

LAW REFORM COMMISSION

OF

PAPUA NEW GUINEA

REPORT OF THE SEMINAR ON THE

REORGANISATION OF THE LOCAL

AND DISTRICT COURTS

WORKING PAPER NO: 16

NOVEMBER 1980.

P R E F A C E

This working paper records the main issues raised at a Seminar on the Reorganisation of the Local and District Courts held at the University of PNG on 13 and 14 October 1980.

Comments, suggestions and criticisms on the issues raised at the seminar are invited and should be sent to:—

The Secretary
Law Reform Commission
P.N.G. Development Bank Building
P.O. Wards Strip,
WAIGANI

They should be submitted before 7th January 1981.

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The Law Reform Commission would like to thank all those who attended this important seminar, and is especially grateful to the following for their assistance in ensuring the success of the seminar:

Mr. J.F. Aisa, Chief Magistrate.

Mr. J. Busse, Catering Manager, UPNG and his Staff.

Mr. J. Harrington, Audio-Visuals Department, UPNG, and his Staff.

Mr. R. Lohia, Vice-Chancellor, UPNG, and his Staff.

Mr. R. Mellor, Principal Legal Officer, Magisterial Service.

SEMINAR PROGRAMME

Monday, 13 October 1980

- 9 - 10.30am: Welcoming speech by Mr. W. Kaputin, Chairman of the Law Reform Commission. Discussion on the possible amalgamation of Local and District Courts into a new Magistrate's Court. Chaired by Mr. S. Kaipu, Secretary of the Law Reform Commission.
- 11 - 12 "Magistrates' views on the reorganisation of the Lower Courts", by Mr. J.F. Aisa, Chief Magistrate. Chaired by Mr. S. Kaipu, Secretary of the Law Reform Commission.
- 1.30 - 2.30pm: Discussion. Chaired by Mr. B. Brunton, Dean of the Faculty of Law, UPNG.
- 3 - 4pm: Simplification of forms and procedures; Chaired by Mr. G. Lay, Young and Williams.

Tuesday, 14 October 1980

- 9 - 10.30am: Jurisdictional changes: increasing present civil and criminal jurisdiction and extending Magistrates' powers of sentencing, disposal, mediation and compensation. Chaired by Mr. J.F. Aisa, Chief Magistrate.
- 11 - 12 "Taking a plea" by Mr. P. Quinlivan, Magisterial Service. Chaired by Mr. A. Amet, Public Solicitor's Office.
- 1.30 - 2.30pm: Committal Proceedings. Chaired by Mr. W. Kaputin, Chairman of the Law Reform Commission.
- 3 - 4pm: Summary of Proceedings. Chaired by Mr. L.K. Young, Director, Legal Training Institute.

The Seminar was held in the Council Chamber of the University of Papua New Guinea, Port Moresby.

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SEMINAR PARTICIPANTS

Mr. J.F. Aisa,	Magisterial Service.
Mr. A. Amet,	Public Solicitor's Office.
Mr. B. Andrew,	Magisterial Service.
Reverend R. Avi,	Melanesian Council of Churches.
Mr. G.E. Bailey,	Magisterial Service.
Dr. L. Benner,	Ombudsman Commission.
Mr. C. Bidar,	Magisterial Service.
Mr. B. Brunton,	Faculty of Law, UPNG.
Mr. A. Deklin,	Faculty of Law, UPNG.
Mr. G. Delaney,	Executive Branch, Justice Department.
Mr. R. DeVere,	Law Reform Commission.
Mr. A. Finnie,	Law Reform Commission.
Mr. R. Gunson,	State Solicitor's Office.
Mr. F. Iramu,	Magisterial Service.
Mr. R. Irung,	State Solicitor's Office.
Mr. S. Kaipu,	Law Reform Commission.
Mr. S. Kapun,	Magisterial Service.
Mr. W. Kaputin,	Law Reform Commission.
Mr. R. Kidu,	Magisterial Service.
Mrs. D.J. Kitching,	Legislative Counsel's Office.
Mr. T.L. Konilio,	General Constitutional Commission.
Superintendent R. Korus,	Royal Papua New Guinea Constabulary.
Mr. G. Lay,	Young and Williams.
Senior Inspector J. Marru,	Royal Papua New Guinea Constabulary.
Mr. R. Mellor,	Magisterial Service.
Mr. Justice Miles,	
Mr. M. Mosoro,	Law Reform Commission.
Brother G. Mount,	Department of Community and Family Services.
Mr. S. Mulina,	Central Provincial Government.
Mr. Justice Narokobi,	
Professor M. O'Collins,	Department of Anthropology and Sociology, UPNG.
Miss B. Pilokos,	Law Reform Commission.
Mr. Justice Pratt,	
Mr. P. Quinlivan,	Magisterial Service.
Mr. R. Ramsay,	Administrative College of P.N.G.

Mr. K. Roddenby,	Public Prosecutor's Office.
Professor A. Sawyerr,	Faculty of Law, UPNG.
Mrs. E. Sheridan,	Ombudsman Commission.
Mr. A. Suare,	Corrective Institution Service.
Mr. H. di Suvaro,	Faculty of Law, UPNG.
Mr. M. Uvako,	Probation & Parole Branch, Department of Justice.
Mr. K. Vagi,	Magisterial Service.
Mr. I. Vartabo,	Magisterial Service.
Mr. J. Wallace,	Probation & Parole Branch, Department of Justice.
Mr. R. Waibauru,	Department of Decentralisation.
Mr. L.K. Young,	Legal Training Institute.
Miss P. Young,	Executive Branch, Department of Justice.

Monday, 13 October 9 - 10.30am

WELCOMING SPEECH BY MR. W. KAPUTIN, CHAIRMAN OF THE LAW REFORM COMMISSION, AND
DISCUSSION ON THE POSSIBLE AMALGAMATION OF LOCAL AND DISTRICT COURTS INTO A NEW
MAGISTRATE'S COURT.

CHAIRMAN: Mr. S. Kaipu, Secretary, Law Reform Commission.

In his welcoming speech Mr. Kaputin expressed his appreciation that such a senior group of judges, administrators of the law and the courts, academics and members of the legal profession were attending the seminar. He added that the duty owed to the people and the government was to assist with the formulation of a legal structure that will suit the people of P.N.G. He pointed out that the purpose of the L.R.C.'s working paper on the "Reorganisation of the Lower Courts" was to help to obtain participants' views on the issues so as to enable an improved structure to be devised and agreed upon. Participants were asked to send their written views after the seminar, and also after they had received the L.R.C.'s report on the seminar.

Although there was support for the fusing of the two courts into a Magistrate's Court structure some participants drew attention to the logistical problems of providing staff, legal representation, availability of support personnel etc. which an expanded jurisdiction would bring (Young, Amet, Korus, Delaney and Pratt J.) It was pointed out that the police had current difficulties on the prosecution side and that they would not be able to cope with the proposed increased jurisdiction without a substantial input in training (Korus). Magistrates would need to receive training in mediation and awarding compensation if these measures were to be stressed in a revised system. Existing resources e.g. magistrates training each other on mediation techniques, should be used as much as possible (O'Collins). On the same topic of making the best use of existing resources, Mr. Young suggested that Legal Training Institute graduates could, with additional training on magisterial matters, be brought into the magistracy. Mr. Iramu suggested better qualified personnel would result from organised exchange arrangements with other countries for training, rather than the present reliance on bringing experts into P.N.G. Narokobi J. stressed that as far as the logistics were concerned in ensuring the increased jurisdiction was a success, the government would just have to make the money available. He also advocated the appointment of six more senior magistrates: 2 in Mt Hagen; 1 in Lae, 1 in Rabaul and 2 in Port Moresby. Lawyers could also be employed to conduct weekend or evening courts.

The Public Solicitor's Office is concerned that the increased jurisdiction would oblige them to provide legal representation in the lower courts (where persons are charged with offences carrying maximum penalties of over two years' imprisonment, which they cannot provide (Amet). Mr. Iramu suggested that there are other ways of providing legal representation in the lower courts. In Tanzania private lawyers are paid by the government to represent clients in court. Mr. Kaputin suggested that we should look outside the present framework of legal representation and try and provide a system where people can deal with the law themselves.

The Village Courts system was breaking down through lack of transport to enable magistrates to reach the villages and through an absence of adequate supervision (Iramu). The roles of Village Court magistrates and community government should be reviewed; perhaps councillors' and magistrates' roles should be combined (Narokobi J).

The proposal to streamline the lower courts was unanswerable as an attempt to bring the judicial process closer to the people. The law itself should be simplified, particularly procedures, so that less qualified personnel could administer it (Sawyerr).

Other general points made were as follows:

- (a) people are not interested in court structures, they are only concerned that their case can be heard, and without being given the "run-a-round" from one court to another. (Quinlivan)
- (b) an overall court structure might include three types: a traditional type for customary dispute settlement; an informally run but institutionalised court; a highly formalised appeal court. (Quinlivan)
- (c) a system of reviewing all magistrates' orders which lead to imprisonment should be instituted. (Brunton)
- (d) there is an overall need to provide accessible legal services to the rural people of PNG. (Aisa)

Monday, 13 October 11. - 12

"MAGISTRATES' VIEWS ON THE REORGANISATION OF THE LOWER COURTS"

Paper delivered by Mr. J.F. Aisa.

CHAIRMAN: Mr. S. Kaipu, Secretary, Law Reform Commission.

This talk is related to the paper from the Magisterial Services in September 1977 entitled:

"Recommendations from the Magisterial Service on Changes to be made to the District and Local Courts Act. Report No.1".

The present paper also follows a LRC Working Paper of August 1980 entitled:

"Reorganisation of Lower Courts".

The magistrates' views included the following points:

1. A Single Magistrates Court.

The Magisterial Service thinks an amalgamation of District and Local Courts into one Magistrates Court is essential.

2. Civil Jurisdiction and Procedure.

A new class of magistrate grade five should be created with a civil jurisdiction of K10,000 and other grades of magistrate should have lesser jurisdiction according to their grade down to that of K1,000 for a magistrate grade one.

Jurisdictional anomalies between the Child Welfare Act and the Deserted Wives and Childrens Act should be corrected and guidelines provided to determine when a customary marriage is a recognised marriage for the purposes of the latter Act.

General custody jurisdiction should be considered along with the LRC's proposals on family law.

All grades of magistrate should have the jurisdiction to deal with the dissolution of a customary marriage.

The unlimited jurisdiction of village court magistrates in regard to bride price under S.24(3) of the Village Courts Act should be extended to all grades of magistrate.

Mediatory jurisdiction should be extended to all grades of magistrate.

3. Procedure in Civil Cases.

The following improvements are suggested:

- (a) all grades should be allowed to sign default judgments;
- (b) "substituted service be allowed only in civil cases";
- (c) "section 33 of the District Courts Act be retained";
- (d) "Transfer of Proceedings from one court to another be given to all magistrates in the new Act".

4. Judgments in Civil Cases.

Magistrates appear to favour imprisonment for civil debt. The repealed Absconding Debtors Act and the Creditors Remedies Act (Papua) 1905 should be incorporated in the new Magistrates Court Act.

5. Criminal Jurisdiction and Procedure.

A complete review of jurisdiction, procedures, sentences and orders should be undertaken. The introduction of mediation in the criminal jurisdiction may result in courts and police being accused of not settling criminal matters according to law. It will adversely affect the independence of the judiciary.

Criminal procedure should be at least changed until it can be understood by the average Papua New Guinean. The procedure followed on a plea of not guilty should be reviewed and adapted to the customary arbitration system.

Adjournments should be limited more strictly than at present.

A plea of guilty by letter should be allowed for minor criminal offences under the new Act.

Ex-parte hearing of minor criminal offences should be allowed in the new Act.

The proposals of the LRC contained in its working paper are generally supported, but with the following comments:

- (a) customary forms of punishment such as apology and feasting should also be considered;
- (b) a better defined bonding system is needed as an alternative to fines or imprisonment;
- (c) magistrates should not be able to revoke their own decisions except in ex-parte criminal proceedings.

6. Compensation Orders in Criminal Cases.

Such orders should be enforceable by way of imprisonment in default of payment. The present jurisdiction under S.19(1) of the Local Courts Act should be increased in the new Act.

7. Other Factors:

The following matters were also mentioned:

- (a) further steps should be taken to ensure the appearance of witnesses in criminal cases, including remanding witnesses in custody;
- (b) the six months time limit on criminal offences, after which the prosecution is discontinued, is too short, particularly in the light of the proposed increase in criminal jurisdiction for the magistrates;
- (c) appeal procedures should be streamlined;
- (d) the court forms need to be thoroughly reviewed.

Monday, 13 October 1.30-2.30pm

D I S C U S S I O N

CHAIRMAN: Mr. B. Brunton, Dean, Faculty of Law, U.P.N.G.

In his opening remarks Mr. Brunton said that it was no accident that the major achievements of the Law Reform Commission, in terms of substantive legislative change resulting from its work, have been in the area of criminal law and criminal procedure. This was because of the political concern over law and order. He added that in the process of tightening up the lower courts system, the wider political, economic and social context should be considered and in particular the interests of those who will be affected by the changes. He raised the following issues for possible discussion: the raising of the civil jurisdiction of magistrates grade one to K1000; the need for a review of magistrate training; the urgency of reform in family law, particularly as it affects the lower courts; the imprisonment of persons for civil debt non-payment; the mediation of criminal cases and its implication on the prosecutor's discretion; the proposal to abolish the "no case to answer" submission; sanctions, pleas and ex parte criminal hearings; and the problems in producing witnesses in court.

After an explanation for non-lawyers by Mr. Quinlivan of the terms, civil, criminal, and discretion to prosecute, discussion centred on the following topics:

1. Compelling the appearance of witnesses.

The payment of fees to witnesses, as under the District Courts Act, has been proposed by the police to assist the problem of witnesses failing to appear (Korus). The Magisterial Service supported the idea in principle but requires a satisfactory administrative system for the payment of fees to be worked out (Aisa). The present written summons procedure for compelling attendance is very laborious (Quinlivan).

2. Magistrates publishing reasons for their decisions.

With increased civil jurisdiction magistrates should publish reasons for their decisions, so the parties can study how a decision has been arrived at and so it is easier for the National Court to consider the case on appeal. (Lay)

3. Magistrates reviewing the decisions of other magistrates.

A number of speakers did not think that it would be desirable for magistrates to review other magistrates' decisions (Lay, Brunton, Narokobi J.). Existing appeal to the National Court was preferable. Mr. Aisa clarified that such reviews were only intended to apply in respect of ex parte criminal cases.

4. No case to answer submission.

The proposal to abolish the no case to answer submission was not favoured by some participants (Lay, Narokobi J.). A defendant should never be required to answer an allegation before any substance has been proven about it (Lay). The accused should have the option of making a no case to answer submission at the conclusion of the prosecutor's case (Narokobi J.).

Other matters raised were as follows:

- (a) support for fusing the District and Local Courts into one magistrate's court (Narokobi J.).
- (b) usefulness of including some provisions in the District Courts legislation to provide sanctions where a person totally disregards an order of the court (Lay).
- (c) support for increasing the jurisdiction of Grade One Magistrates to K1000 in view of the amount of money and customary goods now handled in villages (Narokobi J.).
- (d) District Court magistrates Grades IV and V should have powers to grant divorces and award custody (Narokobi J.).
- (e) Magistrates should have power to appoint mediators of disputes in appropriate circumstances, as well as exercising this function themselves (Narokobi J.).
- (f) Magistrates should have power to determine an individual's case against central, provincial or local government (Brunton).
- (g) the relationship of new Magistrate's Courts legislation with Land and Village Courts should be considered (Narokobi J.).
- (h) the importance of the protection in S.33 of the District Courts Act whereby the Court may set aside an ex parte conviction or order. (Quinlivan).

Monday, 13 October, 3-4pm

SIMPLIFICATION OF FORMS AND PROCEDURES

CHAIRMAN: Mr. G. Lay, Young and Williams.

FORMS.

The forms used in the District Court are discursive and either record or compel. Ideally they should draw the reader's attention to what is required of him. In a country where only a minority of people speak English they should perhaps all be issued in three languages: English, Pidgin and Motu.

Proof of service is inadequate because there should be some evidence that the recipient in fact understands what is required of him.

The structure of the present forms is of course very old and more modern forms would be superior. The new NSW District Court forms are examples of modern forms.

PROCEDURES.

Default summonses and garnishee orders are thorns in the side of private practitioners in this jurisdiction: the former because of problems of service and proof of service and the latter because of the need to apply for an order every pay-day.

The new K10,000 jurisdiction will make many defendants reluctant to go to court. There should be a right to apply for discovery and particulars of a party's defence.

It may soon be necessary to make some provision for the widespread use of word processors in law firms.

SUMMARY OF DISCUSSION.

It was generally agreed that the complaint and summons and information and summons could be combined into single documents.

A difference of opinion over whether a complaint should contain particulars was settled by Mr. Quinlivan quoting S.139 of the District Courts Act.

The questions of proof of service and garnishee orders should be carefully considered by a special sub-committee established for the purpose of considering the improvement of forms and procedures.

The standard way to refer to time is now "AM" or "PM".

The possibility of clerks of court signing default judgments was rejected until the general education and experience of the clerks improves.

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Tuesday, 14 October 1990 9.10.30am

JURISDICTIONAL CHANGES * increasing present civil and criminal jurisdiction and extending magistrates' powers of sentencing, disposal, mediation and compensation.

CHAIRMAN: Mr. J.F. Aisa, Chief Magistrate.

This session was dominated by concern over sentencing. In introducing the topic of jurisdictional changes, Mr. Aisa pointed out that while we may be concentrating on the rights of the defendant we should also recognise that the courts have a duty to protect the community at large.

A number of speakers expressed the view that sending people to institutions did not rehabilitate them (Wallace, Mount, Marru and Sheridan). The emphasis appeared to be on retribution first and foremost with little effort made to provide educational and rehabilitational facilities. Also the view of inmates was to regard prison as a holiday; it had no deterrent effect at all (Marru). A tougher approach was also advocated: the government should no longer feed prisoners, and their relatives should be required to do so (Iramu).

It was pointed out that there are now 23 corrective institutions in PNG, 56 rural lock-ups and a total of 5,000 prisoners. It seems that the establishment of rural lock-ups has not reduced the numbers held in custody (Suare). It was also indicated that 80% of prisoners in corrective institutions had been sent there by the lower courts (Suare). One problem is that currently the lower courts have a limited range of sentencing options available to them (Mount, Deklin). In respect of juveniles they can only be imprisoned, sent to an institution, made a ward of the Director of Child Welfare, or fined (Mount). Perhaps weekend detention or programmes could be implemented or the whole village could become involved in rehabilitating its delinquents (Deklin). Large numbers of children have been imprisoned as a result of non-payment of fines imposed by Village Courts (Mount). In September there were 60 children under the age of sixteen in three welfare institutions and 235 in corrective institutions (Mount).

Improvements in exercising discretion in sentencing and imposing bail were required before increased jurisdiction was given to the lower courts; otherwise appeals would increase and this would create problems in the Public Solicitor's office (Amet).

An ultimate sanction, such as imprisonment, is required when a person disobeys an order of the court e.g. non-payment of a fine (Young). If there is to be a relaxation in sending people to prison, then the alternative forms of sentencing must be effective; probation seems the most likely solution (Korus).

Other topics raised were:

- (a) the history of punishment has been full of conflicting particulars. Simply imprisoning people does not solve the realities of the situation or meet the traditional order; greater emphasis should be placed on the offender providing compensation. The call for higher jail terms is a misinformed notion (Kaputin).
- (b) greater use of mediation might be encouraged (Wallace, Narokobi).
- (c) it is hoped the L.R.C. draft Youth Court Services Bill will be brought before the N.E.C. in the near future (Mount).
- (d) the District Courts (Community Work Orders) Act 1979 has not commenced because the machinery to bring it into effect has not been worked out e.g. the kind of work that can be prescribed under the Act, and the extent of magistrates' discretion in ordering certain types of work (Delaney). This is something which the L.R.C., Magisterial Service and Department of Justice should solve (Kaputin).
- (e) increasing magistrates' jurisdiction in the lower courts will lead to an increase in the numbers sent to corrective institutions (Roddenby).
- (f) Village Courts should have jurisdiction to deal with children in rural areas as they are more appropriate than Children's Courts in towns (Iramu).
- (g) Local government councillors tend to think that Village Court Magistrates are taking away their powers: this relationship needs to be improved (Waibauru).
- (h) the constitutionality of the probation scheme being applied to one restricted area of the country at present was questioned (Roddenby).

In summing up the session Mr. Aisa said that most participants had expressed concern about sentencing, and particularly the lack of alternatives available to the Local and District Courts. Probation, community work orders and alternative institutions should also be considered. But a deterrent to protect the community and the victims of crime must be provided. The L.R.C. and the Magisterial Service should study the possible solutions to sentencing problems in the lower courts.

Tuesday, 14 October 1961

"TAKING A PLEA"

Paper delivered by Mr. P.J. Quinlivan

CHAIRMAN: Mr. A. Amet, Public Solicitor's Office.

Mr. Amet commented that little appeared to have been achieved over the years in establishing procedures in the Lower Courts judging from the number of appeals which had gone through the Public Solicitor's Office on the grounds that magistrates had not heard the defence case properly.

The major points made by Mr. Quinlivan in his paper were as follows:

1. In 1890 Sir William McGregor, with the help of Sir Samuel Griffiths, was the architect of what can be called "the Papua New Guinea Procedure" for the taking of a plea. It was designed to combat one of the disgraces of the administration of justice whereby a defendant is not told the facts of the case until after a plea of guilty has been announced.

2. The PNG Procedure requires a magistrate,

(a) to first acquaint himself as fully as possible with the facts of the case;

(b) then to decide whether a proper case has been brought before him and to certify this in writing;

(c) and then to carefully explain the substance of the charge to the defendant, if he considers a proper case has been brought.

3. The successive re-enactment of the "PNG Procedure" from 1890 onwards is one of the longest ever legislative chains, and is a deliberate break with the law elsewhere.

4. In contrast, the so-called "New South Wales Procedure", adopted in many jurisdictions overseas, is that the charge as laid, in all its legalese, shall be read to the defendant and he shall be asked if he pleads guilty or not guilty.

5. England and New South Wales have now adopted what is in fact the Papua New Guinea Procedure for taking a plea.

6. Quite against the legislation in PNG, it appears that magistrates and police prosecutors have been taught to adopt the "N.S.W. Procedure" and this is causing havoc in the administration of justice.
7. Prosecutors are not being given their proper status. They have the knowledge of the elements of offences and ought to be able to require more evidence be obtained by other police officers when it is lacking, before taking a case to court. Defendants know cases have not been properly investigated by the police.
8. The Constitution pledges that the people of PNG will guard and pass on their noble traditions and Christian principles. The PNG procedure is a very noble tradition which should be guarded. Those involved in the administration of justice should ensure that the straight and narrow of the law is followed by using the PNG procedure.

There was general support for the comments made in this paper, and specifically from Pratt, Miles, Narokobi JJ, Messrs Roddenby, Mount, Vagi and Marru. It was pointed out there are many occasions when the failure of a plea, to put the full facts to the accused, formed the basis for a successful appeal (Pratt, Miles JJ, and Roddenby). Juveniles do not understand the charges being put to them, magistrates do not take sufficient time to explain fully what the police allege they did (Mount).

Other issues raised in discussion were:

- (a) the uncertainty of the meaning of the phrase "the substance of the information shall be stated to him" in S.134 of the District Courts Act, and whether the substance is the taking of the information or whether it has to include the actual elements of the charge (Aisa). If incorporated in a new Magistrate's Court Act, it should define clearly the procedure the magistrate should take (Aisa).
- (b) the danger of magistrates not properly phrasing their questions to the accused so that the true facts do not come out (Sheridan).
- (c) the importance of only putting the precise elements of the offence to the accused, and not confusing the situation with extraneous questions (Roddenby).
- (d) the general failure by magistrates to explain to defendants the purpose of the allocutus, and a reluctance by magistrates to change the plea at that stage (Roddenby). Mr. Quinlivan also referred to Jensen v McGrath (1965-66) P.+ N.G.L.R.91 at this point.

(e) Magistrates should take into account the language understood by the parents of the juveniles appearing in court. (Mount).

Mr. Amet concluded that the consensus was that in the administering or taking of a plea there appears to be adequate provision, but that magistrates are not following the practice correctly. The L.R.C. and Magisterial Service should give directions and guidelines to improve this position.

Tuesday, 14 October 1.30-2.30pm

DISCUSSION OF L.R.C. REPORT NO.10 ON COMMITTAL PROCEEDINGS

CHAIRMAN: Mr. W. Kaputin, Chairman, Law Reform Commission.

Mr. Kaputin introduced the topic by outlining the procedures proposed by the Law Reform Commission after lengthy conferences with representatives from the Public Prosecutor's and Public Solicitor's Offices and the Magisterial Services Commission. He expressed the hope that the debate on the introduction of committals by written brief would not be re-opened. The waste of resources, the confusion of defendants and the tendency of the magistracy to commit in all cases were all good reasons for changing the present procedure.

A number of objections to the proposed new arrangements were raised during the discussion:

1. the LRC's draft bill doesn't clearly state that written statements in the brief handed to the magistrate have to be sworn. (Roddenby).
2. the LRC's draft bill doesn't state what happens to the original sworn statements and other documents, only that copies be sent to the Public Prosecutor and Public Solicitor - Clause 125 (Roddenby).
3. Exculpatory or self-serving statements should be admitted as proposed and it should be made clear that this also applies in relation to more serious indictable offences (Roddenby).
4. as the magistracy is left with virtually no discretion, why involve them at all? (Quinlivan).
5. the defence should have the right to require specific witnesses to attend court for cross-examination, so that the sworn evidence can be tested at an early stage (Miles J.).
6. the Prosecution should be able to supplement the written material with oral evidence and the Defence should be able to cross-examine on that evidence (Miles J.).
7. It is a misnomer to call schedule 5 offences "Indictable Offences Triable Summarily" (Miles J.).

8. **Committals are a check on the prosecutors. If the present committal proceedings are unsatisfactory:**

- (a) because defendants don't understand the procedure, or
- (b) " of delays in committal proceedings, or
- (c) " magistrates are committing for trial unnecessarily

then the solution should not be at the expense of the defendants' rights (di Suvaro, Amet).

9. Because the Childrens Court has to refer committal proceedings to the District Court, the children often have to endure open court proceedings. The new Magistrates Court should have power to conduct the new proceedings in closed court. Problems often arise when a juvenile is charged jointly with an adult and the juvenile is thereby disadvantaged (Mount).

10/ The whole position should be re-examined by the authorities with a view to allowing the cross-examination of deponents upon their sworn statements at the committal proceedings. Such a right would be rarely used but would be vital in some cases (Pratt J.).

Tuesday, 14 October 3-4pm

SUMMARY OF PROCEEDINGS

CHAIRMAN: Mr. L.K. Young, Director, Legal Training Institute.

Mr. Young introduced his summary by noting:

- (a) that the Village Courts were tending to "assume more westernised functions rather than the customary ones" and urged that this tendency be arrested as quickly as possible.
- (b) that the senior magistrates are to have their jurisdiction increased at last, but they are less qualified and there are fewer of them now so a strong review system will be necessary.
- (c) that he would prefer a regional court system as he proposed at the Waigani Seminar in 1978 which could serve as a training ground for future national judges.

Discussion on the possible amalgamation of local & district courts into a new magistrate's court.

There appeared to be general agreement:

- (a) that the magistrates be given greater jurisdiction and
- (b) that the local and district courts be combined into one magistrates court.

The NEC had already approved the increase in jurisdiction and in effect the abolition of committal proceedings. Legislation is to be introduced to this effect in the November session of Parliament.

After a lengthy discussion Mr. Deklin pointed out that the real task was to identify the problem and then ask if the suggestions being made were going to solve the problem.

"Magistrates' views on the reorganisation of the lower courts".

After hearing Mr. Aisa's paper on the views of the magistrates, discussion took place on the following issues:

- (a) whether mediation should be introduced for minor criminal matters;
- (b) whether the grade one magistrates could be entrusted with a civil jurisdiction of K1000;
- (c) how the various jurisdictions in family law matters should be simplified;

- (d) how refusals to pay debts and absconding debtors should be dealt with;
- (e) how to simplify criminal procedure;
- (f) whether pleas of guilty by letter should be allowed in minor criminal matters;
- (g) whether the present limitation period of six months for minor criminal offences should be extended;
- (h) whether magistrates should be allowed to review the decisions of other magistrates;
- (i) how witnesses could be compelled to attend court.

The Simplification and Improvement of Forms and Procedures.

Mr. Lay introduced a discussion on court forms and procedures and it was generally agreed that court forms should be improved to take account of modern inventions from carbon paper to word processing.

Court procedures and their reform were more contentious:

- (a) Default judgments will continue to be referred to magistrates at least until such time as the training of clerks of court has improved.
- (b) Garnishee orders should not be changed until the whole subject is thoroughly reviewed.

However an amalgamated complaint/summons would be generally welcomed.

It was also generally agreed that a sub-committee should be set up to examine the question of improving both forms and procedures.

Jurisdictional Changes.

This session concentrated on sentencing and could be summarized as "unity in diversity". All agreed that sentencing powers should be more varied but there were diverse views as to what these should be. The District Courts (Community Work Orders) Act 1979 has been passed but not implemented because the precise form of implementation has not been decided.

"Taking a Plea".

This session was devoted to Mr. Quinlivan's plea for a return to the Plea-taking procedure introduced by Sir William McGregor. All agreed that such a return would be most beneficial and that legislative change was desirable so that there could be no mistake as to what the procedure should be.

Committal Proceedings.

This session was devoted to the proposed new committal proceedings by hand-up brief. Some participants felt strongly that the accused should still be entitled to call for a full committal or at least cross-examine some or all of the witnesses who gave evidence contained in the brief.

In concluding his summary, Mr. Young touched upon the following points:

- (a) clear guidance should be given to the magistrates on the question of costs on dismissal with a view to compensating acquitted defendants;
- (b) admission or partial admission of guilt should be allowed in criminal cases;
- (c) the standards of the clerks-of-court should be improved so that they can give greater assistance to litigants;
- (d) before any changes are made affecting the Childrens Courts they should be carefully considered in consultation with child welfare authorities.
- (e) the main work of the Commissions will be along four main lines:
 - (i) procedure (including forms);
 - (ii) mediation in criminal as well as civil matters;
 - (iii) sanctions - broadening the range;
 - (iv) personnel.