONAL & LAW REFORM COMMISSION**

# **Review of Committal Proceedings**

**REPORT**

**REPORT 1  
August 2007**

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The Constitutional and Law Reform Commission is a successor to the Law Reform Commission and the Constitutional Development Commission. It was established in 2005 pursuant to provisions of the *Constitutional and Law Reform Commission Act* (No. 24 of 2004) that was enacted on 24<sup>th</sup> November, 2004 and proclaimed into force in March 2005.

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The Hon. Dr. Allan Marat D.Phil., MP  
Attorney-General & Minister for Justice

Dear Attorney-General and Minister;

**CLRC REFERENCE NO. 1 COMMITTAL PROCEEDINGS**

On 2<sup>nd</sup> November, 2006, your predecessor, Hon. Bire Kimisopa, issued this Reference to the Constitutional and Law Reform Commission (CLRC) pursuant to Section 12 of the *Constitutional and Law Reform Commission Act* to enquire into and report on the system of Committal Proceedings with appropriate recommendations.

On behalf of the CLRC Secretariat Staff and the members of the Working Committee who were involved in this Reference, we are happy to present to you the Final Report, *Review of Committal Proceedings*.

Yours sincerely,

**HON. JOE MEK TEINE LLB MP**  
Chairman

**GERHARD LINGE**  
Deputy Chairman

**PROFESSOR BETTY LOVAI**  
Commissioner

**TOM ANAYABERE**  
Commissioner

## Terms of Reference

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### CLRC Reference No 1: Committal Proceedings

I, Bire Kimisopa, Minister for Justice, by virtue of the power conferred on me by Section 12 of the *Constitutional and Law Reform Commission Act 2004* (the Act) refer and direct as follows.

- (1) I refer to the Constitutional and Law Reform Commission (the Commission) for enquiry and report on their systematic development and reform, in accordance with s.12 of the Act:
  - whether and how the provisions for committal proceedings under the *PNG Criminal Code 1975* should be modified or abolished so as to better serve the interests of justice, having particular regard to the impact on the persons, and the State, that are subject of, or subject to, the laws under review; and
  - to the extent necessary to secure the reforms proposed in relation to (a), whether and how any relevant associated laws and practices should also be modified or abolished.
- (2) I direct that in undertaking the investigation and report, the Commission shall:
  - a) consider any relevant research or developments, whether in this or other jurisdictions on the matter for inquiry; and
  - b) consult widely within the community and the legal profession including and without limiting other consultation, regularly (whether separately or in a group or groups) with each of the Supreme Court, the National Court, the District Court and the Magistrates Court, the PNG Royal Constabulary, the Public Prosecutor, the Public Solicitor, the PNG Corrections Service, the Law Society of PNG, the Ombudsman Commission and the Department of Justice and Attorney General.
- (3) The Commission shall report to me within 8 months of the date of publication of this reference in the Government Gazette.
- (4) This reference shall be referred to as: *CLRC Reference No. 1: Committal Proceedings*

Dated this **2<sup>nd</sup>** day of **November** 2006.

Hon. Bire Kimisopa MP

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## **Executive Summary**

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### **Introduction**

Committal proceedings are an essential and central feature of our criminal justice system. The role they play in our criminal justice system is so essential and central in the enforcement of criminal laws through criminal trials.

In the recent past there has been some concern that there were delays in the completion of committal proceedings resulting in the unfortunate flow on effect of overcrowding in the jails for remandees. It is against these background that the former Minister for Justice, Hon. Bire Kimisopa, issued this Terms of Reference to the newly constituted Constitutional and Law Reform Commission.

The primary purpose of this Executive Summary is to state the main features of the proposed law reform measures captured in this Report and then discuss their implications in specific areas.

### **Primary Issues of this Reference**

The primary issues which were referred to us to inquire into and report on in the reference were:

- Whether and how the provisions for committal proceedings under the *District Courts Act* and to a limited extent, the *Criminal Code Act*, and other related laws should be modified or abolished to better serve the interest of justice, having particular regard to the impact on the persons, and the State, that are the subject of, or subject to, the laws under review;
- If the committal proceedings system is to be modified, what should be done and how best should that be achieved;
- If the committal proceedings system is to be abolished, propose and recommend its replacement systems.

The above issues were then considered and presented in an Issues Paper and that was released on March, 30<sup>th</sup> 2007. Following the release of the Issues Paper, a national consultation was then undertaken in April 2007. Views, comments and submissions received on the Issues Paper were then captured in a Draft Report which was released in June, 2007. Upon the release of the Draft Report, further comments and submissions were also received particularly in response to the specific proposals made in the Draft Report. The views, comments, observations and recommendations made in this

report represent the final recommendations on the issues which were referred to the CLRC in this Reference. Relevant draft legislation is also attached as Annexure 2 reflecting the position in these final recommendations.

### **Retention of Committal Proceedings**

A large majority of people consulted, including judges, magistrates, lawyers, policemen and policewomen prosecutors and others spoke in support of the retention, rather than abolition of the current system of committal proceedings. The Public Prosecutor in particular was emphatic – he said that the committal proceedings system should not be abolished and he refuted the earlier report by the former Law Reform Commission in 1980 which recommended for the abolition of committal proceedings. The former Law Reform Commission in its 1980 report (Report No. 10) has recommended that since there has been so much delay in the processing of committals through the committal courts, committal proceedings should be abolished, and all completed police files should be submitted directly to the Public Prosecutor who should then administratively assess the evidence and then frame appropriate charges by way of an indictment in the National Court. The final report of the Court Re-structure Committee to the Chief Justice and the Chief Magistrate 1995 has also argued strongly against the 1980 Law Reform Commission report (Report No. 10) recommending abolition of the committal proceedings arguing that the alternative proposed isn't one that is appropriate since independent judicial scrutiny will be lost to a more administrative process which would not be fair given the fact that it will be the Public Prosecutor who would then proceed to lay appropriate charges and decide on the sufficiency of evidence and then prosecute the matter. The inherently inbuilt processes of checks and judicial scrutiny under the existing committal system would be lost.

Accordingly, it is recommended that the existing system of committal proceedings be retained but appropriate modifications be made to Section 103 of the *District Court Act* to allow for a system to facilitate and fast track guilty pleas. Furthermore, the current Section 96 of the *District Courts Act* be repealed and replaced with a new provision that would only give an opportunity to the defendant to make a statement, if he or she wishes to without the right to call evidence because in our view, for all practical purposes, the committal proceedings had been completed at the Section 95 stage when the committal court had found that there were sufficient evidence to commit the defendant to stand trial.



### **Modifications to the Current System of Committal Proceedings**

The main modifications which are recommended in this report are intended to inject efficiency into the conduct of committal proceedings. In this review, it was noted that the current Section 96 of the *District Court Act* is not only incongruent to the current paper based hand up brief system of committal proceedings, but in the words of Justice Mogish, it is also absolute in the sense that the committal court has already earlier in Section 95 found that there is sufficient evidence to commit the defendant, and it is both unnecessary and futile later at s.96 to ask the defendant to make a statement in this defence and also call evidence to defend himself/herself. As stated above, we are therefore recommending that Section 96 be repealed and replaced with a new provision that would:

- Only invite the defendant to make a statement if he or she wishes to;
- Allow the defendant to enter a guilty plea or indicate his/her intention to enter a guilty plea in the National Court;
- But the current Section 96(3) that denies the defendant's right to cross-examine any witnesses be retained.

The second major modification that is recommended in this report is to repeal the current Section 103 that is procedurally flawed to the extent that it purports to facilitate a system of committal for sentence by the National Court if the defendant admits guilt. In view of the major procedural difficulties associated with this current s.103 procedures, which have been fully canvassed in the body of the report, we recommend that the s.103 be repealed and replaced with a new provision that would only facilitate a system of identifying and fast tracking guilty pleas but only after the completion and submission of the police file so that the State's case is not jeopardised should the defendant changes his plea in the National Court. The new Section 103 we recommend allows for committal on plea:

- At any stage of the committal proceedings but only after the completion and service on the defendant and submission to the committal court of the police hand-up brief; and
- If the defendant upon committal to the National Court on a plea maintains his guilty plea in the National Court, then on sentence, the National Court will be legally bound to take that into account as a strong mitigation factor – (not as a matter of judicial discretion but as a matter of law).

## **Committals and Delays**

Delay in the completion of committal proceedings resulting in the system being clogged up with resultant flow on effect to the institutions, systems and processes in the law and justice sector are the underlying concerns behind this Reference. There have been at least two significant points at which delay has been experienced. The first is at the police investigations stage where police investigators are not able to complete their investigations and complete their files within the expected time resulting in the committals being prolonged. The second point is at the committal courts where the committal courts are not proactive and efficient enough to manage their processes with expediency resulting in committals being protracted. Particularly concerning Schedule 2 category offences – indictable offences triable summarily – there is yet a third point of delay involving time that the Public Prosecutor takes to make an election as to whether the matter should proceed by way of indictment in the National Court or be remitted to the Grade 5 Magistrate in the District Court to hear the matter summarily.

In view of these various and associated sources contributing to the problem of delay, an issue was raised as to whether a statutory time period should be imposed within which committal proceedings should be completed. The majority views, comments and submissions recommended against this – Principal Magistrate Marai Pupaka pertinently stating that we must not put a clock on the process of justice. We recommend against the imposition of strict statutory timeline because to do so may seriously compromise the standard and quality of justice – particularly so from the point of view of the State where the State's ability and duty to effectively conduct criminal investigations and bring wrong doers/law breakers to justice may be seriously compromised. Rather than the imposition of statutory time lines, we recommend that:

- The Chief Magistrate issue appropriate Practice Directions stating the time lines by which all committal hearings in the District Courts should be completed; and
- The Police Commissioner issue relevant Administrative Instructions to all Police Investigators and Prosecutors stating the time lines by which the police hand up brief should be completed.

## Participants

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The Commissioners of the Constitutional and Law Reform Commission (CLRC) are:

- Hon. Dr. Allan Marat Chairman (up to July 2007)
- Hon. Joe Mek Teine Chairman (from August 2007)
- Mr Gerhard Linge Deputy Chairman
- Dr. Betty Lovai
- Mr Tom Anayabere

The Commissioners appointed Dr. Betty Lovai to supervise this reference. The CLRC then established a Working Committee comprising representatives from key organizations who are involved in the criminal justice system to guide and supervise the work in these two and related references on committal proceedings and indictable offences triable summarily. The Working Committee thus comprises:

- Mr Iova Geita Senior Provincial Magistrate - Chairman
- Mr Frazer Pitpit Public Solicitor - Stand in Chairman in the absence of the Chairman
- Mr Jack Pambel Acting Public Prosecutor
- Mr Allan Kopi Waigani Committal Court Senior Magistrate
- Ms Nialin Kiteap Waigani Committal Court Senior Magistrate
- Mr Jimmy Tapat Central Provincial Committal Court Senior Magistrate
- Mr Jim Wan ACP Police
- Mr Robert Ali Police Officer
- Ms Negil Kauvu Director, Community Based Corrections
- Rev. Steven Pirina Deputy Director, Community Based Corrections
- Mr Collin McKenzie Adviser, Community Based Corrections
- Mr Solomon Kai Correctional Services
- Mrs Ume Waineti Program Co-ordinator, Family & Sexual Violence Action Committee as Civil Society Representative
- Ms Lydia Polomon Clerk of Court, Waigani Grade 5 Court
- Ms Elsie Gaius Clerk of Court, Waigani Committal Court

## **List of Recommendations**

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The relevant sections of the *District Courts Act*, amended consistently with the relevant recommendations are set out in full in Appendix 2.

### **3. Law and Practice on Committal Proceedings**

3-1 Section 96 of the *District Courts Act* be repealed and replaced with a new provision that should only invite the defendant to make a statement if he/she wishes to. Any statement made by the defendant should now form part of the court depositions and be treated accordingly. The new s.96 we recommend must allow for the defendant to express an intention to enter a guilty plea if he/she desires to as provided for under s.103 of the *District Courts Act*.

3-2 Section 96(3) *District Courts Act* that currently prohibits the right of defendant to cross-examine any witness be retained but under a new provision.

3-3 Section 95(3) *District Courts Act* be appropriately amended to reflect the recommended changes in Proposal 3-1 above.

3-4 Appropriate consequential amendments be made to Section 100 of the *District Courts Act* to accommodate these recommended reforms.

3-5 That Section 103 of the *District Courts Act* be extensively amended to focus on a system of fast tracking pleas with the heading: “103 Committal on plea”.

### **4. Reform Recommendations**

4.1 The Chief Magistrate issue appropriate Practice Directions stating the time lines by which all committal hearings in the District Court should be completed.

4.2 That the Police Commissioner issue Administrative Instructions to all Police Investigators and Prosecutors clearly stating time lines by which the police hand-up

brief should be completed and served on the accused and submitted to the court.

- 4.3 That Section 103 of the *District Courts Act* be appropriately amended to institute a legal mechanism by which the accused/defendant can be given an opportunity to say whether or not he wishes to plead guilty in the National Court and the matter can then be fast tracked to go before the National Court upon immediate committal.
- 4.4 That a new clause be added to Section 103 of the *District Courts Act* when the recommended amendments under Proposal 4-3 (above) are effected, which will compel the committal court magistrate to inform or explain to the accused/defendant that if he/she pleads guilty at this stage and maintains that plea at the National Court hearings, then the National Court is likely to give him/her a discounted sentence. A further clause must then be added requiring the National Court to take this into account when deciding on the appropriate sentence.
- 4.5 That the Chief Magistrate issue appropriate Practice Directions to implement a system of committal mention date procedure to better manage committal proceedings in line with Recommendations 4-1 and 4-2 above.
- 4.6 The Chief Magistrate issue appropriate Practice Directions reminding committal court magistrates of their roles and responsibilities and then to run their courts efficiently by guarding against entertaining unnecessary and unproductive submissions from lawyers appearing for accused persons/defendants.

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**1.1 The Constitutional and Law Reform Commission**

The Constitutional and Law Reform Commission (CLRC) is an amalgam of the former Constitutional Development Commission (CDC) and the Law Reform Commission (LRC). It came into being on March, 4, 2005. It is established under the *Constitutional and Law Reform Commission Act 2004*. As stipulated under Section 12 of its enabling legislation, the CLRC:

- receives reference from the Minister for Justice to conduct its review and propose legislative change where appropriate concerning laws other than constitutional laws; or
- receives reference from the Head of State acting on advice from the executive government to conduct its enquiry and review into any parts of the Constitution and the Organic Laws and then propose appropriate constitutional law reform where and when considered appropriate.

**1.2 Background of this Inquiry**

About one month before Independence, on 21<sup>st</sup> August, 1975, the then Minister for Justice – now Sir Ebia Olewale, issued a reference to the then Law Reform Commission to review the criminal laws of Papua New Guinea. Pursuant to this reference, the Law Reform Commission then reviewed criminal law practice and procedure relating to committal proceedings and indictable offences and produced the following working papers and reports:

- Indictable Offences Triable Summarily – Joint Working Paper No. 1 (Law Reform Commission and Acting Chief Magistrate) February 1977;

- Committal Proceedings (Preliminary Examinations – Joint Working Paper No. 2 (Law Reform Commission and The Chief Magistrate) July 1977;
- Report on Summary Offences – Report No. 1 September 1975;
- Indictable Offences Triable Summarily – Report No. 8 August 1978; and
- Committal Proceedings - Report No. 10 July 1980

As a result of these reviews and reports, the following legislation were introduced:

- District Courts (Hearing of Indictable Offences) Act 1980 (No. 32 of 1980); and
- District Courts (Committal Proceedings in Cases of Indictable Offences) Act 1980 (No. 31 of 1980).

Generally, these legislative reforms introduced the paper based committal proceedings system we now have where committal proceedings are now done through a police prepared witness file called a hand-up brief. These reforms also saw the introduction of the new Magistrate Grade 5 Courts with requisite jurisdiction to summarily hear and dispose of those group of criminal offences called Indictable Offences Triable Summarily –originally they were referred to as Schedule 2 1A Offences but now Schedule 2 Offences – referring to Schedule 2 of the *Criminal Code Act* where these offences are listed.

Generally this review did cause an improvement in the criminal justice system relating to committal proceedings and indictable offences triable summarily since its introduction in 1980. Twenty six years on, with increase in the work load of committal matters both for the committal courts and the police investigators and prosecutors, the committal process is now under stress. Hence, this reference.

The former Law Reform Commission in its report on committal Proceedings<sup>1</sup> expressed an opinion that ultimately, the holding of committal proceedings and preliminary hearings should be abolished and the Public Prosecutor should receive the completed police files and peruse the file and decide on whether or not to indict the accused to stand trial. However, the Law Reform Commission was evenly concerned that at that stage of the development of the courts and the training of lawyers, magistrates and police prosecutors and investigators, particularly the staff strengths of the

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<sup>1</sup> Law Reform Commission (1980) *Committal Proceedings* (Report No. 10) (Port Moresby: Law Reform Commission).

office of the Public Prosecutor and the Public Solicitor, the proposal to abolish committal proceedings should be delayed. It is really as an interim measure that the Law Reform Commission recommended for the introduction of the Police hand-up brief system of committal proceedings which we now have.

In 1995, the Court Restructure Committee established by the Chief Justice and the Chief Magistrate headed by Justice Hinchliffe<sup>2</sup> considered the issue of abolition of committal proceedings and the recommendations of the Law Reform Commission for the Public Prosecutor to then receive the police file and then upon his perusal of the file and his satisfaction of the evidence, indict the accused and commence trial in the National Court. This report refuted the Law Reform Commission's views on abolition of committal proceedings but instead recommended for the committal proceedings to be retained and made various recommendations to enhance efficiency and attack the dreaded problem of delay.

It is against this background that the Justice Minister, Hon. Bire Kimisopa, issued to us this reference.

### **1.3 Objectives of this Reference: CLRC Reference No. 1: Committal Proceedings**

The primary objective of this Reference is to inquire into and review the system of committal proceedings of the criminal justice system and assess and determine:

- whether and how the provisions for committal proceedings under the *District Courts Act*, and to a limited extent, the *Criminal Code Act* Chapter 262, and other related laws should be modified or abolished to better serve the interest of justice, having particular regard to the impact on the persons, and the State, that are the subject of, or subject to, the laws under review;
- if the committal proceedings system is to be modified, what should be done and how best should that be achieved;
- if the committal proceedings system is to be abolished, propose and recommend its replacement system;

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<sup>2</sup> Final Report of the Court Restructure Committee to the Chief Justice and Chief Magistrate on Committal Proceedings (Unpublished) (copy available on file) 24 pp. We are grateful to Justice Panuel Mogish for alerting us of the existence of this report and then making available to us a copy.



- to the extent necessary to secure the reforms proposed above, whether and how any relevant associated laws and practices should be modified or abolished.

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#### **1.4 Consultations**

For purposes of achieving the above objectives, the CLRC has been directed to consult widely within the country and outside the country. Within the country, we have been directed to consult with the judges, magistrates, court clerks and other officials, police personnel, Public Prosecutor, Public Solicitor, Correctional Services and their jails, the PNG Law Society, Ombudsman Commission, the Department of Justice and Attorney General and the general public. Outside of the country, we have been directed to consider any relevant research or developments of comparative value to this inquiry.

After the issuance of the Issues Paper on 30<sup>th</sup> March, 2007, the CLRC with the support of Working Committee members conducted extensive national consultations in the month of April, 2007. Eight Teams of at least three persons were sent out to all major centres and those other district urban centres which had District Courts in those Districts. These Teams took with them the Issues Papers and Questionnaires and discussed the issues raised in the Issues Papers and furthermore, administered questionnaires and inspected District Court registry files. In those provinces like Madang, Morobe, Eastern Highlands, Western Highlands and East New Britain where there are Public Prosecutor's Office, those Teams who covered those areas also inspected the Public Prosecutor's Election Registration files for those Schedule 2 Matters – indictable offences triable summarily.

After this consultation process, we then released a Draft Report which incorporated the views, comments and submissions we obtained from the consultations. Soon after the Draft Report was released, we then conducted a Seminar in collaboration with the PNG Law Society at which seminar, we discussed the various proposals for reform with a view to finalizing this report. A full list of persons and organizations we consulted with together with those from whom we received written submission is appended to this Report as Appendix 1.

#### **1.5 Purposes of this Report**

The primary purpose of this Report is to discuss the various reform proposals which we are recommending after considering the various submissions, both written and oral which we have received in response to

the issues we raised in the Issues Paper and the Draft Report that we earlier released. In this Report we evaluate the various submissions and then make appropriate recommendations for reform.

## **1.6 Structure of this Report**

This Report is structured as follows:

- Chapter 2 provides a background to general conceptual issues on the essence, nature and purpose and functions of committal proceedings;
- Chapter 3 provides an overview of the current law, practice and procedure governing committal proceedings and recommends several reform measure to streamline and improve the efficiency of the process; and
- Chapter 4 discusses the issues in this Reference and discusses the submissions received on the issues and then makes recommendations for reform where appropriate.

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**2.1 Introduction**

In here we will first explain the nature and purpose of committal proceedings as background information and to put the issues and the discussions on the issues from the submissions we received into perspective.

**2.2 Essence and Nature of Committal Proceedings**

Essentially, committal proceedings are preliminary investigations conducted by a Committal Court to assess and determine the sufficiency of evidence before an accused person is made to stand trial in the National Court. Committal proceedings are required to be conducted under our laws when a person commits a crime that is known as an indictable offence. Generally most, if not all of the crimes under the *Criminal Code Act* Chapter 262 (Criminal Code) are indictable offences and therefore when a person is arrested and charged for any of the offences under the *Criminal Code*, it is most likely that committal proceedings will be conducted as a first step before the actual trial in the National Court. The offences under the *Criminal Code* are known as indictable offences because they are serious crimes and that eventually (after committal) they will be prosecuted by the Public Prosecutor in the National Court by way of an indictment.

Committal proceedings in their essence are rather administrative in nature than judicial. They are administrative because committal proceedings do not “determine whether the accused person is guilty or not”<sup>1</sup> but merely

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<sup>1</sup> Per Jordan C.J. in *Ex Parte Cousens: Re Blacket and Another* (1946) 47 S.R. (N.S.W) 145 at 146 where his honor said: “In relation to charges of offences which they (the Magistrates) have no jurisdiction to try and dispose of, their authority is not judicial; they do not determine whether the accused is guilty of

consider the evidence assembled by police in the completed police file and seek to ascertain the correctness, completeness and compliance of the various witness statements with applicable legal requirements and then upon being satisfied of the adequacy of the evidence and the other compliance issues, commits the accused to stand trial in the National Court.

In other words, committal proceedings enquire into the strengths and weakness of the charges brought by the State against the accused by scrutinizing the evidence available on the police file and considering those against the elements of the crime/offence for which the accused is charged under. The following observations by Ted Hill and Guy Powles is therefore pertinent:

“A committal proceeding is an investigation into the strength of the case being mounted by the prosecution, and it is not an act of adjudication. Its function is not to determine whether or not the person accused is guilty of the offence charged. The proceedings are of an investigatory, tentative and non-conclusive nature. The statutory test to be applied by the Magistrate asks whether the evidence is sufficient to put the defendant on trial for an indictable offence.”<sup>2</sup>

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not guilty; they consider the evidence adduced against him, and if they think that there is enough to justify putting him upon his trial, they direct that he be held, or bailed, for trial by a court which has jurisdiction to try him. This is essentially an executive and not a judicial function”.

Note however that the District Court Magistrate sitting as Committal Court in Committal Proceedings, to the extent they bring with them their judicial approaches and minds inherent to them as judicial officers; they do exercise some judicial power then they take a decision on the sufficiency of evidence and correctness of the witness statements. See *Royal Acquarium and Summer and Winter Gordon Society v Parkinson* (1892) 1.Q.B. 431 at p.452, “The word “judicial” has two meanings. It may refer to the discharge of duties exercisable by a judge or by justices in court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind that is a mind to determine what is fair and just in respect of the matters under consideration.”

<sup>2</sup>. Hill T and G Powles (2001) *Magistrates Manual of Papua New Guinea* (Sydney: Law Book Company) at p. 193-194.

### 2.3 Purpose and Functions of Committal Proceedings

The primary purpose of conducting these preliminary examinations of the evidence against an accused person at committal proceedings stage is to determine the sufficiency and strength of the case against the accused before he/she is committed to stand trial. The purpose here therefore is to screen and filter weak, unjustified and unmeritorious charges and to ensure that only those criminal charges which are justified, meritorious and deserving are put to the process of criminal trial. The following often quoted statement by Lord Widgery C.J. in *R –v- Epping and Horlow Justices; Ex parte Massaro* (1973) Q.B. 433 at p.435 has been cited in this context for as stating the basic purpose of committals:

“For my part I think it is clear that the function of the committal proceedings is to ensure that no one shall stand his trial unless a prima facie case has been made out.”

Dawson J in *Grassby –v- The Queen* (1989) 168 CLR 1 at p.15 then emphasises the importance of committal proceedings:

“The importance of the committal in the criminal process should not, however, be underrated. It enables the person charged to hear the evidence against him and to cross-examine the prosecution witness. It enables him to put forward his defence if he wishes to do so. It serves to marshal the evidence in depositions form. And, notwithstanding that it is not binding, the decision of a magistrate that a person should or should not stand trial has in practice considerable force so that the preliminary hearing operates effectively to filter out those prosecutions which, because there is insufficient evidence, should not be pursued.”

In the 1922 American State of Wisconsin case of *Thies v State* 178 Wis. 98, 103; 189 N.W. 593, 541 the purpose of committals is elaborated upon and further explained in these terms:

“The object or purpose of the preliminary investigation is to prevent hasty, malicious, improvident and oppressive prosecutions, to protect the person charged from open and public accusations of crime, to avoid both for the defendant and the public the expense of a public trial, and to save the defendant from the humiliation and anxiety involved in public prosecution, and to discover whether or not there are substantial grounds upon which a prosecution may be based.”

In the Papua New Guinean context, the following comments by Sheehan J. in the case of *Robert Lak v Daisy Magaru (Presiding Magistrate at Waigani District (Grade V) Committal Court) and the State* [1999] PNGLR 572 at p.576 aptly explain the purpose and function of the Committal Courts in our criminal justice system:

“Notwithstanding that committal proceedings do make determination effecting a person’s rights thus enabling courts to consider applications for review, the fact is that a committal nonetheless making no determination of liability or penalty. It is a preliminary process in the system of criminal justice where the prosecutor makes public disclosure to a committal court for trial of a charge. The National Court is where that evidence is to be tried, where it is to be tested”.

The Supreme Court in *Supreme Court Review No. 34 of 2005, Review Pursuant to Constitution Section 155 (2)(b) by Herman Joseph Leahy* (Unnumbered & Unreported judgment) explicitly articulates the purpose of committal proceedings at p.58:

“The purpose of the proceedings is to determine whether in the opinion of the presiding magistrate there is sufficient evidence for the defendant to be committed to trial. If the magistrate’s opinion is that the evidence is insufficient, there is no committal and the defendant, if he is in custody, is discharged from custody. That is the end of the matter unless there is an appeal under Section 219, initiated by the Secretary for Justice, or the Public Prosecutor invokes Section 256 of the *Criminal Code* and presents an indictment to the National Court.”

From these statements, we can restate the basic purposes of conducting preliminary examinations of a case against a person in committal proceedings being to:

- prevent hasty, malicious, oppressive or unjustified prosecutions;
- protect the accused from open and public accusation of crime;
- to save the defendant from the humiliation and anxiety involved in public prosecution;
- to avoid both for the defendant and the public expense of a public trial;
- to discover whether or not there are substantial grounds upon which a prosecution may be based; and

- to disclose to the accused the details and extent of the charges against him or her so that he or she can then prepare their defense accordingly.<sup>3</sup>

Committal proceedings have become an important part of the criminal justice system in the common law jurisdictions for the processing of indictable offences. From the point of view of the accused, committal proceedings gives the accused an opportunity to challenge the State case on issues of sufficiency of evidence and the correctness of the form of the evidence such as witness statements and to obtain a discharge there and then.

To abrogate committal proceedings would be to abrogate that every opportunity available in our criminal justice system.<sup>4</sup>

To summarize this part of the discussions on the purposes and functions of committal proceedings, we refer to the commentary by Ted Hill and Guy Powel from their book *Magistrates Manual of Papua New Guinea*<sup>5</sup> where they first explain that because of the serious nature of criminal trials in the National Court for indictable offences, it is necessary that preliminary examinations be conducted at committal proceedings stage to assess the strength of the charges against the accused. That these preliminary investigations serves both the interest of the accused and the State in ensuring that “weak” or “misconceived” charges do not proceed to trial.

Therefore, the “primary objective of the committal proceeding is to determine whether there is sufficient evidence to warrant a person accused of an indictable crime being sent for trial before a judge for the offence

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<sup>3</sup> “... committal proceedings gives the accused person an opportunity to obtain more precise details of the charges laid and the supporting evidence. It compels the pre-trial disclosure or discovery of the essence of the case for the prosecution. This assists in the formulation of defence strategy for those committed to stand trial”.: Supra n.2 at p. 194.

<sup>4</sup> “It is now accepted in England and Australia that Committal Proceedings are an important element in our system of Criminal Justice. They constitute such an important element in the protection of the accused that a trial held without antecedent Committal Proceedings, unless justified on strong and powerful grounds, must necessarily be considered unfair.. To deny an accused the benefit of a Committal Proceedings is to deprive him of a valuable protection uniformly available to other accused persons which is of great advantage to him, whether in terminating the proceedings before trial or at trial”. Per Gibbs ACJ & Mason J, Atkin J concurring in *Barton v R* (1980) 147 CLR 75 at p. 100.

<sup>5</sup> Hill T and G. Powel (2001) *Magistrates Manual of Papua New Guinea* (Sydney: Law Book Company) at p. 193.

charged (or any other indictable offences).”<sup>6</sup> This is best explained by Akuram AJ (as he then was) in *Buckley Yarume v-Sylvester Euga* (1996) (Unreported National Court Judgment) N1476 where his honor explains that the whole purpose of conducting committal proceedings in the District Courts, sitting as Committal Courts, is: “to gather evidence and assess it to see whether it is sufficient to commit the accused for trial... This requires proper and reasonable assessment of the evidence with a view to seeing whether all the elements or ingredients of the offence are present”.

#### 2.4 Role of Committal Court Magistrates

As stated above, since committal proceedings are, by their very nature, preliminary investigations into the adequacy and strength of the evidence against an accused person relating to the charges which have been brought against him/her, the role that the Magistrate plays in committal proceedings is restricted to conducting an investigation into the adequacy of the evidence.<sup>7</sup> Therefore, in committal proceedings: “The duty and province of the Magistrate ... is to determine ... whether the case is one in which the accused ought to be put upon his trial. It is no part of his province to try the case.”<sup>8</sup>

In other words: “In substance, a Committal Magistrate determines nothing, except that in his opinion, a prima facie case has been made out for committing the accused for trial.”<sup>9</sup>

#### 2.5 Committal Proceedings in Papua New Guinea

Any person who has been charged for any indictable offence either under the Criminal Code or other laws which have indictable offences prescribed in them<sup>10</sup> is first dealt with by a Committal Court. Committal Courts are District Courts exercising criminal jurisdiction and are presided over by Senior Magistrates Grade 4.

<sup>6</sup> Ibid

<sup>7</sup> “A Magistrate ... does not act as a Court of Justice; he is only an officer deputed by the law to enter into a preliminary inquiry”: *Cox v. Coleridge* (1822) 107 E.R. 15, 20.

<sup>8</sup> *R v. Carden* (1879) 5 Q.B.D. 1, 6.

<sup>9</sup> *Ex Parte Cousens; Re Blacket and Another* (1946) 47 S.R. (N.S.W) 145 at p. 147.

<sup>10</sup> For example, the crime of mutiny under Section 55 of the *Defence Act* Ch No. 74 and the case of the *The State -v-Captain Bola Renagi & Others* [2000] PNGLR 34.



Since the enactment of the *District Courts (Committal Proceedings in Cases of Indictable Offences) Act 1980* (No. 31 of 1980), committal proceedings in Papua New Guinea are now conducted through hand-up briefs. Hand-up briefs are essentially the complete files which the Police assemble on the alleged crime which the accused is alleged to have committed. The hand-up briefs or files contain the Information and Summons relating to the charge laid against the accused and all the relevant police witness statements. Under this system, State or Police witnesses are not required to appear at the committal courts and give oral evidence. Although the law does not expressly say it, in practice those State or Police witnesses who have given written witness statements are subject to cross examination by the accused at the committal proceedings.

Prior to the introduction of the police hand-up brief (or paper based committal) when committal proceedings were conducted by the courts, the State or Police witnesses appeared in open court and gave oral evidence and their statements were taken and transcribed and then considered by the committal court. The State or Police witnesses were subject to full cross-examination by the accused. Having heard the evidence, the committal magistrate was then required to commit or discharge the accused depending on the strength and weight of the evidence. If the magistrate found that the State or Police evidence was uncontradicted and hence strong, then he was bound to commit the accused to stand trial in the National Court. In a study conducted by the former Law Reform Commission and the Chief Magistrate in July 1977<sup>11</sup>, it was found that because of the need to have State/Police witnesses appearing in person and giving evidence and being further subjected to cross examination, the system then was inefficient and time consuming resulting in long delays. The former Law Reform Commission then in its report in July 1980<sup>12</sup>, recommended for the introduction of committal by hand-up brief and this resulted in the enactment of the relevant legislation in 1980 and the subsequent introduction of the current system of police hand-up brief. This system has now been in operation for a little over a quarter of a century and there has been some concerns raised that there are still delays. Hence this reference.

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<sup>11</sup> Law Reform Commission and Chief Magistrate *Committal Proceedings (Preliminary Examinations) Joint Working Paper No. 2* July, 1977.

<sup>12</sup> Law Reform Commission (1980) *Committal Proceedings Report No. 10* (Port Moresby: Government Printer).

## **Chapter 3. Law and Practice on the Conduct of Committal Proceedings**

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### **3.1 Introduction**

Committal proceedings are conducted by Magistrates Grade 4 and above in the District Courts sitting as Committal Courts. The law and procedure which these Committal Courts must follow when conducting these proceedings is set out under Part VI of the *District Courts Act* Chapter 40 (as amended). In here we set out the law, process and procedure, primarily to help us to inform ourselves better and enhance our understanding of how the current system operates.

### **3.2 Indictable Offences and Committal Proceedings**

In the criminal justice system that Papua New Guinea has adopted, when a person is accused to have committed a serious crime falling in the category known as indictable offence, it is mandatory that upon arrest, the accused must be taken to the District Court sitting as a Committal Court. As stated above, committal proceedings are preliminary investigations conducted to assess and determine the sufficiency or strength of the evidence against the accused. If the committal court finds that there is evidence against the

accused to warrant him or her to stand trial, then the accused is committed to stand trial in the National Court.

Speaking from the point of jurisdiction, it is the National Court that has exclusive jurisdiction to try a person who has committed an indictable offence (other than a Schedule 2 Offence). The role of the District Court sitting as a Committal Court is restricted to conducting a preliminary investigation to determine the sufficiency or strength of the evidence.

The committal proceedings are commenced in the District Court sitting as a Committal Court by summons and information issued pursuant to Sections 39 and 94 respectively under the *District Courts Act*. In this regard, Section 94 is significant. It says:

- “(1) Subject to Subsection (6), where a person is charged with—
- (a) an indictable offence that shall not be tried summarily; or
  - (b) an offence against Section 420 of the Criminal Code 1974 where the offence is not to be tried summarily,  
the informant shall serve or caused to be served, in accordance with Subsection (3), on the defendant or his legal representative—
  - (c) a copy of the information; and
  - (d) a copy of each statement that the informant intends to tender at the committal hearing; and
  - (e) a list of documents and exhibits referred to in a statement referred to in Paragraph (d) that the informant intends to tender at the committal hearing; and
  - (f) a copy of each document referred to in Paragraph (e).

- (1A) A statement referred to in Subsection (1)(d) shall contain the following warning to the maker of the statement and shall be signed by the maker of the statement:—  
'I...certify that this statement is true to the best of my knowledge and belief. I make it knowing that if it is tendered in evidence I will be liable to prosecution if I have knowingly stated anything that is false or misleading in any particular.  
Signed'.

- (1B) A statement referred to in Subsection (1)(d) shall, for the purposes of Division III.2 of the Evidence Act 1975, be treated as an affidavit.”

Although Section 94(1) as quoted above implies that when the information is served on the accused, other documents such as all witness statements together with a list of documents and exhibits which the State intends to rely on as evidence on trial are required to be served on the accused simultaneously. What happens in practice now is that upon arrest and the laying of charges, it is the Information and the Summons Upon Information which are first served on the accused to compel the accused to appear in the Committal Court. All the relevant witness statements, exhibits and a full list of all the documents comprising the State evidence against the accused are then organized and assembled in a police file and served on the accused, usually two or three weeks after the first or second mention in the Committal Court. The police file that is served on the accused and the Committal Court is then used by the presiding Magistrate to scrutinize and assess the sufficiency and strength of the evidence against the accused.

### **3.3 Hand Up Brief**

The police file that is completed by the police investigator (and the arresting officer) that is served on the accused and the court is also served on the police prosecutor. If the crime for which the accused is charged is an indictable offence triable summarily commonly referred to as Schedule 2 offences,<sup>1</sup> the Public Prosecutor is also served with a copy of the police file to enable him to make an election as to whether the matter should be sent to a Grade 5 District Court to be tried and disposed off summarily or proceed

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<sup>1</sup> See Schedule 2 of the *Criminal Code Act* Chapter 262. Indictable Offences Triable Summarily or Schedule 2 Offences as they are commonly referred to, are serious indictable offences in the Criminal Code but a Grade 5 Magistrate sitting in the District Court has been given jurisdiction or power to hear them and determine the guilt or innocence of the accused and respectively sentence or a acquit the accused. But in order to enable the Grade 5 District Court to have jurisdiction, it is mandatory that the Public Prosecutor must also be served with the completed police file and on the basis of what is on the Police file, make an election either to refer the matter to the Grade 5 Court to be tried and disposed of summarily or for the matter to proceed through committal and then, if committed, for trial in the National Court. This topic is separately considered as a separate reference in our Reference No. 2 – Reference on Indictable Offences Triable Summarily.

with committal in the District Court sitting as a Committal Court.<sup>2</sup> The completed police file that contains all the relevant witness statements appropriately taken and signed by the witness with the statutorily required notations together with a full list of documentary evidence and exhibits constitutes a police Hand-Up Brief. It is based on the strength of this hand-up brief that:

- the Public Prosecutor can make an election under Section 4(1) (ga) of the *Public Prosecutor (Office and Functions) Act* (Chapter 388 (as amended) to either allow the matter to proceed on with committal or send it to the Grade 5 District Court for the matter to be tried summarily where the Offence is a Schedule 2 Offence;
- the presiding Committal Magistrate scrutinizes the witnesses statements and other enclosed evidentiary material and then decides to commit or not to commit the defendant to stand trial in the National Court;
- a defence counsel or the defendant assess the strength and weakness of the evidence against the accused/defendant and then if he forms the view that the evidence is not sufficient, makes a no-case-to-answer submission to the committal court seeking to have the matter dismissed and the accused discharged; and
- if the accused is committed to stand trial in the National Court, copies of this hand-up-brief are then forwarded to the Public Prosecutor and the National Court to enable them to prepare for the eventual trial;
- the Public Prosecutor carefully peruses the witness statements and all the other evidentiary material contained in the hand-up brief and then considers the appropriateness of the charges laid by police. The Public Prosecutor is at liberty to substitute the charge for another that is well supported by the available evidentiary material on the hand-up brief. The Public Prosecutor then uses the witness statements and other evidentiary material on the hand-up brief to prepare for the trial by liaising with the police Investigating Officer and ensuring that those witnesses are available to give evidence based on their statements on the hand-up brief. The Public Prosecutor is at liberty to interview the witnesses at this pre-trial

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<sup>2</sup> The Public Prosecutor is given these powers to make an election under Section 4(1) (ga) of the *Public Prosecutor (Office and Functions) Act* Chapter 338.

stage to ensure that there is no material change or substantial deviation from their statements contained in the hand-up brief.

### 3.4 Commencement of Committal Proceedings

As stated above at Paragraph 3.2, committal proceedings are commenced in the District Court sitting as a Committal Court under a police Information and a Summons Upon Information. The Information and the Summons Upon Information are basic initiating legal documents required under the *District Courts Act* to commence any criminal proceedings, of course including committal proceedings.<sup>3</sup> The Information contains the charges which has been laid on the accused by the police together with brief facts upon which the charges are based. The Summons Upon Information is served on the accused together with the Information to compel the accused to answer the summons and appear in court.

In some instances, the particular provision of the Criminal Code or such other law which states the indictable offence for which the accused is charged may require that the accused be arrested and charged only on a warrant of arrest issued in the first instance by the District Court. An example of such an offence is unlawful wounding under Section 128 of the Criminal Code where Section 128(2) goes onto instruct that any person that is charged under this section for unlawful wounding “shall not be arrested without warrant.” In such a situation, the arrest of the accused without a warrant will render the committal proceedings illegal and therefore invalid.

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<sup>3</sup> In relation to commencement of proceedings in the District Court, Section 28 of the *District Courts Act* says that criminal proceedings shall commence by Information. Section 29 of the *District Courts Act* then goes onto say that: “An information shall be for one matter only, except that –  
in the case of indictable offences, if the matters of the information are such that they may be charged in one indictment; and  
in other cases, if the matters of the information are substantially of the same act or omission on the part of the defendant”.  
Note also the requirements of Section 35 of the *District Courts Act* which instructs:  
“(1) Where it is intended to issue a warrant in the first instance against the party charged, the information shall be in writing and on oath either by the informant or some other person.  
(2) Where it is intended to issue a summons instead of a warrant in the first instance, the information need not be in writing or on oath, but may be verbal only and without oath, whether the law under which the information is laid requires it to be in writing or not.”

The National Court has made this clear in the cases of *Bonga v The State* [1988-89] PNGLR 360 and *State v Natpalau Tulong* [1995] PNGLR 329. Doherty J in the *Natpalau Tulong* case has made it clear that the Committal Court is duty bound to ensure that an accused person is lawfully arrested and charged and brought before the court.<sup>4</sup>

### **3.5 Duties, Roles and Responsibilities of the Committal Court Magistrate at Committal Proceedings**

Pursuant to the various requirement under the *District Courts Act* and case law, the following are duties, roles and responsibilities which the law imposes on the Magistrate sitting in the Committal Court.

- 3.5.1 First, a Committal Court Magistrate must ensure that the police have properly served the information and summons upon information on the accused compelling the accused to appear in court. This is a requirement under s 94(1) of the *District Courts Act*. In satisfying himself or herself as to the requirements of service, the Magistrate must have regard to Sub-sections (3), (4) and (5) of Section 94 of the *District Courts Act* where these provisions require that service of the relevant court processes and documents must be effected as follows:
- in the case of a natural person – on the person to whom they are directed by serving them on the accused personally (ie, personal service);<sup>5</sup>
  - in the case of a company incorporated under the *Companies Act* – on the company as stipulated under that Act;<sup>6</sup>
  - in the case of any other corporation – by serving the documents on either the Secretary, Chief Executive Officer or public officer personally or by post to the last know postal address;<sup>7</sup>

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<sup>4</sup> In this case, the accused was committed to stand trial in the National Court by the Committal Court on a charge for unlawful wounding under Section 128 of the *Criminal Code*. At the commencement of his trial Doherty J found that when he was arrested and charged he was arrested without a warrant of arrest inspite of the clear terms of Section 128(2) which stated that “a person shall not be arrested without a warrant” for an offence under s.182(1). Therefore the failure to obtain a warrant before the arrest rendered the arrest unlawful. Accordingly, at commencement of trial, Doherty J refused to accept the indictment present by the State Prosecutor and discharged the accused.

<sup>5</sup> See s.94(3)(a) *District Courts Act*.

<sup>6</sup> See s.94(3)(b) *District Courts Act*.

<sup>7</sup> See s.94(3)(c) *District Courts Act*.

at least 14 days before the date fixed for the hearing. The person (usually a policeman) who carries out service on the persons as stated above is then required:

- within seven days after service to make an affidavit of service stating the day and place at which service was effect; and
- at least within 72 hours before the date fixed for hearing – transmit the affidavit to the Clerk of Court before which the hearing is to take place.<sup>8</sup>

For purposes of the Committal Court, the affidavit of service then becomes a prima facie conclusive evidence of service on the accused.<sup>9</sup>

In the case of *The State -v- Rush: Ex parte Rush* [1984] PNGLR 124 the National Court has emphasized that where a person is charged with an indictable offence that cannot be tried summarily and the necessary documents relating to the charge have not been served on the accused within the time limits specified under Sections 94(3) (then s.101) of the *District Courts Act* as specified above, an order in the nature of certiorari should go to quash the committal of the accused. From this decision, it is important to point out that if committal court magistrates do not scrutinize and ensure that the compliance of the requirements of service as stated above, including the specified time limits for service, the entire committal proceedings stands to be quashed by the National Court on application by the accused.

3.5.2 The second matter for the committal magistrate to be satisfied with relates to the requirements of Section 35 which deals with two situation:<sup>10</sup>

- 1) that which involves an offence for which arrest and the laying of charge can only be done upon the prior issuance of a warrant of arrest; and

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<sup>8</sup> See s.94(4) *District Courts Act*.

<sup>9</sup> See s.94(5) *District Courts Act*.

<sup>10</sup> “35. Form of Information.

(1) where it is intended to issue a warrant in the first instance against the party charged, the information shall be in writing and on oath either by the informant or some other person.”

(2) where it is intended to issue a summons instead of a warrant in the first instance, the information need not be in writing or on oath, but may be verbal only and without oath, whether the law under which the information is laid requires it to be in writing or not.”



- 2) that which does not require the prior obtaining of a warrant before arrest and that compliance for appearance in court can only be secured by a summons upon information only.

Under the first situation (situation 1),<sup>11</sup> it is a requirement that the information must be in writing and on oath either by the informant or some other person. Under the second situation (situation 2),<sup>12</sup> neither the information need be in writing nor on oath. It however has been the practice and good practice too, that all information under this category have always been in writing and that should continue.<sup>13</sup> Apart from the specific requirements of these two situations, the following general requirements concerning the form of the information are also important considerations to which the committal court magistrate must be satisfied:

- that the information must be in writing;
- that the information must relate to all the elements of the offence for which the accused is charged as reflected in the provision of the applicable law that defines the offence and states the charge;
- the description of the offence on the information must be in accordance with the words which appear in the legislation which contain and state the charge;
- for offences which require the absence of justification or excuse to constitute the offence, the information must allege the absence or lack of such justification or excuse.<sup>14</sup>

3.5.3 The third set of matters which the committal magistrate must consider and be satisfied with relates to the contents of the completed police file also known as the hand-up brief. Upon receiving the completed police file, the committal magistrate must peruse the file to ensure that the files do contain the following set of material:

- a copy of the Information; Summons Upon Information; and or were applicable, a copy of a warrant of arrest for those offences which require arrest to be effect on warrant;

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<sup>11</sup> See s.35(1) *District Courts Act* as cited above in n.10.

<sup>12</sup> See s.35(2) *District Courts Act* as cited above in n.10.

<sup>13</sup> Akuram J in *Backley Yarume -v- Sylvester Euga* (1996) N1476 (unreported) National Court Judgment of September 6, 1996 generally considered these matters at p.10 of his judgement.

<sup>14</sup> Generally, see Hill T and G Powles (2001) *Magistrates Manual of Papua New Guinea* (Sydney: Law Book Company) pp.155-156.

- a copy of each and every witness statements intended for evidence and tendered by the police;
- copies of all documents and exhibits (ie. Photographs, etc) referred to in the various witness statements which the police intends to rely on to establish a prima facie case at committal;
- a complete and full list of all documents and exhibits which the police have put together in the hand-up brief.<sup>15</sup>

All these evidentiary material must be relevant and go towards sustaining the charges laid against the accused. All the various witness statements which the police investigator(s) have obtained and which they intend to rely on to sustain the charge must be personally signed by the person who has made the statement and must contain the following statement:

“I ..... certify that his statement is true to the best of my knowledge and belief. I make it knowing that if it is tendered in evidence I will be liable to prosecution if I have knowingly stated anything that is false or misleading in any particular.

Signed: .....

Such a statement is deemed to be an affidavit under Section 94(1B) of the *District Courts Act*.

3.5.4 The fourth task which the committal court magistrate must attend to is to conduct an inquiry into all the various witness statements including confessional statements if any, and record of interview statements from the accused and any other related documents and exhibits, and ensure that all such evidentiary material have been obtained lawfully. This is a requirement under Section 94C of the *District Courts Act*. The committal court magistrate is required to conduct this inquiry first before he or she can admit into evidence or reject the particular evidentiary material concerned. Hill and Powles (2001) explain that: “Here, the court’s task is to consider the witness statements, documents and exhibits which have been served on the defendant for the purpose of admitting them as evidence.”<sup>16</sup> For example if a

<sup>15</sup> These are set out under Section 94(1) of the *District Courts Act*. Note Section 94 (2) which says: “Where an exhibit... cannot be copied or adequately described, the defendant shall be notified of the place nominated by the informant where the exhibit may be inspected.”

<sup>16</sup> See n.14 at p.198.

confessional statement of a co-accused has been illegally obtained (in breach of Section 35 of the *Evidence Act* and Section 49(1)(a) of the *District Courts Act*) then the committal court must reject such evidence: *Hami Yawari-v-Tolimo English* [1996] PNGLR 446.

Apart from the general issues of lawfulness or otherwise of processes and procedures in obtaining witness statements or confessional statements, Section 94C(2) of the *District Courts Act* lays down the following mandatory test:

“Before admitting a written statement, the court shall be satisfied that the person who made the statement had read and understood it, or if unable to read, had had it read to him in a language that he understood”.

In *The State -v- Kai Wabu* [1994] PNGLR 498, Injia AJ (as he then was) came across a situation where when the accused was committed to stand trial in the National Court for one count of attempted rape by the Committal Court, the committal magistrate did not satisfy himself/herself that, the accused an illiterate villager, understood the statement because there was no evidence on the hand-up brief that some one has read to the accused in a language he understood the content of the written statements attributed to him. It is against this background, that His Honor laid down the following judge made law:

- the combined effect of ss 94(1A) and 94C(2) of the *District Courts Act* is that the Committal Court must conduct an enquiry to ensure that the makers of statements had full knowledge of the contents, correctness, and truth of written statements they are responsible for signing;
- the requirement is mandatory and requires strict compliance. This enquiry is an independent one, which the court must conduct in the exercise of its judicial function;
- after having conducted the enquiry, the court has a discretion to admit or reject the written statement. The court must then record the nature and extent of the enquiry conducted and record its findings; and
- failure to conduct such enquiry and record its finding may result in voiding the committal.

3.5.5 The fifth task which the court has is the onerous duty imposed by Section 95 of the *District Courts Act* where it must now after

scrutinizing and admitting the evidence, consider the sufficiency of the evidence and decide whether or not a prima facie case has been established to commit the accused to stand trial or not:

- if the court is of the opinion that the evidence is not sufficient to put the accused on trial for an indictable offence, it shall immediately order the release (if in custody) and discharge the accused;
- if the court is of the opinion that the evidence is sufficient to put the accused upon his trial for an indictable offence, the court shall then proceed further with the committal proceedings.

3.5.6 The sixth responsibility that the committal court magistrate has after the s.95 consideration and upon deciding that there is sufficient evidence, then is to ask the accused whether he/she desires to give any evidence at this committal stage. This is a requirement imposed by Section 96 of the *District Courts Act*. It states:

“(1) Where a Court proceeds with the examination of a defendant in accordance with this Division, the Court shall read the charge to the accused and explain its nature in ordinary language and shall say to him these words, or words to the same effect—

"Having heard the evidence for the prosecution do you wish to be sworn and give evidence on your own behalf, or do you desire to say anything in answer to the charge? You are not obliged to be sworn and give evidence, nor are you required to say anything, unless you desire to do so; but whatever evidence you may give on oath, or anything you may say, will be taken down in writing, and may be given in evidence on your trial. You are clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been held out to you to induce you to make any admission or confession of your guilt; but whatever you now say may be given in evidence on your trial, notwithstanding any such promise or threat."

(2) Anything that the defendant says in answer to a statement made in accordance with Subsection (1) shall be—

- (a) taken down in writing in the English language and read to him; and
- (b) signed by the Magistrates constituting the Court and by the defendant if he so desires; and

- (c) kept with the depositions of the witnesses and transmitted with them to the Public Prosecutor.
- (3) In an examination of a defendant in accordance with this Division neither the defendant nor his legal representative shall be permitted to subject any witness to cross-examination.”

Note that Section 96 of the *District Courts Act* (as cited above) gives the accused/defendant an opportunity to give evidence in his defence at this committal stage. The rationale behind this opportunity given by s.96 to the accused is that since the committal magistrate has found earlier under s.95 that there is sufficient evidence to put the accused on trial, the accused must now be given the opportunity to give evidence on his/her defence and spare himself or herself from the pending decision to commit. If the accused/defendant does give strong and convincing evidence in his/her own defence at this stage, then the committal court will have to reconsider its earlier decision taken under Section 95 and then discharge the defendant. Whilst this stands as a hope and promise to the accused/defendant, note however that any incriminating evidence given by the accused/defendant at this s.96 opportunity can be legitimately used by the State against him or her at trial in the National Court. At this Section 96 opportunity to respond to the State/police case presented in the hand-up brief, the defendant is given an opportunity to give either a sworn or unsworn statement. If he/she elects to give an unsworn statement, then he/she will not be subject to cross-examination by the police prosecutor and any self serving statements made by the defendant may be relied upon in his/her favour at trial.<sup>17</sup>

Conversely, if the defendant/accused elects to give a sworn statement, then he/she will be subject to cross examination by the police prosecutor and the State is entitled to rely on the defendant’s statement at trial.<sup>18</sup>

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<sup>17</sup> “Facts, including self-serving statements related by an accused in a signed statement to the police put in evidence the Crown and in a statement ... and subjected to cross-examination, are evidence in favour of the accused but must be considered along with all other evidence in the trial....” *R v Joseph Haihai Sarufa* [1974] PNGLR 173.

<sup>18</sup> “Where an accused chooses to give sworn evidence, such evidence ... is subject to cross-examination by the police prosecutor and any questions by the magistrate, and answers to such cross-examination are available as evidence at

Realising the double edge sword nature of this s.96 opportunity statement, Kapi J (as he then was) in *The State-v-Nagiri Topoma* [1980] PNGLR 18 has issued the following caution and also a reminder to committal court magistrates:

“It will only do justice to defendants who are either uneducated or who are not represented by legal counsel, for the presiding magistrate to explain to the defendant the legal consequences of whether or not the defendant should say anything at all at this point or, if choosing to say anything, whether the defendant should make a sworn statement or an unsworn statement and make specific mention of the right of the police prosecutor to cross-examine if the choice is made to give sworn evidence. If the defendant is not advised of the legal consequences of the options, the National Court may, in its discretionary power, reject such statements if it feels that, in all the circumstances, it was unfair to admit answers in response to cross-examination.”

The above statement must now be read subject to Section 97 of the *District Courts Act*<sup>19</sup> which states:

“On the trial of a defendant for an offence for which he has been committed for trial or for any other offence arising out of the same transaction or set of circumstances as that offence, a statement made by him under Section 96 may be given in evidence without further proof, notwithstanding that the statement may be exculpatory or self-serving, if the statement purports to be signed by the Magistrates by or before whom it purports to have been taken, unless it is proved that it was not in fact signed by those Magistrates.”

Thus this provision now accommodates some of the concerns raised by judges in their comments as cited above. Particularly in relation to the concerns by Kapi J (as he then was) in the Nagiri Topoma judgment as cited above, Section 97 of the *District Courts Act*, now makes it clear that:

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trial.”: per Kapi J (as he then was) in *The State v Nagiri Topoma* [1980] PNGLR 18.

<sup>19</sup> Introduced by *District Courts (Committal Proceedings in Cases of Indictable Offences) Act* 1980.

- a statement made by the accused/defendant under s.96 may be tendered as evidence at trial without further proof irrespective of whether the statement is self serving or exculpatory;
- for the s.96 statement to be admitted into evidence at trial, the statement must be signed by the Magistrate before whom the statement was made and taken down in writing. As a matter of practice, it must also be counter signed and dated by the accused/defendant.

It is clear from the dictates of Section 97 of the *District Courts Act* that when a Section 96 statement is made by the accused/defendant, it must be taken and signed by the presiding magistrate if the statement is to be admitted as evidence at trial in the National Court. Failure to do that will render the s.96 statement inadmissible.

3.5.7 The seventh and ultimate responsibility that the Committal Magistrate has in these sequential flow of the committal proceedings process is to then eventually discharge or commit the defendant/accused to stand trial in the National Court pursuant to Section 100 of the *District Courts Act*. This provision accordingly directs:

- “(1) When an examination [in these committal proceedings] is completed, the Court shall consider whether the evidence is sufficient to put the defendant on trial.
- (2) If, in the opinion of the Court, the evidence is not sufficient to put the defendant on trial, it shall immediately order the defendant, if in custody, to be discharged as to the information then under inquiry.
- (3) Where—
- (a) in the opinion of the Court, the evidence is sufficient to put the defendant on trial; or
- (b) the Court commits the defendant for trial under Section 94B(1)—
- the Court shall—
- (c) by warrant commit the defendant to a correctional institution, police lock-up or other place of security to be kept there safely until the sitting of the National Court before which he is to be tried, or until he is delivered by due course of law; or
- (d) admit him to bail in accordance with Division 2.”

Pursuant to this provision, the matters which the Committal Court Magistrate must satisfy himself or herself on, before taking the decision to commit or discharge are:

- if the magistrate forms the opinion that the evidence is sufficient and all witness statements and such other evidentiary materials have been properly and legally obtained as required by various laws as reviewed above – then the court must commit the defendant/accused to stand trial; or
- if the magistrate forms the opinion that the evidence is insufficient etc, he or she must discharge the defendant/accused.

The consideration that the Magistrate makes here in relation to the sufficiency of the evidence is same as that he/she has earlier had to when the stage of s.95 of the *District Courts Act* was reached – that of deciding whether there is sufficient evidence or a prima facie case for the defendant/accused to answer.

### **Submissions and Consultations**

At the national consultations and a subsequent meeting with the Chief Magistrate and Deputy Chief Magistrate and all the serving Magistrates in National Capital District, most magistrates expressed the view that the procedure under Section 96 is unnecessary, if not dysfunctional to the purpose of committal proceedings. This is because the Section 96 procedure (as described above) is somewhat like an allocutus and then requiring the accused to give evidence in this defense as if he has been tried and found guilty and is about to be sentenced. This is clearly unnecessary and unwarranted because the committal magistrate has, when administering the Section 95 procedure (see paragraph 3.5.5 above) found that there is sufficient evidence to commit the accused. At that stage, the purpose for committal proceedings has been accomplished.

The majority of the magistrates, in their verbal submissions and consultations expressed the view that, in practice, the Section 96 procedure gives a somewhat false hope to the accused of sparing himself or herself from being committed because the magistrate has already at the Section 95 stage found that there is sufficient evidence to commit the defendant. Furthermore, the Section 96 procedure, somewhat turns the committal into a unnecessary mini trial which will not serve any real and useful purpose for the accused but more over may unnecessarily expose the defendant to the risk of giving incriminating testimony.



As quoted above, the Section 96 (1) statement begins by inviting the defendant to respond in this manner: “Having heard the evidence for the prosecution do you wish to be sworn and given evidence on your own behalf, or do you desire to say anything in answer to the charge?” This is a clear invitation to the accused to lead evidence in his or her defense after the committal magistrate has earlier, under the Section 95 stage of the committal, found that there is sufficient evidence against the accused to warrant committal to stand trial. Bearing in mind the purpose of the committal proceedings as stated at paragraphs 2.3 above – that the primary function is to determine whether there is sufficient evidence to warrant the committal of the defendant to stand trial – the current Section 96 procedure of the committal proceedings is clearly unnecessary. If anything, the accused at that stage should only be given the opportunity to make a statement but not to be sworn and give evidence on this own behalf. To do so is simply a futile exercise.

We note that the *Final Report of the Court Restructure Committee to the Chief Justice and Chief Magistrate on Committal Proceedings* 1995 has recommended that the right of the accused person to make a statement under s.96 of the *District Courts Act* be retained but does not elaborate. We further note that this same report has recommended for the abolition of any right of cross examination by the defendant. We point out that currently Section 96 (3) of the *District Courts Act* prohibits the defendant or his/her lawyers from cross examining any witnesses. We have quoted this provision above at paragraph 3.5.6.

### **CLRC Views**

The CLRC is of the view that most part of the current Section 96 procedure is unnecessary and serves no real and useful purpose in the current system of committal proceedings that we now have, given the fact that the Committal Court has earlier at the Section 95 stage of the Committal Proceedings (see paragraph 3.5.5), found that there is sufficient evidence. The CLRC is firmly of the view that at the conclusion of the Section 95 stage of the committal proceedings, the purpose of conducting the committal proceedings has been accomplished when the court found under s.95 (3) that there is sufficient evidence.

Accordingly, the CLRC recommends that Section 96 of the *District Courts Act* be repealed in its entirety. This will then have consequential effect on the other related provisions, namely:

- Section 95 (3) – that say that if there is sufficient evidence to put the defendant on trial, then the accused must be invited to give evidence on his behalf under s.96;
- Section 100 – concerning the eventual discharge or committal of the defendant (see paragraph 3.5.7 above). The contents of this provision should be incorporated into Section 95 (see paragraph 3.5.5 above). If Section 96 is repealed, the process of committal will be hastened and will therefore conclude at the current s.95 stage (see paragraph 3.5 above).

***Recommendation 3-1.*** Section 96 of the *District Courts Act* be repealed in its entirety and replaced with a new provision that should only invite the defendant to make a statement if he/she wishes to. Any statement made by the defendant should now form part of the court depositions and be treated accordingly. The new s.96 we propose must also allow for the defendant to enter a plea if he/she desires to as provided for under s.103 of the *District Courts Act*.

***Recommendation 3-2.*** Section 96 (3) of the *District Courts Act* that currently prohibits the right of defendant to cross-examine any witness be retained but under a new provision.

***Recommendation 3-3.*** Section 95 (3) *District Courts Act* be appropriately amended to reflect the proposed change in Proposal 3-1 above;

***Recommendation 3-4.*** Appropriate consequential amendments be made to Section 100 of the *District Courts Act* to accommodate these proposed reforms.

The submissions we received after we made the above proposals in the Draft Report strongly supported these recommendations. Hon. Justice Panuel Mogish was particularly critical and questioned the rationale behind placing the s.96 opportunity before the committal court found under s.95 that there is sufficient evidence to commit the accused to stand trial. Most of the lawyers who spoke after Justice Mogish at a seminar we organised with the PNG Law Society to discuss the draft report supported Justice Mogish and concurred with our recommendations as stated above.

### 3.6 Committal for Trial Without Consideration of the Evidence

With the primary intention to expedite the processing of committals and introduce a speedier procedure of committal proceedings and address the problem of delay, a procedure of committal without hearing was introduced in 1980 by the *District Courts (Committal Proceedings in Cases of Indictable Offences) Act 1980* (No. 31 of 1980). This procedure is now contained in Section 94B of the *District Courts Act*. It states:

- “(1) Subject to Subsection (2), a Court inquiring into an offence may, if it is satisfied that all the evidence, whether for the prosecution or the defence, consists of written statements, with or without exhibits, tendered to the Court after service in accordance with Section 94, commit the defendant for trial for the offence without consideration of the contents of the statements.
- (2) Committal for trial in accordance with Subsection (1) shall not occur where—
  - (a) the defendant or one of the defendants does not have legal representation; or
  - (b) the legal representative of the defendant or one of the defendants, as the case may be, requests the Court to consider a submission that the statements referred to in Subsection (1) do not disclose sufficient evidence to put the defendant on trial for the offence.”

It is important to point out that the Section 94B committal procedure is available for invocation by the Committal Court only if the defendant is represented by a lawyer (ie. has legal representation at the committal court). When the defendant/accused is represented by counsel and if counsel at the outset upon receiving the completed police hand-up brief, forms an opinion that the evidence as presented to the court in the police hand-up brief does not disclose sufficient evidence to commit the defendant to stand trial and submits accordingly to the committal court, then the Section 94B procedure of committal without hearing must be vacated. In other words, under those circumstances, the Section 94B procedure is not available as that is precluded by Section 94B(2)(c) of the *District Courts Act* as cited above. When

this happens, then the normal committal procedure as represented above in paragraph 3.5 applies.

Where the Section 94B procedure of committal without hearing is involved, the Committal Court Magistrate must still satisfy himself or herself of the matters stated above in Paragraphs 3.5.1 to 3.5.5. Briefly, that is to say that the Committal Court Magistrate must satisfy himself or herself that:

- service as been properly effected as required under s.94(1) and ss.94(3)-(5) of the *District Courts Act*;
- if the offence for which the accused is charged requires a warrant of arrest to effect arrest, then that must be complied with as required by Section 35 of the *District Courts Act*;
- all witness statements etc. are properly taken and presented as required under Section 94 1A of the *District Courts Act*;
- conduct an inquiry into the various witness statements and then either admit into evidence or reject as required under Section 94C of the *District Courts Act*; and
- consider the evidence and decide whether or not the evidence is sufficient to warrant a committal or acquittal.

### **Submissions and Consultations**

A large majority of the magistrates consulted both during the national consultation and subsequently at a meeting in the CLRC Office at Boroko, NCD, with all the NCD serving Magistrates, including the Chief Magistrate and his Deputy, expressed the view that this procedure was not widely used. Quite to the contrary, when defendants were represented by lawyers, the lawyers contested the evidence.

### **CLRC View**

The CLRC is of the view that despite the lack of utilization of this procedure, it must be maintained and left as an option for anyone to take since this procedure was introduced with the expressed aim of expediting the committal proceedings but with adequate protection to the defendant through legal representation. Most of the submissions we received after we released the Draft Report were in support of this position.

### 3.7 Admission of Guilt by the Defendant at Committal

After the committal court has found that there is sufficient evidence to warrant the defendant/accused to be committed to stand trial as required under Section 95 of the *District Courts Act*,<sup>20</sup> the defendant is then asked if he/she wishes to make a statement in his or her defence in the terms prescribed by Section 96. If at this opportunity given by the Section 96 statement,<sup>21</sup> the defendant pleads guilty, the committal court magistrate is required to commit the defendant for sentencing by the National Court rather than for trial. This is a procedure provided for under Section 103 of the *District Courts Act* – which states:

- “(1) If a defendant, on being asked in accordance with Section 96 whether he wishes to say anything in answer to the charge says that he is guilty of the charge, the Court shall further say to him these words, or words to the same effect—  
“You will now be committed for sentence instead of being committed for trial.”
- (2) The statement by the defendant in accordance with Subsection (1) shall be—
  - (a) taken down in writing and read to him; and
  - (b) signed by the Magistrate constituting the Court and by the defendant if he so desires; and
  - (c) held with the statements of the witnesses and transmitted with them to the Public Prosecutor.
- (3) In a case referred to in Subsection (1), the Court, instead of committing the defendant for trial, shall order him to be committed for sentence before the National Court, and in the meantime, shall—
  - (a) by warrant commit him to a correctional institution, police lock-up or other place of security to be kept safely until the sittings of the National Court, or until he is delivered by due course of law; or
  - (b) admit him to bail to appear for sentence in accordance with Division 2.”

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<sup>20</sup> See paragraph 3.5.5 above.

<sup>21</sup> See paragraph 3.5.6 above.

There are however inherent practical problems associated with this Section 103 procedure which have been pointed out to us by our Working Committee:

- even when the committal court commits the accused/defendant for sentencing, the Public Prosecutor is not obliged to treat that matter as a sentencing only matter but can if in his judgment and professional opinion finds that there are evidence warranting trial, cause the matter for trial;
- because the matter will go before the National Court for sentencing only, the Public Prosecutor is still required to present an indictment in the National Court to commence the trial. There the accused/defendant would still be required to take a plea and the matter is then normally treated as a plea matter; and
- it is not practically and procedurally sound for the District Court to take a plea only and the National Court to sentence thereby treating the matter as a continuing matter from the District Court because the commencement processes in these two courts are different where the District Court matters commence on information and the National Court matters commence on indictment.

**In the light of these problems, how best should we review and reform this procedure to achieve the intended result of expediting plea matters from the Committal Court Stages?**

### **Submissions and Consultations**

The *Final Report of the Court Restructure Committee to the Chief Justice and Chief Magistrate on Committal Proceedings 1995* has advocated for a system of identifying guilty pleas earlier in the committal system and then have the plea matters fast tracked to the National Court for the matter to be dealt with upon committal. Whilst Section 103 is mentioned in the report, there has been no consideration given as to the appropriateness of the current s.103 procedure of committal for sentence by the National Court.

The Public Prosecutor has, at paragraph 44 of his written submission, commented on the current s.103 procedure albeit mistakenly, thinking that it was a proposal rather than existing law – thus:

“... it is unclear whether what is being suggested here is that persons who plead guilty should be able to be sentenced and dealt with by the District Court. I would strongly object to such a course. It is pursuant to the *Constitution*, essential that the Public Prosecutor finalise the charge(s) and the bringing of matter to the National Court. It is also necessary that the National Court satisfy itself that it is able to accept a plea of guilty in any particular matter. Indictable Offences are serious (crimes) attracting heavy penalties and it is only proper that the [National] Court itself assess and decide whether or not to convict. In Papua New Guinea this requires the [National] Court to satisfy itself that the offence is made out on the depositions and that the accused understands what he is pleading to. Only then can the National Court [record] a conviction and go onto consider sentence. Again I note that many defendants are unrepresented at the committal stage.”

Perhaps owing to the misunderstanding that the current s.103 procedure as we have set it out under pp 34-36 of the *Issues Papers* (see also above) is a proposal, the Public Prosecutor did not use the opportunity to specifically comment on the inherent practical problems associated with the current s.103 procedure. We note however that the concerns raised by the Public Prosecutor as quoted above does relate to some of the inherent practical difficulties of the current s.103 procedure and we share those concerns as well.

In the national consultations, a large majority of the magistrates we consulted said that although they were aware of the existence of this Section 103 procedure, they did not commit accuseds/defendants for sentencing in those instances where they were satisfied that the matter was a plea matter. Instead, they usually generally committed the accused/defendant to stand trial in the National Court.

### **CLRC Views**

It is our view that there are inherent procedural difficulties associated with this current s.103 procedure, particularly, those relating to:

- the Public Prosecutor’s powers to review all committals and then depending on the strength of the evidence, frame appropriate charges and prepare and present the indictment accordingly before the National Court to commence proceedings there;

- that the National Court must be satisfied on the evidence on depositions before it and then accepts a guilty plea and enter a conviction and then considers sentence. Under our current system of criminal procedure, the District Court cannot accept a plea and record a conviction on behalf of the National Court for the National Court to pass sentence only;
- that under our current rules of criminal practice and procedure, all criminal matters in the District Court are commenced by information and proceedings before the National Court are commenced by an indictment. These two originating process are separate and different so that when proceedings are commenced in the District Court by information, they cannot continue in the National Court. The current s.103 procedure seem to imply that when the accused pleads guilty in the District Court the matter continues upon committal to the National Court for sentencing only.

In view of these inherent procedural and practical difficulties, we recommend that Section 103 be appropriately amended to allow for a mechanism of identifying plea matters at committal proceedings and then effecting committal there and then. This should happen at any stage of the committal proceedings provided the police investigators have completed their investigations and submitted the police hand up brief containing all the necessary evidence.

***Recommendation 3-5***

***That Section 103 of the District Courts Act be extensively amended to focus on a system of fast tracking pleas with the heading reading: "103 Committal on plea."***

***(The relevant text of this proposed provision which we recommend accordingly is set out in Appendix 2)***

The comments and submissions we received after the Draft Report was released were generally in support of this recommendation with the emphasis that any system to fast track committals must still await the completion of the police file (hand-up brief) so that the State's case is not put in any jeopardy should the accused change his plea on indictment in the National Court. Note however that the Public Prosecutor still has the supervising role in checking the file upon committal and deciding on the appropriate offence to indict the defendant.



## **Chapter 4. Other Recommendations for Reform**

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### **4.1 Introduction**

There are a number of issues and concerns which have compelled the Minister for Justice to issue this Reference. Some of the issues and concerns are generic whilst others are more pronounced or focused on the impact of the generic issues on particular law and justice sector agencies. This was apparent from the preliminary consultations we have had with the sector agencies in National Capital District and Central Province in February of 2007. We shall first look at those generic issues and shall then consider the other specific issues.

## 4.2 Should Committal Proceedings be abolished?

In many ways, this is the central issue to be determined in this Reference. The Law Reform Commission report on *Committal Proceedings* (Report No. 10) published in July 1980,<sup>1</sup> advocated for the abolition of committal proceedings citing the issue of delay as the main reason. With the abolition of committal proceedings it was presumed that criminal trials would be expedited so that the accused person's right to speedy trial as accorded under the Constitution can be realised.

In its report, the Law Reform Commission was critical of the effectiveness of committal proceedings saying that the system was inefficient and ineffective resulting in it not effectively functioning as a sound screening process. The following captures the gist of the former Law Reform Commission's views:

“Comments have been divided fairly evenly between the two proposals and although the Commission is of the opinion that ultimately, the holding of committal or preliminary hearings should be abolished... As a short term measure the Commission is recommending that a system of hand up briefs be adopted for most indictable offences... In the longer term, the Commission recommends that preliminary hearings of indictable offences be abolished.”<sup>2</sup>

However writing 15 year later in 1995, the Court Restructure Committee appointed by the Chief Justice and Chief Magistrate headed by Justice Hinchliffe<sup>3</sup> strongly refuted the Law Reform Commission recommendations and pointed out that:

- Committal is an extremely important part of the criminal justice system since it serves purposes other than just a process of filtering out weak cases – ie., it gives the accused person protection and opportunity to challenge the charges at the initial stages;

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<sup>1</sup> Law Reform Commission of Papua New Guinea (1980) *Committal Proceedings (Report No. 10)* (Port Moresby Law Reform Commission).

<sup>2</sup> *Supra* at p.1. See also pp.13-14 generally on the views of the Law Reform Commission.

<sup>3</sup> Final Report of the Court Restructure Committee to the Chief Justice and Chief Magistrate on Committal Proceedings (Unpublished).

- The perennial problem of delay is largely related to logistics and issues of efficiency which could be addressed with adequate resourcing; and
- If committals are to be abolished, there was no viable and suitable alternative replacement system. The proposal to have the Public Prosecutor to handle the screening role has inherent weaknesses relating to the issue of fairness and impartiality since it is the Public Prosecutor who would eventually indict the accused person and prosecute.

Available comparative literature in our region whilst on the one hand bemoan the issue of delay and costs to the State, strongly argue that committals play a useful role in the criminal justice system because:

- committals are more effective at filtering-out weak case than their critics claim;
- are a potentially useful forum for the early identification of guilty pleas;
- provide a reasonably effective mechanism for disclosing the Prosecution's case against the accused to enable the accused to prepare himself/herself well and effectively and appropriately respond to the charge(s) against him/her;
- particularly in large and complicated cases, perform a useful management function; and
- allows the defendant/accused the pretrial opportunity to evaluate and test the State case against him or her before the committal court which is a fair and independent judicial process and forum.<sup>4</sup>

Available comparative literature arguing for the abolition of committals argue that this pretrial assessment of the evidence for indictable offences should be handled by the Public Prosecutor because:

“Police Prosecutors are, in effect, only care takers of those briefs and have no real control over them since they are ultimately decided in a different jurisdiction. By handling these cases earlier, the Crown Prosecutor can engage in more meaningful negotiations and effectively sort out the guilty pleas, the *nolle*

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<sup>4</sup> See Brereton D and Wills J. “Evaluating Committals”; Weinberg M, “The Criminal Trial Process and the Problem of Delay”; and Coldrey J QC “Committal Proceedings; the Victorian Perspective” in Vernon J ed. (1991) *The Future of Committals* (Canberra: Australian Institute of Criminology) respectively pp.5; 139; 57.

*prosequis* and the reduced charges and be allowed to concentrate on the cases which are really going to trial and which require some extra attention.”<sup>5</sup>

Those proponents for the abolition of committal proceedings, argue that the vital screening and filtration role which the committal process provides can still be played effectively by the Public Prosecutor/Crown Prosecutor administratively because:

- effectively, the screening process requires dialogue between the counsel and the state prosecutor at pre trial stages. Though such dialogue with the involvement of the Public Prosecutor, at these very early stages, depending on the weakness of the case against the accused, charges can be withdrawn there and then; and
- under the current system, the Committal Court Magistrate’s decision to commit the accused to stand trial in the National Court can be some what futile because ultimately it is the Public Prosecutor that still has to decide on whether or not to indict or which appropriate charge to indict the accused upon.<sup>6</sup>

**The CLRC now seeks your views, comments or detailed written submissions on:**

- 1. whether or not the current system of committal proceedings for indictable offences should be abolished or modified?;**
- 2. if abolished, what should be the alternative to replace the committal system?;**
- 3. if it is to be modified, how are we to modify it?**

### **Submissions and Consultations**

A large majority of judges, magistrates, lawyers and others we consulted with during the national consultations recorded strong support for the retention of the current system of committal proceedings but with relevant

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<sup>5</sup> Murray J “Committals – Time for Change” in Vernon J ed. (1991) *The Future of Committals* (Canberra: Australian Institute of Criminology) p. 151.

<sup>6</sup> “The Crown Prosecutor can still decide not to prosecute or to prosecute on different charges. The same irony applies where the Crown Prosecutor decides to indict ex officio where there has been no case to answer”; Ibid.

modifications to address the areas of concerns and to bring about greater efficiency. The Public Prosecutor made a strong written submission, recommending a retention of the current system of committal proceedings. So as not to miss the rigor of his submission, we quote in full, thus:

“At the outset I would like to say that I have given serious consideration to the issues of abolition and/or modification of committal proceedings, in consultation with my officers. I have been conscious of the fact that it is human nature perhaps to resist change, even where it is needed. And that lawyers are traditionally resistant to change, particularly in the area of criminal law, where there is often concern that any change may erode or diminish the traditional protections afforded to an accused person.

Nevertheless, it is my submission that committal proceedings in Papua New Guinea should not be abolished.

In this regard I support the comments by the Court Structure Committee in 1995, reproduced in the Issues Paper at page 38. In addition, I would like to emphasize or add the following comments.

Despite recommending in 1980 that committal proceedings be abolished, the Law Reform Commission was “concerned that at that stage of the development of the courts and the training of lawyers, magistrates and police prosecutors and investigators, *particularly the staff strengths of the office of the Public Prosecutor* and the Public Solicitor, the proposal to abolish committal proceedings should be delayed.

It is my submission that the Office of the Public Prosecutor is in no better position now than it was in 1980 to take on the additional burden of assessing all indictable matters following arrest or summons for the purpose of determining whether they should proceed to trial in the National Court.

As discussed above, while the Public Prosecutor is ultimately responsible for determining whether and on what charges a matter will proceed in the National Court, the committal court plays an important role in screening matters at an early stage.

Consequently requiring this Office to take on this task would increase its workload. This Office is already struggling to meet the demands of its current obligations, within which its workload continues to grow given the increase in the number and complexity of prosecution briefs, the large number of matters referred under the leadership code and its new obligations under the recently enacted Proceeds of Crimes, Mutual Assistance in Criminal Matters and Extradition Acts.

Not only would the number of staff have to be significantly increased, in my estimate at least one third, it would also be necessary to have staff permanently located in every place in the country where committals are currently heard.”

### **CLRC Views**

The CLRC concurs with the views of the Court Restructure Committee – particularly that if committal proceedings are to be abolished, currently there are no viable and suitable alternative replacement systems to perform the all too important task of filtration of meritorious and unmeritorious or strong and weak charges against defendants. The inherent protections available to the accused under the current system of committals administered by the District Courts would be lost. As the Public Prosecutor candidly says in his submission, his office is not in a position, in terms of staff strength and other resources, to take on this enormous responsibility. The problems associated with delay in the current system are largely related to logistics and resourcing and therefore, these are administrative problems - not legal problems. In our view, the issue of delay alone should not be cited as a reason to abolish the current system. We must first explore available options and perhaps modify the system and cause improvements and avoid large scale experimentation. The committal proceedings system that we now have is central and pivotal to our criminal justice system and therefore the stakes are far too high to take a risk on experimentation. We are confident that the reform measures which we recommend in this report will address most of the areas of concern.

### **4.3 Committals and Delays.**

A major criticism against committal proceedings is that they represent a productive source of delay in the efficient and effective disposal of criminal cases and thereby cause strain on the entire criminal justice system. The Court Restructure Committee appointed by the Chief Justice and the Chief Magistrate and chaired by Justice Hinchliffe,<sup>7</sup> found that in the period from 1992 to 1994, on average it took about 3 months from the laying of information to completion of the committal proceedings. Most magistrates and court officials reported that there were indeed delays in the completion of committal proceedings and cited the following as the main cause of delays:

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<sup>7</sup> Final Report of the Court Restructure Committee to the Chief Justice and Chief Magistrate on Committal Proceedings (Unpublished) 1995 at pp.8-9.

- Delay on the part of police in completion and service of the police hand-up brief on the accused, the court and the Public Prosecutor if the matter is a Schedule 2 Offence (indictable offences triable summarily) for election purposes;
- Lack of commitment, dedication and professionalism on the part of magistrates to diligently and efficiently attend to matters before them and have them completed efficiently;
- Shortage of magistrates in those committal courts which carry heavy loads such as Boroko (now Waigani);
- Unnecessary or necessary protracted cross examination of State witnesses by counsel for the defendant(s) when defendants are represented by private lawyers thereby resulting in prolonging of the committal proceedings;
- Plain logistical problems such as lack of or unavailability of office equipment, stationeries supplies etc., for the committal courts to work with and efficiently attend to their work.

In the preliminary inquiries we conducted through our consultations with the Waigani Committal Court and Central Province Committal Court Magistrates and court officials, similar views were also raised as the cause for delays in the committal court process.

**What should be done to address the issue of delay in committals, should there be a statutory period imposed by which committal proceedings should be completed?**

### **Submission and Consultations**

The Public Prosecutor made a strong submission on the issue of delay associated with committal proceedings, pointing out that the main argument in favour of abolition of committal proceedings is that committal proceedings are a productive source of delay in the delivery of criminal justice and that immediately assumes that if we abolish committal proceedings, then we would expeditiously deliver criminal justice. This assumption however overlooks the other instances, and sources of delay in the criminal justice system such as resourcing issues and delay between committal and trial in the National Court. The Public Prosecutor then goes onto state that the issue of delay should be addressed in total by looking at

causing improvement to the various phases of the system. The Public Prosecutor however cautions that absolute statutory deadlines requiring police investigators to complete police hand up briefs or even to complete committal proceedings should not be fixed by laws because there are numerous and various other factors which can be outside of control by the police or even the committal courts. At a meeting with the Chief Magistrate, Deputy Chief Magistrate and serving magistrates in the National Capital District, a consensus was reached that a statutory time limit should not be fixed for either completion and submission of the police hand up brief from arrest of the accused or even for completion of the committal proceedings by the committal court from first mention. The magistrates pointed out that a statutorily fixed "reasonable time" may not have a fair universal application given the current great divergence in resource strength and sheer geographical unevenness and difficulties which police face in investigating crimes throughout the country. There were also similar concerns over divergence in resources and strengths of the committal courts through out the country. We may therefore run the risk of setting accused person's free simply because of our inability to meet the statutorily fixed time lines and thus may be failing in our overall duty to the nation in enforcing law and order and securing peace in our communities.

In the national consultations we conducted, there was nearly a even split between those who supported the notion of statutorily fixed time lines for completion of the police investigations and the submission of the police hand up brief from arrest and the completion of the committal proceedings and those who were not in favour. A very senior Supreme Court judge was adamant that strict statutory periods be imposed so that the police investigators and the committal courts understand the clear time limits they need to work under. If they see that they are running out of time, then provisions must be made for the committal court to hear an application for extension of time. Police Prosecutors should be allowed to apply to the committal court to obtain extension of time, either for completion of the police hand up brief or the committal proceedings.

In the meeting we had with the Chief Magistrate, Deputy Chief Magistrate and all the serving magistrates in NCD, the Chief Magistrates took a middle ground. He was of the opinion that rather than imposing statutory time lines, particularly, for the completion of committal proceedings, the Chief Magistrate should issue specific practice directions, taking into account the peculiar circumstances of District Courts. That a practice direction issued for the Waigani Committal Court setting three (3) months as the period to complete the committal in full consideration of the resource strength of that



particular committal court, may not be applicable to a remote committal court in Maprik or Vanimo or Bulolo. Therefore, the Chief Magistrate, in consultation with the Senior Provincial Magistrates (SPM) of the respective provinces should be allowed to issue Practice Directions relative to and reflective of the provincial situation. The Chief Magistrate, will of course make every effort to standardize as much as possible so that we do not create too much confusion or uncertainty in District Court Practice and Procedure on committal proceedings.

### **CLRC Views**

Our view is guided by the following principle, adopted from the wise counsel of Justice Felix Frankfurter: "... mere speed is not a test of justice, deliberate speed is. Deliberate speed takes time. But it is time well spent."<sup>8</sup> It is our view therefore that whatever reform measure that we propose, must not compromise the quality of justice that we accord to the accused as well as to the State encapsulating the people whose laws and peace the accused has broken. In other words, the accused person's right to a speedy trial must not be to the detriment of the interest of the society at large to effectively conduct criminal investigations and properly bring such accused person to justice. Indeed, it would be a travesty of justice from the point of view of the State if an accused person who has been charged for a serious criminal offence got off simply because the police did not complete the police hand up brief within a fixed time line or that the committal proceedings were not completed within the fixed time line.

We point out that if statutory time lines are set and provisions are made for applications for extension of time by the police, either to complete the police hand up brief and/or committal proceedings, such new process will cause further delay to the committal process since it is highly likely that the accused will strongly contest such an application. We note that in the Australian State of Victoria the *Magistrates' Court Act* 1999 that came into effect on July, 1<sup>st</sup> 1999 through amendment caused to Schedule 5 of the Act, introduced various changes to their committal proceedings system including certain time lines for the following types of offences or processes:

- for sexual offences, committal mention hearings were to be held within 3 months after the charges are laid;

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<sup>8</sup> *First Iowa Coop v Power Commission* 328 US 152 (1946) at 188 as cited by Weinberg M "The Criminal Trial Process and the Problem of Delay" <http://www.ajja.org.au/ctr/WEINBERG.HTM>

- for all other offences, committal hearings are to be held within 6 months after charges are laid;
- that completed police hand up briefs are to be served on the defendant at least 28 days before the committal mention date; and
- if the defendant intends to cross examine a police witness, he/she must give 14 days notice to prosecution through the committal court clearly demonstrating “substantial relevance” of the “scope and purpose” of the intended questions to his/her case.

Writing in 2000, Justice Mark Weinberg former Commonwealth Director of Public Prosecutions and current Federal Court judge, after discussing the above amendments introduced to the Victorian legislation observes:

“Schedule 5 in its present form has been in operation for only a few months. Regretably, the early feed back from both side of the profession is not encouraging. That is scarcely surprising. The process of preparing for a committal proceeding, which was once reasonably straight forward, has now been converted into a complex exercise requiring the preparation of a significant number of important documents all of which must be completed within strict time limits. Some practitioners complain that the new procedures require frequent and unnecessary court appearances. These appearances are often lengthy, and add to delay and cost.”<sup>9</sup>

We share these concerns and would therefore advise against the temptation to statutorily impose timelines against which either the police hand up brief or the committal proceedings should be completed. If we impose a statutory time line and particularly if the time lines are on the shorter side, that will put a lot of pressure on the police and the committal courts and no doubt, that will in turn affect the quality and standard of justice. A speedier process may not necessarily deliver a fair and just criminal justice system. If any thing, we run the serious risk of compromising the quality and standard of justice.

However, we recommend that for purposes of completion of the committal proceedings, the Chief Magistrate, in consultation with the respective SPMs, should issue Practice Directions. Like wise, the Police Commissioner, in consultation with the OIC Police Prosecutions and the respective Provincial Police Commanders, should be encouraged to issue

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<sup>9</sup> Weinberg M (2000) “The Committal Trial Process and the Problem of Delay” <http://www.aija.org.au/ctr/WEINBERG.HTM>

administrative standing instructions, directing Police Investigators to complete their investigations and compile and submit the police hand up briefs within whatever time lines they set. In this regard, we note that the Chief Magistrate has indicated his willingness to raise this matter with the Police Commissioner and we encourage that.

***Recommendation 4-1***

*The Chief Magistrate issue appropriate Practice Direction stating the time lines by which all committal hearings in the District Court should be completed.*

***Recommendation 4-2***

*That the Police Commissioner issue Administrative Instructions to all Police Investigators and Prosecutors clearly stating time lines by which the police hand up brief should be completed.*

Comments and submissions we received on these recommendations after we released the Draft Report have been positive. Hence, we recommend accordingly.

#### **4.4 Delays in Committals and Associated Costs**

For some sectors of the criminal justice system who are impacted by the delays in the completion of committal proceedings, they are concerned with the costs to them. The Correctional Service, in many ways carries huge costs in keeping remandees in its jails and has expressed concerns that their services are intended for prisoners and not remandees but huge numbers of remandees in their jails, diverts their attention and costs somewhat unnecessarily. It was therefore suggested that remandees should not be sent to and kept in jails but should be kept in police lock ups. In this way, there will be pressure on the police to expedite the completion of the police hand-up brief and their speedy disposal of committal matters. This will also make it convenient for the police investigators and police prosecutors to access accused persons for purposes of expediting the completion of the police hand up brief.

The rationale behind this argument by the Correctional Services is that if remandees are kept by police in police lock ups, they will be in the face of

police and this will cause police to make every effort to dispose off the committal in the quickest time possible. From the point of view of management of police, they would be concerned about the costs to them in keeping the remandees and therefore they will insist on their officers to complete the committals in the quickest time possible. As it is now since Correctional Services is carrying the costs of maintaining remandees, the issue of costs does not appear to be a concern to police.

**Do you think remandees should be kept by police in police cells or lock ups until their files are completed or for the full length of the committal proceedings period?**

### **Submission and Consultations**

A great majority of persons we consulted during the national consultations, whilst on the one hand sympathized with the Correctional Services, they were adamant that the Correctional Services is the only institution of government, properly equipped to keep remandees for longer periods. The concerns expressed by Correction Services are concerns over resource allocations. They should therefore use this situation as a leverage for seeking an increase in resources to them so that they can properly and effectively handle the large number of remandees who are in their care.

The Public Prosecutor has made a strong written submission objecting to any moves to keep remandees in police cells or lock ups, and points out that “police lock ups are not intended to house prisoners for any length of time. They do not have the appropriate facilities. It is not appropriate for one State Department to use remandees, ie., persons who are innocent until proven guilty, as a means to put pressure on another State department... if Correction feels that it has inadequate or limited facilities, it should seek funding to adequately deal with the needs of inmates.” The Public Prosecutor then correctly points out that under Section 7(1) (a) of the *Correctional Services Act 1995*, the Correction Services is required to:

“... take custody and control of all persons committed to –

- (i) correctional institutions upon warrant or order of a court; or
- (ii) the custody of the Service by any other competent authority under any law in force in the country...”

It is therefore clear by this provisions that the Correctional Services is legally obliged by its own legislation to take custody, control and care of remandees. It is therefore the designated State institution to keep and look after remandees. Accordingly, it is required to plan for and accommodate remandees as well as prisoners.

### **CLRC Views**

We concur with the strong and legally sound and unchallengeable submission by the Public Prosecutor as stated above.

### **4.5 Modification of the Committal Proceedings**

The Court Restructure Committee established by the Chief Justice and the Chief Magistrate<sup>10</sup> have recommended that the committal proceedings system be modified to enhance efficiency in the following manner:

- that the right of the accused to cross examine witness at committal hearings be abolished because it serves no useful and meaningful purpose given the position in law that the Committal Court is not a trial court and that the accused/defendant's rights are adequately protected by the Constitution and at trial in the National Court;
- however the accused/defendant should retain his/her right to make the Section 96 Statement (see above at paragraph 3.5.6);
- that a system separate from the Section 103 process (see paragraph 3.7 above) be developed to expedite early pleas of guilty directly to the National Court;
- a system of committal mention date procedure should be adopted with strict time limits imposed on the time between the laying of information and the date for hearing of the committal and restriction placed on the number of adjournments allowed;
- administratively, that the number of Magistrates conducting committal hearings be increased and their logistical problems be addressed reflective of the significance of this process to the criminal justice system.

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<sup>10</sup> Ibid at pp.19-20.

**The CLRC is seeking your views and comments on:**

- 1. the above recommendations;**
- 2. how best we can modify and improve the committal court system.**

### **Submissions and Consultations**

The *Final Report of the Court Restructure Committee to the Chief Justice and Chief Magistrate on Committal Proceedings 1995* has strongly expressed the view that a legal mechanism must be provided in the *District Courts Act* to expedite early pleas of guilty to the National Court. That Committee was of the view that the opportunity that is currently available under s.103 of the *District Courts Act* for the defendant to plead guilty and be committed for sentencing only is rather too late in the current committal process. Instead, that Committee was advocating for an opportunity for guilty pleas to be made available much earlier – at the mention stage where a preliminary inquiry could be conducted largely based on the allegations of facts endorsed on the back of the Information as Statement of Facts. That apart from reading out the charge and the alleged statement of facts and explaining the charge to the accused/defendant, the Court Restructure Committee recommended that the Committal Magistrate must:

- first, inform and/or explain to the accused/defendant the purpose of such an inquiry – being that the court wants to find out what the accused’s position is with a view to fast tracking the committal process if he/she wanted to plead guilty;
- that if he/she wanted to plead guilty and if unrepresented, he/she can consult a lawyer first;
- that if he/she pleaded guilty, the full committal process would not be followed and that he/she would be committed to the National Court for sentencing;
- inform or explain to the accused that if he/she pleads guilty at this very early stage, he/she is likely to get a discounted sentence on a guilty plea in the National Court; and
- if the accused elects to indicate his position, with or without first consulting a lawyer, and if he/she expresses a desire to plead guilty, then the Committal Court should then require the police informant to produce a record of interview or confessional

statement together with copies of key witness statements only within 14 days and then commit the accused to the National Court to be dealt with;

The Court Restructure Committee further stated that if at any time before or at commencement of trial upon arraignment by the National Court the accused changes his mind and pleads not guilty, his or her case will be fixed for trial at a later date through the pre-trial listing process. The State will then be at liberty to conduct further investigations and call any witnesses of its choice to prove its case.

The Public Prosecutor has, in his written submission to the Issues Paper we released, generally supported the proposal by the Courts Restructure Committee to find a legal mechanism for fast tracking guilty pleas but has not expressed any opinion on the stage at which such a mechanism could be built into. The Public Prosecutor has however gone on to express the following view at paragraph 42 of his written submission – that:

“... the current provisions, particularly Section 96 and 103 provide a useful process whereby a Magistrate must be satisfied that there is sufficient evidence on which to commit, even on a guilty plea. This is important bearing in mind that most defendants are unrepresented at committal stage... it is obviously important that a brief be prepared to prove the elements of the offence so that the National Court can be satisfied of guilt.”

It appears then that the Public Prosecutor is impliedly expressing a reservation on the proposal by the Court Restructure Committee which have recommended an earlier preliminary process on commencement of the committal proceedings rather than later at the current Section 96 and 103 stages.

During the national consultations a great majority of the judges, magistrates, lawyers and police officers whom we consulted were supportive of a process of fast tracking committals for accuseds/defendants who desired to plead guilty. None of these persons however expressed any opinion on the stage at which early pleas can be identified and sent to the National Court through committal for sentence.

### **CLRC View**

The CLRC shares the reservations expressed by the Public Prosecutor, mainly on the basis that if an accused is committed for sentencing only at the very early stage of the committal proceedings, as proposed by the Court

Restructure Committee without a complete hand up brief and then subsequently on arraignment by the National Court or before commencement of proceedings in the National Court, the accused changes his position and pleads not guilty, then the State case will be seriously jeopardized or compromised. Further police investigations are most likely to be in serious jeopardy given the loss of time. It is therefore important that in whatever system we propose to identify and fast track guilty pleas, the police hand up brief must first be completed and submitted. Only based on that, then the Committal Court can then identify a guilty plea and commit to the National Court with sufficient degree of certainty. Even if the accused/defendant decides otherwise and pleads not guilty on arraignment by the National Court, all the necessary evidence would have been obtained and compiled into the police hand up brief. The State case would not be put in jeopardy. Accordingly, it is our view that the earliest possible opportunity at which the accused/defendant can be given to indicate to the court that he or she wants to plead guilty would be at the current Section 95 stage of the committal proceedings (see paragraph 3.5.5).

***Recommendation 4-3.***

***That Section 103 of the District Courts Act be appropriately amended to institute a legal mechanism by which the accused/defendant can be given an opportunity to say whether or not he wishes to plead guilty in the National Court and the matter can then be fast tracked to go before the National Court upon immediate committal.***

***(The relevant text of this proposed new Section 103 which we recommend accordingly is set out in Appendix 2).***

This proposal was prominently addressed at a seminar we organised with the PNG Law Society to discuss the Draft Report. There was majority consensus with Justice Mogish in the lead that the current s.103 is rather obsolete and therefore it should be replaced with a new provision that would allow for facilitating and fast tracking pleas. Hence our recommendation received strong support. Thus, we recommend accordingly.



We however concur with the Court Restructure Committee that at any stage at which the accused/defendant intends to plead guilty and notify the committal court accordingly, the committal court should be legally obliged to inform or explain to the accused/defendant that if he pleads guilty at this very early stage and maintains that position at the National Court, then he/she is likely to get a discounted sentence on a guilty plea in the National Court. Furthermore, we agree with the Court Restructure Committee recommendation that if the accused/defendant is unrepresented at this stage of the committal proceedings, the committal court should offer him/her the opportunity to consult with a lawyer if he/she wishes to.

***Recommendation 4-4***

***That a new clause be added to Section 103 of the District Courts Act when the proposed amendments under Proposal 4-3 (above) are effected, which will compel the committal court magistrate to inform or explain to the accused/defendant that if he/she pleads guilty at this stage and maintains that plea at the National Court hearings, then the National Court is likely to give him/her a discounted sentence. A further clause must then be added requiring the National Court to take this into account when deciding on the appropriate sentence.***

***(The relevant text of this proposed amendment we recommend is set out in full in Appendix 3).***

This recommendation was extensively discussed at the seminar we organised with the PNG Law Society to discuss the proposals as we put those forward in the Draft Report. There were two issues which emerged from this recommendation. One was concerning the recommendation for the presiding committal court magistrate to explain and inform the accused that is proposing to plead guilty that if he maintained his/her guilty plea in the National Court, then it is likely that he/she will receive a discounted sentence. Some lawyers who spoke at the seminar felt that such a clause was not necessary because it is already a matter of practice where guilty pleas are rewarded with a lower sentence. Other lawyers expressed the

opinion that although it was currently a matter of practice, it was necessary to write it into law so that it was not left to the discretion of the courts. Furthermore, it was necessary to write this down in law so that the accused person that is pleading guilty is entitled by law rather than by discretion of the court and this will be a strong assurance being a matter of law that he/she will receive a lower sentence should he/she maintain the guilty plea in the National Court.

In the end, a consensus was reached that it was in the interest of the accused that a system of fast tracking pleas did offer strong protection and attraction to the accused. This necessarily implies that an assurance of a discounted sentence should be put down as a matter of law and not at the discretion of the courts. In other words, an assurance cannot be left to discretion since such is not an assurance at all. Accordingly, the first leg of our recommendation was supported.

The second issue that emerged is in relation to the second leg of our recommendation in Recommendation 4-4 – which proposed for a further clause to be added to require the National Court to, as a matter of law, take the guilty plea as a mitigation factor and impose a discounted sentence. Again there was division of opinion. One group of lawyers voiced caution that we should not be taking judicial discretion away from the courts by inserting such a clause, and added that this was already happening and it is settled law in sentencing. The other group of lawyers acknowledged that indeed it was already settled law and to do so would be to take away judicial discretion in sentencing as allowed to them under Section 19 of the *Criminal Code*. Nevertheless, since one of the primary purpose of this proposal is to give assurance to the accused/defendant that he/she would receive a discounted sentence, we cannot leave this to judicial discretion – we must make it a matter of legal entitlement and write it into law so that it does become an assurance to the accused/defendant. The CLRC supports this view and we therefore recommend accordingly.

Finally, in relation to the other recommendations of the Court Restructure Committee concerning the right of the accused/defendant to cross-examine police witnesses and a system of committal mention date procedure, we point out that:

- currently Section 96(3) of the *District Courts Act*, prohibits the defendant/accused or his or her legal representative from cross-examining any witnesses. Therefore, currently the defendant/accused does not have any right of cross examination;

- a system of committal mention date procedure does not need legislative action. Rather such a system can be trialed by issuance of appropriate Practice Directions by the Chief Magistrate. We recommend that the Chief Magistrate consider issuance of appropriate Practice Direction.

***Recommendation 4-5***

***That the Chief Magistrate issue appropriate Practice Directions to implement a system of committal mention date procedure to better manage committal proceedings in line with Recommendations 4-1 and 4-2 above.***

This recommendation was well received after we released the Draft Report. We therefore recommend accordingly.

#### **4.6 Involvement of Defence Lawyers at Committal Proceedings.**

As stated in discussions on the essence and nature of committal proceedings at paragraph 2.2 and the purpose and functions of committal proceedings at paragraph 2.3 above, committal proceedings are administrative preliminary hearings to verify and quantify the evidence by going through a check list as stipulated in the *District Courts Act* which we have detailed at paragraph 3.5 above. Committal hearings are not trials. Therefore, there is an argument that since committals are not trials but mere administrative preliminary hearings, defence counsel should not be involved at these early stages. The accused persons' rights are adequately protected under the *Constitution* to seek redress should his or her rights be infringed at these early stages. The involvement of defence lawyers at these early stages has been identified in our preliminary consultations within the NCD and Central Province as one of the sources of delay in the expeditious discharge of the committal matters.

According to court files review we conducted on the first 100 files from the NCD and Central Committal Courts between 2004, 2005 and 2006, fifty four (54) legal representations were noted to have been made for various defendants.

The charges laid against the defendants in these cases involved:

Table 1: Charges defended by lawyers

Charge	Occurrences
Aiding a prisoner	1
Arm robbery	6
Arson	3
Attempt to kill	2
Bodily harm	2
Break, enter and stealing	1
Carnal knowledge	1
Conspiracy	3
Dangerous driving causing death	3
Dishonest application	4
Escaping from lawful custody	1
False accounting	1
False declaration	1
False pretence	2
Harbouring a prisoner	1
Have in premises under siezed Bech de Mer	1
Indecent act	1
Murder	4
Receipt of motor vehicle by indecent means	1
Received stolen property	2
Sexual penetration	3
Stealing	5
Storage of bech de mer without license	1
Unlawful and willful damage to properties	2
Unlawful assault causing bodily harm	1
Unlawful deprivation	1
Unlawful use of motor vehicle	6
Unlawfully wounding	2
Willful murder	1

Note: Some of the defendants have been charged with a multiple offences.

#### **4.6.1 Pleas**

In all the cases, the defendants have taken a ‘not guilty’ plea, thereby resulting in serious and prolonged attempts by the defence lawyers to discredit the information provided by the State witnesses.

#### **4.6.2 Sitting days**

The number of court sitting days were also assessed, and it was found that with the involvement of defence lawyers in the cases studied, the sitting days ranged between (3) three and twenty seven (27), twenty two (22) of which were above ten (10) sitting days.

#### **4.6.3 Adjournments**

Our examination of the adjournments suggests there were varying reasons why adjournments were sought. Some have been requested by the defence counsels for them to have time to study the files; prepare and make ‘no case’ submissions; further adjournments for further preparations; and the unavailability of counsels. Other reasons for adjournments are covered under our other assessments of the prosecutions and defendants categories.

#### **4.6.4 Remand and Bail**

Twenty (20) successful applications have been made by defence counsels for their clients to be on bail while the other defendants have been remanded in custody awaiting rulings on their cases.

#### **4.6.5 Rulings**

Out of the fifty four (54) files where defence lawyers were engaged to represent defendants during committal proceedings, the rulings of the committal magistrates have been distributed in the following manner:

Table 2. Rulings of the committal magistrates in cases where defence lawyers have been involved

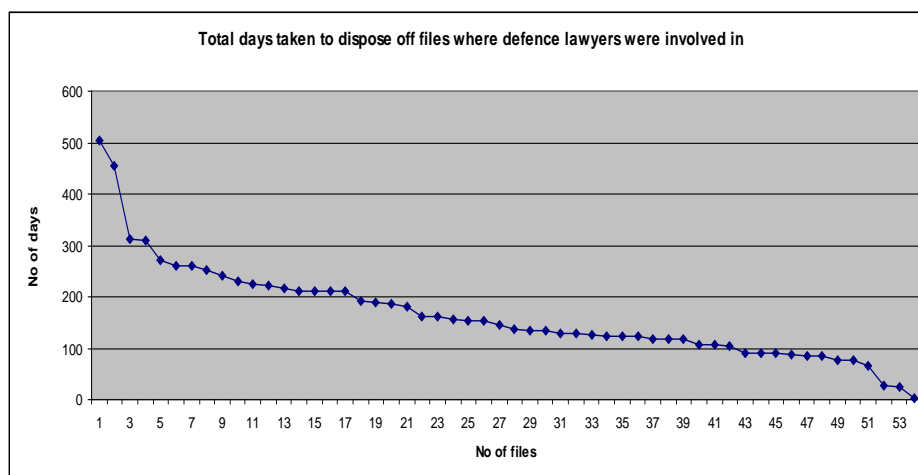
<b>Rulings</b>	<b>No. of cases</b>
Committed to stand trial in the National Court	15
Dismissed	13
Struck out	12
Transferred to other courts	5
Withdrawn	3
Convicted and sentenced to imprisonment	3
Convicted and fined	2

#### **4.6.6 Total number of days in the disposal of the files**

With the involvement of defence lawyers, we note an extremely high number of days spent in the disposal of cases, the highest of which was five hundred and four (504) days or about sixteen (16) months. The graph below explains in the hundreds, the number of days taken to dispose the cases studied.

When applying the three months or an approximation of one hundred days considered the fair and just number of days to dispose office cases, a total of forty two (42) files out of fifty four (54) have exceeded this requisite. This is about seventy nine percent (79 %) of the total cases that involved defence lawyers.

The following chart represents the length of committal trials when defence lawyers are involved.



**Now having identified this as a source of delay, should lawyers be allowed to represent defendants at committal hearings?**

### Submissions and Consultants

In the national consultations, there was strong support, particularly amongst police personnel and members of the public that since committal proceedings are preliminary hearings only to determine the sufficiency of the evidence, it was not necessary for lawyers to appear for accused persons at this early stage. Some police personnel pointed out that the appearance of lawyers at this early preliminary stage creates the impression that the lawyers are appearing at the committal court to “defend” the accused when in actual fact there was not much for the lawyer to defend. The lawyers themselves at these preliminary stages are already in “defence” mode and they then go unnecessarily into great lengths and make submissions on substantive matters of law and facts which are really in the province of a trial proper. The Police Prosecutors in particular pointed out that many, if not all lawyers, when they appear for accused persons at committal proceedings, they make unnecessarily long and winding no-case to answer submissions as if they are making those submissions at the close of the State case during trials. Unfortunately, magistrates are inadvertently sucked in by these submissions, and in turn the committal courts then put

unnecessary pressure on the police prosecutor to respond to those rather unnecessary submissions. The prosecutors then remarked that magistrates should take better control of their committal courts and keep lawyers who appear at committal proceedings in check.

The Chief Magistrate, Mr John Numapo, and Principal Magistrate (Grade V), Mr Marai Pupaka made strong submissions that the accused is entitled to legal representation at all times once charged with an offence under Section 37(4) of the *Constitution*, or if he/she is deprived of his/her liberty, under Section 42 of the *Constitution*. Therefore, the proposal to abolish legal representation at committal proceedings runs the serious risk of being unconstitutional. They then pointed out that appearance of counsels at committal proceedings does bring benefits to this phase of the criminal justice system as lawyers do, through their involvement and submissions, offer guidance to the committal courts.

The Public Prosecutor has submitted that it would not be appropriate to disallow lawyers to represent defendants at committal proceedings. He then points to one of the benefit of having lawyers representing defendants – that it does greatly assist in testing the police case and in some cases, identifying early pleas whilst in others, identifying the issues for trial upon committal. This does then bring benefits to the criminal justice system ultimately reducing the time or any subsequent trial or even perhaps helps to promote the chances of a subsequent plea, particularly so when the strength of the police case is known and assessed by the lawyer representing the accused.

### **CLRC Views**

The CLRC acknowledge that the involvement of lawyers at committal proceedings does contribute to some delay in the disposal of committal matters. We however re-iterate our view that mere speed is not a test of justice in itself but deliberate and calculate speed is. If some time is lost whilst pursuing justice then that is time well spent. Whilst we agree that if we disallow lawyers from appearing in committal proceedings and sometimes then unnecessarily contesting issues of evidence and substantive law and then drawing on the committal proceedings, we are likely to reduce delay. But the non-appearance of lawyers does raise many serious issues and concerns as pointed by the Chief Magistrate and the Public Prosecutor above. We are convinced the issue of delay caused by lawyers through the making of unnecessary submission, etc., is a matter that can be effectively handled by the committal court magistrate by being proactive in ensuring that committal courts abide by their mandate and do not function like trial courts. Committal Court Magistrates must take full charge of their courts



and must not allow lawyers appearing for defendants to dictate to them in terms of how they run their courts.

Apart from the above general issues, we also agree with the views of the Chief Magistrate and Principal Magistrate Pupaka that the proposal to legally disallow lawyers from appearing for accused persons does raise serious issues of constitutionally accorded rights of accused persons. In this regard, we note that any person that is charged with any criminal offence is entitled to the full protection of the law under Section 37 of the *Constitution*. Particularly under s. 37(4) that person is presumed innocent and is entitled to defend himself or by a lawyer of his choice. This, in our view implies that even at the preliminary hearing stages, ie., committal proceedings, the accused is entitled to have legal representation because he is, for purposes of Section 37 of the *Constitution*, a person “charged with an offence”.

Rather than disallowing lawyers and in recognition of the existence of the problem and the need to reduce unproductive delays, we recommend that the Chief Magistrate should issue appropriate Practice Directions to all Committal Courts, first reminding them of their purpose, roles and responsibilities as committal courts and then instructing them to be proactive in ensuring that the committal courts are not subjected to unnecessary and unproductive submissions by lawyers appearing for accuseds.

***Recommendation 4-6***

***The Chief Magistrate issue appropriate Practice Directions reminding committal court magistrates of their roles and responsibilities and then to run their courts efficiently by guarding against entertaining unnecessary and unproductive submissions from lawyers appearing for accused persons/defendants.***

This recommendation has been well accepted and supported from the views and comments we received after the Draft Report was released. We therefore recommend accordingly.

**Appendix 1 List of Persons and Organisations Consulted**

**NORTH SOLOMONS PROVINCE**

Mr. David Maliku	Senior Provincial Magistrate, Buka District Court
Mr. Bruce Tasikul	Magistrate, Buka District Court
Ms. Ruth Nangoi	Clerk of Court, Buka District Court
Ms. Carol Pio	CID, Police
Mr. Thomas Ratavi	OIC Prosecutions, Police
Mr. Chris Siriosi	Legal Advisor, ABG
Mr. Edward Latu	Lawyer, Latu Lawyers
Mr. Martin Tisivua	Corrections Officer, CBC
Mr. Sylvester Luga	OIC, Correction Services
Mr. Reuben Kueng	Police Prosecutor
Mr. Thomas Raban	Businessman, Business Representative
Mrs. Elizabeth Tinap	Prosecutor, Committal Court
Mr. Benjamin Mangkeju	OIC Prosecution
Mr. Narral Kadamai	Police Prosecutor

**EAST NEW BRITAIN PROVINCE**

Akuila Tubal	Provincial Administrator
Ben Mangeju	OIC Prosecution, Police
Boas Binuali	Grade 5 Prosecutor, Police
Narral Kadamai	Committal Court Prosecutor, Police
Kevin Bulu	Investigator, Police
Elizabeth Munap	Committal Prosecutor, Police
Philip Kaluwin	Lawyer, Public Solicitor's Office
Dessie Magaru	Senior Magistrate

Suzie Vuvut	Senior Community Correction Officer
Magdelene Kivu	Senior Associate
Oplen Kaluwin	Welfare Officer
Clement Irasua	Deputy Provincial Administrator
Lasiel Tovue	Councilor
David Paul	CCRO
John Poris	Acting Provincial Police Commander
Ponameh John	Kerevat CS - Reception Clerk
Nerrie Wilson	Women's Representative
Eriel Kaure	Manager, Correctional Services
Ephreddie Jubilee	Legal Officer

### **NEW IRELAND PROVINCE**

Mr Aquilah Tokanini	Provincial Police Commander
Sergant Andrew Tunuma	Police Prosecutor
Aiyofa Faregere	Police CID
Greg Toxie Seth	Town Mayor
Mathew Asio	Town Law Inspector
Orim Karapo	Senior Magistrate
Thomas Vogusang	Magistrate
Joram Boram	Probation Officer – CBC
Jerum Melim	Probation Officer – CBC
Esmah Daniel	Probation Officer – CBC
Samuel Tabairua	District Administrator – Namatanai
Meksen Darius	Provincial Legal Officer
Francis Gahuye	Gaol Commander, Correctional Services
Margaret Boskuru	S/SGT – OIC Prosecution
Sergeant Wilson Sogang	CID – Police
Senior Const. Steven Lassingang	CID – Police

Constable Tosinel Waton	CID – Police
PWC Cathy Bongut	Police Prosecutor
PWC Janet Ezekiel	Police Prosecutor
Mr. Zacchaeus Malingan	Magistrate
Mr. Matus Gugu Ignatius	Namatanai Town Manager
Mr. Elias Talom	Ex Magistrate (Businessman)

### **MANUS PROVINCE**

Inspector Alex NDrasal	Provincial Police Commanger, Manus
Inspector Gabriel NDrihin	Police Station Commander, Lorengau
Lawrence Sanais	OIC – Prosecution, Police
Andrew Sweli	Police Prosecutor
Lynnette Watah	OIC – CID, Police
Robert Pondikou	CID, Police
Margaret Kumasi	CID, Police
Gami Madu	Senior Provincial Magistrate
Lucy Mutanbeck	Clerk of Court
Niachalau Posakei	Deputy Clerk of Court
Charlie Pokambut	Registry Clerk
Randolph Scottie	Acting Commander, Correctional Services
Mr Pomat P Paliau	Provincial Legal Officer
PW Sgt. Lynne Watah	OIC - CID
Sergeant Lawrence Sanae	OIC Prosecutions

### **WEST SEPIK PROVINCE**

Mr. Joseph Sungi	Provincial Administrator
Mr. Tobias Welly	Deputy Province Administrator
Mrs. Julie Kai	Director for Community Development
Mr Paul N'Dranoh	District Court Magistrate

**EAST SEPIK PROVINCE**

Mr. Thomas Morabang	Senior Provincial Magistrate
Mr Leo Kabilo	Provincial Police Commander
Mr. David Susame	Senior Magistrate
Mrs. Christine Anawe	Senior Magistrate.

**MADANG PROVINCE**

Justice Sir Kubulon Los	Senior Judge
Mr. Mark Selekarui	Senior Provincial Magistrate
Mr. Tanga Kuri	Magistrate
Mr. Jacob Sare	Magistrate
Mr. Paul Kig	Clerk of Court
Mr. Jim Wala	Senior State Prosecutor

**MOROBE PROVINCE**

Mr. Iova Geita	Senior Provincial Magistrate
Mr. Sasa Ikung	Magistrate – Juvenile Court
Mr. Cosmos	Magistrate
Mr. Caspo Koi	Magistrate
Mrs. Oiti Malala	Clerk of Court, Committal Court
Mr. Nicholas Miviri	Senior State Prosecutor
Mr. Melchoir Gawi	OIC – Prosecution
Mr. Hove Genderiso	OIC – Prosecution
Mr. Robert Numbos	Prosecutor, Committal Court
Mr. Galus Gumbia	Police Prosecutor
Mr. Sakarias Albert	Police Prosecutor
Mr. Francis Tommy	OIC – Reception/Discharge
Mr. Samson N. Jaro	Chief Superintendent – DCS Commanding Officer

Mr. Simon Lakeng	Superintendent – Manager, Operations
Mrs. Judy Tara	Superintendent – Manager, Administration
Serg. Major Mr. Jack B. Teana	Station-In-Charge

### **EASTERN HIGHLANDS PROVINCE**

Mr Mekeo Gauli	Senior Provincial Magistrate
Mr Ignatius Kurei	District Court Magistrate
Inspector John Haua	Police Station Commander
Chief Inspector Timbi Kugula	Gaol Commander
Inspector Peter Marl	Acting Gaol Commander
Mr Frank Manue	Coroner Magistrate
Mr Gerald Vetunawa	Juvenile Court Magistrate
Mr Martin Ipang	Local Land Court Magistrate
Mr Munare Uyassi	Provincial Administrator
Mr John Gimiseve	Deputy Administrator
Dr Musawe sinebare	Deputy Administrator
Mr Ignatius Kurei	Senior Magistrate

### **SIMBU PROVINCE**

Mr Martin Loi	Senior Provincial Magistrate
Mr Anthony Gomia	Senior Magistrate
Mr Jeffery	Senior Magistrate
Sup. Jimmy Onopia Puieke	Provincial Police Commander
Superintendent Simon Sobaim	Gaol Commander

### **SOUTHERN HIGHLANDS PROVINCE**

Peter Warea	Correctional Services
Moses Loko	Correctional Services

Gulae Kirape	Correctional Services
Samson Tandakali	Magistrate
Jerry Kani	Police Prosecutor
Samson Peter	Senior Committal Court Clerk
Stephen Pangai	Police Prosecutor
Tolimo English	CID Mendi
Vincent Erali	District Court Magistrate
Morgan Opi	Police Sergeant

### **WESTERN HIGHLANDS PROVINCE**

Paul Urangaian	Police Prosecutor
Emma Koss	Police Prosecutor
Kerrie Duma	Police Prosecutor
Betty Kup Jacobs	Magistrate
Patrick Baiwan	Senior Provincial Magistrate
Bruce Izane	Clerk of Court, Grade 5 Court
Jimmy Peakep	Police Prosecutor
Garumu Giwoso	Police Prosecutor
Martin Kigare	Police Prosecutor
Micheal Kigare	Police Prosecutor
Peter Micheal	Police Prosecutor
Peter Kumo	Lawyer, State Solicitor's Office
George Korei	Lawyer, Public Solicitor's Office
Alex Tipiri	Correctional Services
Sabina Roika	Correctional Services

### **ENGA PROVINCE**

Mr. Bartho Kawa	Magistrate	Wapenamanda	District Court.
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Steven T.	Clerk of Court, Wapenamanda District Court.
Kaivi H	Police Prosecutor
Vincent K	Clerk of Committal Court
David S	Police Prosecutor
Felix H	Police Prosecutor
Agapi Tim	Police Prosecutor
Sam Kausel	Village Elder

### **NORTHERN (ORO) PROVINCE**

Mr. Monty Derari	Provincial Administrator
Mr. Paulinus Awai	Senior Community Corrections Officer
Mr. David Seboda	Village Courts Coordinator
Mr. Alex Boniepe	Executive Officer - Provincial Administrator
Mr. Damuri Tale	Advisor – Provincial Administrator
Mr. Lawrence Pagere	Advisor Welfare – Provincial Administration
Mrs. Kathy Magioudi	Welfare Officer – Provincial Administration
Mr. Kewei Kawi'iu	Senior Provincial Magistrate
Mrs. Jeanne Mao	Clerk of Court
Mr. Teddy Biega	Jail Commander
Mr. Noah Baniara	OIC – Detainee Registry
Sgt. Ben Waimona	OIC – Prosecutions
Sgt. Kenari Begola	OIC – CID
D/Sgt. Noroya Zozowa	Station Commander
Mr. Malchus Tatai	Principal – Martyrs Memorial Secondary School



**MILNE BAY PROVINCE**

Mr. Henry Bailasi	Provincial Administrator
Mrs. Sisi Jonathan	Senior Community Corrections Officer
Mr. Edward Dermot	Education Advisor
Mr. Nimrod Mark	Director – Div. of Law & Order
Mrs. Elaine	E/O to the Provincial Administrator
Mrs. Florence Peter	Coordinator, Social Welfare
Mrs. Sunema Bagita	Principal Advisor – Comm. Dev. Office
Mr Michael Kape	Principal Advisor – LLG Affairs
Mr. Thomas Pilai	District Administrator
Mrs. Ibonigu Kapigeno	Senior Magistrate
Mrs. Miriam Jack	Clerk of Court
Mr. Joe Samson	Station Commander
Mr. Natapu	OIC/CID
Mr. Mang	OIC – Prosecutions
Mr. Steven Mati	Community Policing
Mr. Bamua Kubu	Jail Commander
Mr. Kosia Ban	Senior Inspector
Mr. Uliowa Sulo	Correctional Officer
Ms. Eve Ngen	Correctional Officer
Mr. Liwonei Donald	Correctional Officer
Mr. Apilom Alunkalu	Correctional Officer
Mrs. Josephine Onesi	Correctional Officer
Mr. Saulas Lauis	Correctional Officer
Mr. Nansen Deilala	Correctional Officer
Mr. Philip Dotana	Correctional Officer
Hon. Ila Paku MPA	Mayor
Mr. Sanori Elliot	Manager

Mr. Amos Mangoson	D/Manager
The Principal & Teaching Staff	Cameron Secondary School

**WESTERN PROVINCE**

Sergeant Aliba Kawaki	Police Prosecutor
Sergeant Akimot	Police CID
Inspector John Timothy	CS Officer
Paul Asaki	Community Based Corrections
Sergeant John Taka	Police Prosecutor
Constable Haga	Police CID
James Temop	Magistrate
Sen. Insp. Dickson Kakoyan	CS Officer
Const. Paul Irie & Stella Warmanai	Police Prosecutors
Patrick Monouluk	Senior Magistrate
Constable Kepo Undi	Police CID
Mary Anne Nongkas	Community Based Corrections

**GULF PROVINCE**

Chief Sergeant Michael Takyei	Police CID
Alva Arua	Magistrate

**THE FOLLOWING PERSONS OR ORGANISATIONS MADE WRITTEN SUBMISSION:**

Mr Jack Pambel, Acting Public Prosecutor of Papua New Guinea

Hon. Justice (retired) Maurice Sheehan

Mr Laurence Newell

Mrs Dessie Magaru

Supt. Jimmy P Inopia

PNG Law Society

Principal Magistrates

## Appendix 2 Proposed Draft Legislation



THE INDEPDEPENDENT STATE OF PAPUA NEW GUINEA

A BILL

for

AN ACT

Entitled

District Courts (Committal Proceedings Amendment of Procedure) Bill 2007

BEING an Act to amend the *District Courts Act* Chapter 40 (as amended) to institute appropriate changes to Part VI of the Act dealing with committal proceedings and related purposes.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with the advise of the Minister.

1. REPEAL AND REPLACEMENT OF SECTION 96

Section 96 of the Act is repealed and substituted with the following:

“96 ACCUSED TO BE ASKED WHETHER HE DESIRES TO MAKE A STATEMENT.

- (1) Where upon a Court finds that there is sufficient evidence to put the defendant on trial under Section 95(1) of the Act, the

Court shall read the charge to the accused and explain its nature in ordinary language and shall say to him these words, or words to the same effect -

“Having heard the evidence for the prosecution, do you wish to make any statement or give any explanation concerning the charge(s) against you? You are not obliged to be sworn and give evidence, nor are you required to say anything; but whatever you say shall be taken down in writing, and may be given in evidence on your trial. You are clearly to understand that you have nothing to hope from any promise or favours, and nothing to fear from any threats, which may have been held out to you to induce you to make any admission or confession of your guilt; but whatever you now say may be given in evidence on your trial, notwithstanding any such promise or threats.”

- (2) If the defendant, pursuant to the opportunity given under Subsection (1) expresses a desire to plead guilty to the charges against him at his trial in the National Court:-
  - (a) the Court shall explain the advantages and disadvantages of pleading guilty; particularly that he is likely to get a discounted sentence on a plea of guilty in the National Court;
  - (b) the Court shall then proceed to record the intention of the defendant to plead guilty and;
    - (i) take his statement down in writing in the English language and read to him; and
    - (ii) the Magistrate constituting the Court, and the defendant, if he so wishes, shall sign the statement; and
    - (iii) the statement shall form part of the court depositions and shall then be transmitted to the Public Prosecutor upon committal;
    - (iv) the defendant shall then be committed to plead in the National Court.
- (3) Pursuant to Subsection (2), if the defendant pleads guilty in the National Court, on sentence, the National Court shall take the defendant's guilty plea as a strong mitigating factor.

- (4) Either at this stage or at any stage prior to or later this, neither the defendant nor his legal representative shall not be permitted to subject any witnesses to cross-examination.

2. AMENDMENT TO SECTION 95(3)

Section 95(3) of the Act is amended as follows:

“3 If the Court is of the opinion that the evidence is sufficient to put the defendant on trial for an indictable offence, it shall:

- (a) first allow the defendant to make a statement pursuant to Section 96 of the Act; and
- (b) then commit the defendant to either:
  - (i) stand trial in the National Court; or
  - (ii) enter a guilty plea in the National Court pursuant to Section 96(2) of the Act.

3. AMENDMENT TO SECTION 100

- (1) Subsections (1) and (2) of Section 100 of the Act are repealed.
- (2) The Subsection (3) of Section 100 remains in force but now exists without the prefix “(3)”

4. REPEAL AND REPLACEMENT OF SECTION 103

Section 103 of the Act is repealed and substituted with the following:

“103 COMMITTAL ON PLEA.”

- (1) At any stage of the committal proceedings prior to the opportunity given to the defendant under Section 96 of the Act, but after the completion and service on the defendant and submission to the Court of the police hand-up brief, if the defendant expresses a desire to the Court to plead guilty to the offence the subject of the committal proceedings, the Court shall:
  - (a) explain the advantages and disadvantages of pleading guilty; particularly that he is likely to get a discounted sentence on a guilty plea in the National Court;

- (b) the court shall then proceed to record the intention of the defendant to plead guilty in a statement form – and:
  - (i) the Magistrate constituting the court, and the defendant if he so wishes, shall sign the statement; and
  - (ii) the defendant shall then be committed to plead in National Court.
- (2) If on arraignment by the National Court the defendant pleads guilty to the offence or related offence the subject for which he was committed to the National Court by the Committal Court, the National Court shall when considering sentence, take the defendant's guilty plea as a strong mitigating factor.

### Appendix 3 List of Publications of the Commission

ANNUAL REPORTS	DATE	PRICE
PNGLRC Annual Report	1975	
PNGLRC Annual Report	1976	
PNGLRC Annual Report	1977	
PNGLRC Annual Report	1978	
PNGLRC Annual Report	1979	
PNGLRC Annual Report	1980	
* PNGLRC Annual Report	1981	
PNGLRC Annual Report	1982	
PNGLRC Annual Report	1983	
PNGLRC Annual Report (not published)	1984-86	
PNGLRC Annual Report	1987	
* PNGLRC Annual Report	1988	
PNGLRC Annual Report	1989	
PNGLRC Annual Report (not published)	1990	
PNGLRC Annual Report	1991	
PNGLRC Annual Report (not published)	1992-93	
PNGLRC Annual Report	1994	
PNGLRC Annual Report	1995	
PNGLRC Annual Report	1996/97	
PNGLRC Annual Report (not published)	1998-1999	
PNGLRC Annual Report (not published)	2000	
PNGLRC Annual Report (not published)	2001-2002	
PNGLRC Annual Report (not published)	2003-2004	
PNGLRC Annual Report	2005	
PNGLRC Annual Report	2006	



		PNG	OVERSEAS
<b>ISSUES PAPERS</b>			
1. Committal Proceedings	2007		
2. Indictable Offences Triable Summarily	2007		
<b>DRAFT REPORTS</b>			
1. Committal Proceedings	2007		
2. Indictable Offences Triable Summarily	2007		
5. Incorporated Land Groups and Design of a System of Voluntary Customary land Registration	2007		
<b>REPORTS</b>			
1. Summary Offences	1975	K5.00	K10.00
2. Abolition of Native Regulations	1975	K5.00	K10.00
3. Punishment for Wilful Murder	1975	K5.00	K10.00
4. Arrest, Search & Bail	1976	K5.00	K10.00
5. Adultery	1977	K5.00	K10.00
6. Fairness of Transaction	1977	K5.00	K10.00
7. The Role of Customary Law in the Legal System	1977	K5.00	K10.00
8. Indictable Offences Triable Summarily	1978	K5.00	K10.00
9. Young Persons in Conflict with the Law	1980	K5.00	K10.00
10. Committal Proceedings	1980	K5.00	K10.00
11. Customary Compensation	1980	K5.00	K10.00
12. Transfer Pricing Manipulation	1981	K5.00	K10.00
13. Bribery and Corruption	1988	K5.00	K10.00
14. Final Report on Domestic Violence	1992	K10.00	K20.00

**WORKING PAPERS**

1. Abolition of Native Regulations	1975	K5.00	K10.00
2. Adultery	1975	K5.00	K10.00
3. Detention for Interrogation & Confessions	1976	K5.00	K10.00
4. Declaration & Development of the Underlying Law	1976	K5.00	K10.00
5. Fairness of Transactions	1976	K5.00	K10.00
6. Criminal Responsibility: Taking Customs, Perceptions & Beliefs into Account	1977	K5.00	K10.00
7. Judiciary	1978	K5.00	K10.00
8. A Second Review of the Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act 1974	1978	K5.00	K10.00
9. Family Law	1978	K5.00	K10.00
10. The Legal Profession in PNG	1978	K5.00	K10.00
11. Detention for Interrogation and Confessions	1978	K5.00	K10.00
12. Law of Succession	1978	K5.00	K10.00
*13. Committal Proceedings	1979	K5.00	K10.00
14. Young Persons in Conflict with the Law	1979	K5.00	K10.00
15. Reorganisation of the Lower Courts	1980	K5.00	K10.00
16. Seminar on Legal Reorganisation of the Local & District Courts	1980	K5.00	K10.00
17. Consumer Protection	1981	K5.00	K10.00
18. Seminar on Legal Profession Act for PNG	1982	K5.00	K10.00

19. Corruption and Bribery	1982	K5.00	K10.00
*20.A Fourth Review – Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act	1983	K5.00	K10.00
*21. Interim Report on Domestic Violence	1987	K5.00	K10.00
22. Custody Jurisdiction in PNG	1987	K5.00	K10.00
23. The Law on Maintenance in PNG	1989	K5.00	K10.00
24. Political Refugees & The Proposed Report on the Laws Relating to Gillnet & Driftnet Fishing in PNG	1989	K5.00	K10.00
Critique of the World Bank's Tropical Forestry Action Plan for PNG	1989	K5.00	K10.00
Attitudes towards Land Compensation and Development in PNG	1997	K10.00	K20.00

#### **JOINT WORKING PAPERS**

1. Indictable offences triable summarily	1977	K5.00	K10.00
2. Committal proceedings (preliminary examinations)	1977	K5.00	K10.00

#### **OCCASSIONAL PAPERS**

1. The Punishment for Wilful Murder	1976	K5.00	K10.00
2. Review of the Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act 1974	1977	K5.00	K10.00
3. Customary Rules of Succession	1977	K5.00	K10.00
4. Sorcery	1977	K5.00	K10.00
5. Customary Marriage & Divorce in Selected Areas of PNG	1977	K5.00	K10.00

6. Law Information Center	1977	K5.00	K10.00
7. The System of Selecting in PNG	1978	K5.00	K10.00
*8. Sorcery among the Tolai	1978	K5.00	K10.00
9. The Legal Profession in PNG	1978	K5.00	K10.00
*10. Sorcery among the East Sepiks	1978	K5.00	K10.00
The Effect of Sorcery in Kilenge, WNBP	1978	K5.00	K10.00
Transfer Pricing Manipulation in PNG	1980	K5.00	K10.00
Forms & Functions of Business in PNG	1980	K5.00	K10.00
14. A Third Review of the Basic Protection Compensation Act	1981	K5.00	K10.00
15. Corporate Social Responsibility in PNG	1981	K5.00	K10.00
16. Constitutional Review Jurisdiction	1981	K5.00	K10.00
*17. Review of Consumer Protection Legislation Part 1	1981	K5.00	K10.00
18. Marriage & Domestic Violence in Rural PNG	1986	K10.00	K20.00
19. Domestic Violence in Urban in PNG	1986	K10.00	K20.00
20. New Directions in Resource Management in PNG	1990	K5.00	K10.00
*21. Ol Kalabus Meri – A Study of Female Prisoners	1992	K5.00	K10.00

### **MONOGRAPH SERIES**

1. Homicide Compensation in Papua New Guinea – Problems & Prospects	1981	K10.00	K20.00
2. Customary Law: A Melanesian View	1983	K10.00	K20.00
3. Domestic Violence in Papua New Guinea	1986	K10.00	K20.00
4. Marriage in Papua New Guinea	1986	K10.00	K20.00
5. Land Law and Policy in Papua			

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New Guinea	1986	K10.00 K20.00
6. Compensation for Resource Development in Papua New Guinea	1997	K20.00 (NCD) K25.00 (PNG) K30.00 (Overseas)

\* **Out of Stock**