



OFFICE OF PUBLIC PROSECUTOR

GOING TO COURT

A guide to understanding the criminal court processes in Papua New Guinea





AIMS OF THE BOOK

The aims of this book are to explain to non-legal people:

- (i) some of the words, abbreviations and legislation that are used in the criminal law process;
- (ii) the legal process in relation to elements of the investigation, charging, committal process, and trials (both summary and indictable) of offences against the criminal law;
- (iii) how the various courts are laid out; **and**
- (iv) the roles and functions of various parties involved in the process.

While the jurisdiction of the Village Courts is briefly explained in the definitions, this book **is not targeted** at people attending or appearing **at the Village Courts**.

In relation to the court processes involving offences of family and sexual violence, Appendix A answers many of the questions for both victims and witnesses. In regard to Victim Impact Statements [VIS], Appendix B explains the process for completion of the VIS and submission to the courts. Appendix C contains an explanation of consent in regard to rape and sexual assault cases.

For additional information on various aspects of the legal process, various brochures may be available. Some of those publications may be available through the District Court and National Court Registries, police stations, the Public Prosecutor's Offices, and/or the Public Solicitor's Offices.



FOREWORD

My office has developed this book in order to help people understand the court processes in Papua New Guinea from a complainant's or a witness's point of view. When an offence is committed on a person or their property, and that person has been called to give evidence for the State, it may be the first time that person has ever been to a court. The personnel of my office are hopeful that the contents of the book, once read or explained, will help take away any concerns people may have in relation to going to court. Much of the contents will be unfamiliar to people outside of the legal system. However, this book cannot be cited as a text on legal processes.

Many of the words used in the text are legal words and that is why definitions have been provided. The major criminal laws used in the courts are outlined, and some of the abbreviations used in court documents have been included to help people better understand any forms they may receive or be served with when going to court. The Juvenile, District, and National Courts' systems have been explained.

As well, we have included some brief information on the police investigation process. For many people, it will be unfamiliar to them. Appendixes are included for victims of family or sexual violence going to court, victim impact statements and consent as it relates to rape and sexual assault cases. A brochure on what state witnesses should know is available from the Public Prosecutor's Office at Waigani or in the provinces. This book also contains details on preparing for court, the court processes and the withdrawal of charges.

I trust that you find the book useful. Particularly, I record my appreciation to Mrs Tracy Ganaii, LLB, who has led this work in the Public Prosecutor's Office. I also place on record my appreciation to staff of the office who made contributions and all of those people from other organisations (including civil society) who gave feedback on the drafts and made the final document more relevant and user friendly for their work.

I hope that this book will help the professionals who assist survivors of violent crimes, victims of offences generally and witnesses to have greater access to our legal system and hopefully, achieve just results from their interaction with the system. I also trust that the book will ultimately assist victims of crime in Papua New Guinea to gain greater confidence in using our legal system.

Jack Pambel, LLB,
Acting Public Prosecutor
April 2008

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DEFINITIONS

- Accused**..... A person charged with an offence who is to appear in the National Court is referred to as the accused. **[Also see defendant]**
- Acquit**..... Upon the evidence available, a judge or a magistrate makes a decision, based on the facts and/or the law, to set free the defendant or accused from the charge or indictment. That person cannot be charged with or prosecuted for the same offence at any later time.
- Adjournment**..... Where a magistrate or judge decides that the case before the court should be held at some later time or date.
- Affirmation**..... This is where a non-Christian who is to give evidence or appear in court, says that they will tell the truth in court and that they understand what may happen if they do not tell the truth. Other religions may have special ways of telling the court that they will tell the truth. **[Also see Oath]**
- Allocutus**..... The prisoner addresses the court on what he or she thinks his or her punishment should be. This occurs after conviction but before sentence.
- Appeal**..... The process of contesting a decision of a lower court is an appeal. There are time limits for lodging an appeal with the courts.
- Appellant**..... This is the person or party who is appealing a court's decision.
- Arraignment**..... This is the process when a court asks a defendant or accused by name, if the charge is true or not true after the details of the charge have been read to him or her.
- Arrest**..... Taking away the liberty or freedom of a person by some lawful authority in order to answer a charge that may later be presented to a court is an arrest.
- Bail**..... This is where the police or the court releases from custody, someone who has been charged with an offence. It requires the person to continue to appear in court until the case is finalised. The bail may be granted with or without any conditions, including the payment of some security.

Bail Certificate	This is the certificate issued to the defendant or accused by a magistrate or a judge granting bail.
Bench Warrant	This is also sometimes known as an Arrest Warrant. It is a document issued by the court for the arrest of a defendant or accused when they fail to appear in court or they have escaped from custody, or have otherwise breached other conditions of bail.
Brief Facts	This is the story about how the offence happened including before and after it happened. It usually contains the elements of an offence and it is read to the court before a defendant or accused enters a plea. Other names for this are Summary of Facts or Statement of Facts.
Callover	A review of the status and progress of cases in a National Court circuit area. [Also see Listings]
Case dismissed	The magistrate decides on the evidence available that the defendant is not guilty as charged. That person cannot be charged with or prosecuted for the same offence at any later time. [Also see Acquit]
Case struck out	The magistrate decides that the case will not proceed. However this is not a dismissal and the charge may again be laid at some future time.
Case withdrawn	This is where the prosecutor makes an application to the District Court to withdraw the charge.
Charge	It is the accusation made against the person who has been summonsed or arrested.
Committal	This is where on indictable charges, the magistrate considers the evidence presented in the District Court to decide if there is enough evidence for the defendant to be tried or sentenced in the National Court.
Complainant	This is a person who makes the complaint to the police or to the court. A person from an organisation or a company making a complaint, informs the police, but the organisation or company is the actual complainant. [Also see Informant]
Consent	Appendix C explains some of the issues relating to consent in sexual assault and rape cases.

Convict	This is a person who has been found guilty of an offence by the court. The person may be then given a sentence, and if it is a term in prison, the person is said to be 'a convict'. [Also see Prisoner]
Conviction	The formal finding and recording of guilt against an accused person, or defendant.
Defendant	This is a person charged with an offence who is to appear in the District Court. [Also see Accused]
Defence	This is the accused's/defendant's legal reason, explanation or justification for the actions for which they are charged.
Defence Counsel	This is the legal representative of the person on trial.
Discharge	This is where a magistrate makes a decision, based on the facts and/or the law, to set free the defendant from the charge.
Dock	This is the place where the defendant or accused sits in a court.
Election Certificate	This is a document completed and signed by the public prosecutor to give power to Grade 5 magistrates to hear indictable cases in the District Court, rather than the National Court. The certificate must be filed with the District Court.
Evidence	This can be what is allowed to be said by witnesses in court, some physical item or items that may be presented in court, or documents that are relevant to the case. The evidence may be direct evidence or it can be circumstantial in that it is a fact that is legally relevant to the case.
Ex Officio Indictment	This is an indictment signed and presented in the National Court by the public prosecutor in special cases where the committal magistrate has refused to commit a person to trial. The <i>ex officio</i> indictment is only to be signed by the public prosecutor. [Also see Indictment]
Finding	This is a conclusion by the magistrate or judge about the evidence or some issue of law.

Guilty

An accused person or defendant may enter a guilty plea if they admit that they committed the offence. The magistrate or judge may give a verdict that the accused person or defendant is guilty after hearing the evidence in a trial where that person has pleaded not guilty.

Hearing

This is the trial of a case before a court. **[Also see Trial]**

Indictable Offence

This is a serious criminal offence that is usually dealt with in the National Court. **[Also see Schedule 2 Offence]**

Indictment

This is the formal document presented by the public prosecutor outlining the charges against the accused person/s in the National Court. **[Also see Ex officio indictment]**

Informant

A person who informs the police about an offence that has been committed is the informant. A police officer who lays the formal charges against the defendant is also known as the informant **[Also see Complainant]**

Information

This is the document which has the charge the defendant or accused is charged with by the police. It is a police document that is put with the court file.

Judge

A person with legal qualifications and experience who is appointed by the government to hear cases in the National or Supreme Courts, or other tribunals. A judge is referred to as "Your Honour" if you are addressing her or him in a court room.

Judgment

The decision on verdict or sentence of the judge who is hearing the case is referred to as the judgment.

Juvenile

Under the *Juvenile Court Act*, this refers to a person aged over 7 years and under 18 years of age. Another term used to refer to a juvenile, is a "minor". The *Criminal Code* defines the age of criminal responsibility as 7 years and over – subject to special conditions.

[Note: Proposed changes to legislation may see an increase in the age of criminal responsibility.]

Listings

The parties appear in court for mention of their cases, and a date is set for entering a plea or to start a trial. **[Also see Callover]**

Magistrate

A person with legal qualifications and relevant experience who is appointed to hear cases in the District Court, or courts other than the Supreme or National Courts is a magistrate. They have responsibility for hearing evidence and making judgements, or in committals, deciding whether there is enough evidence to send the defendant to trial before a judge, or for sentencing. A magistrate is referred to as “Your Worship” if you are addressing him or her in a court room.

No case submission

This is an application sometimes made by the lawyer for the defendant or accused at the close of the Prosecution case. The lawyer asks the court to stop a case and discharge a defendant or accused for reasons that the prosecution has not provided sufficient evidence against the accused or defendant.

Mention

This is a court process when the parties decide on issues like a plea, or a date for a trial. **[Also see Listings]**

Nolle Prosequi

This is a process where the prosecutor presents to court a document asking for the proceedings to be stopped. This is **not** an acquittal. It means that this case can again be taken to court if further evidence becomes available.

Not Guilty

This is a plea where the defendant or accused says they did not do what they are charged with, OR it is the verdict given by the magistrate or judge based on the evidence presented in the trial. It is a term that means the person is not **legally responsible** for the charge or indictment.

Oath

This is where a Christian person who is to give evidence swears to God that they will tell the truth in the court. Some of the people appearing in court, like interpreters, may also take an oath if they are Christians. **[Also see Affirmation]**

Parole

This is where a prisoner serves part of the sentence in custody and the remaining part of the sentence outside custody. The prisoner must serve one third of the prison sentence before being considered for parole by the Parole Board. The Board must set conditions for the release on parole of a prisoner.

Plea	This is the reply to the charge or indictment by the defendant or accused, for example true or guilty, not true or not guilty.
Police Prosecutor	A member of the Royal Papua New Guinea Constabulary who appears in a case in the District or Juvenile courts and represents the State of Papua New Guinea in criminal matters. The police prosecutor is there to assist the court. [Also see Public Prosecutor]
Presiding judge	This is the judge who made the decision. It is sometimes also referred to as the trial judge.
Pre-Trial Conference	This is a court process where all parties appear before a judge or magistrate and discuss issues that will be raised at the trial. It can also refer to a meeting between a party's lawyer and their witness.
Prima Facie	The words literally mean on the face of it. A judge or magistrate may make a finding that there is enough evidence or not evidence <i>prima facie</i> . [Also see No case submission]
Prisoner	This is a person who has been found guilty or who has pleaded guilty, and who is in custody awaiting sentence by the court. It also refers to a person who has been sentenced and is serving a period in custody. [Also see Convict]
Probation	This is a non-custodial sentencing option of a court. The court is assisted in its decision to allow probation or not and the conditions to apply, by the recommendations of a probation officer's report. The person on probation will be supervised by a probation officer or a voluntary probation officer.
Public Prosecutor	This is the government lawyer who is responsible for the prosecution function of the State. There are no fees for this service. [Also see Police Prosecutor]
Public Solicitor	This is the lawyer provided by the government to defend or represent the defendant or the accused. The services are generally free but there may be cases where a small fee is charged for the services provided.

Punishment	The sentence or other form of penalty that is given to a defendant or accused by the court is known as the punishment. It could include a good behaviour bond, a probation order, a fine, or a prison sentence. A court can also order “restitution” to be paid to a complainant for expenses such as the value of the item stolen, the medical or dental expenses incurred in an assault, and where the complainant suffers financial loss in other offences.
Remand	Where a defendant or accused is in custody or on bail and awaiting trial or sentence, this is known as remand.
Remandee	The defendant or accused who has been remanded in custody or on bail and awaiting trial or sentence is known as the remandee.
Respondent	This is the person or party against whom an appeal case is made.
Schedule 2 Offence	These are serious offences that can be dealt with by a Grade 5 magistrate in the District Court when a police prosecutor has filed an election certificate with the court. For information and examples of these offences, refer to the <i>Criminal Code</i> Schedule 2FS. [Also see Indictable offence]
Sentence	This is the sentence of the court about penalty. A magistrate or judge has many options available as to the penalty from good behaviour bond, probation, to a fine, restitution, and/or imprisonment. The prosecutor can tell the magistrate or judge a victim’s or complainant’s concerns regarding a sentence. The defence can tell them the concerns of the accused or defendant. It is up to the judge or magistrate to decide the terms of the sentence.
Statement of Facts	[See Brief Facts]
State Prosecutor	In criminal courts, this is a lawyer who works for the Public Prosecutor’s Office. [Also see public prosecutor]
Submissions	This can be oral, or written, or both forms of argument and /or information put to a court on points of law or facts. Submissions are also made on verdict or sentence.

Subpoena	[See Summons]
Summary of Facts	[See Brief Facts]
Summary Offence	An offence that is dealt with in the District Court by a magistrate is a summary offence.
Summons	This is a legal document used to direct and compel the named person to appear in court at a particular time, date and place for giving evidence or producing evidence to the court. If the person named fails to attend court, he or she may be subject to arrest if the court issues a warrant. This document may also be called a subpoena.
Trial	This is the process where a court examines evidence and the judge then makes a decision on the guilt or otherwise of the accused based on the facts presented and the appropriate laws involved.
Trial Date	This is the date on which the trial will be starting.
Verdict	This is the decision of the court after considering the plea of the defendant or accused, the facts, the laws involved, and submissions of lawyers or prosecutors.
Victim	This is a person who has suffered harm, including physical, sexual, financial, or mental injury, loss of property or other economic valuables as a result of an offence against the criminal law. The term is relevant whether or not a suspect is charged with or convicted of any offence. [Also see Complainant]
Village Court	Village Courts are established under the <i>Village Courts Act</i> . There are limitations on the type of cases that can be heard in the Village Courts. For example, serious assault, sexual offences, and other crimes cannot be heard by the Village Court magistrates, but the cases get referred to the police. Some examples of cases that the Village Courts can deal with include minor assaults, breach of the peace, drunkenness, public nuisance, stealing from gardens, or destroying fences around a piggery or poultry. Appeals against decisions of the Village Courts are made to the District Courts.

Voire dire

This is a trial within a trial where the defendant or accused challenges certain aspects of the evidence to be presented by the State.

Warrant of Commitment

This is a paper directing the Correctional Services personnel to keep a convicted prisoner in custody in order to serve a prison term.

Warrant of Remand

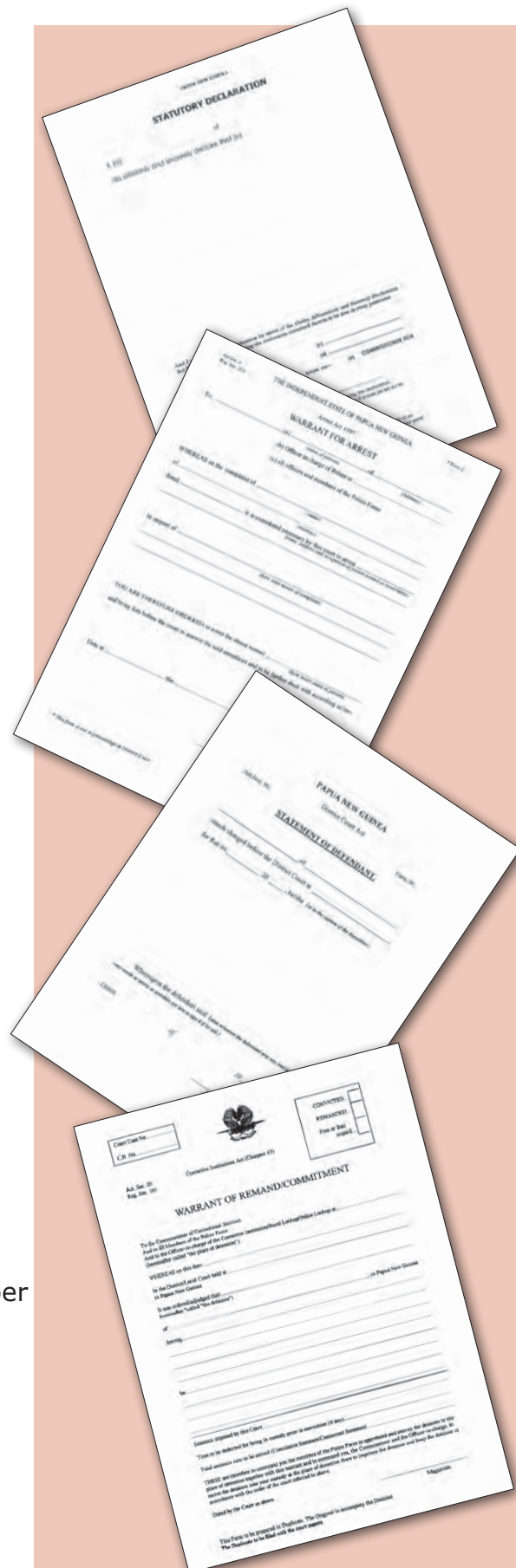
This is a paper authorizing the detention of a defendant or an accused in custody for a specific period.

Witness

There are different types of witnesses. The main type is an eye witness who gives evidence in court about what they have seen when an offence is committed. Other types may include expert witnesses such as a medical doctor who may give evidence on the conduct of a post mortem or a police officer involved in the apprehension of a suspect. A witness will make an affirmation or swear an oath that the evidence they give to the court will be the truth.

ABBREVIATIONS USED IN COURT DOCUMENTS

CBC	Community Based Corrections / Probation Office
CB No.	Charge Book Number
CCA	<i>Criminal Code Act</i>
CR No.	Crime Report Number [National Court]
CS	Correctional Services
DC	District Court
DC No.	District Court Number
FC	Family Court
JC	Juvenile Court
JCO	Juvenile Court Officer
MP No.	Miscellaneous Proceedings Number
MS	Magisterial Service
NC	National Court
OB	Occurrence Book [RPNGC document]
PP	Public Prosecutor
PPO	Public Prosecutor's Office
PS	Public Solicitor
PSO	Public Solicitor's Office
RPNGC	Royal Papua New Guinea Constabulary
SC	Supreme Court
SC No.	Supreme Court Number
SCAPP No.	Supreme Court Application Number
SCRA No.	Supreme Court Reference Appeal Number
SCR No.	Supreme Court Review Number
St-v-	State against [versus]
VIS	Victim Impact Statement



MAJOR LEGISLATION IN CRIMINAL CASES

Arrest Act, Chapter 339 of 1997

Bail Act, Chapter 340 of 1977

*Constitution of the Independent State of Papua New Guinea,
Chapter 1 of 1975*

Criminal Code Act, Chapter 262 of 1974

District Court Act, Chapter 40 of 1963

Evidence Act, Chapter 48 of 1975

Juvenile Court Act, Chapter 40 of 1991

Lukautim Pikinini Act, No. 15 of 2007

National Court Act, Chapter 38 of 1975

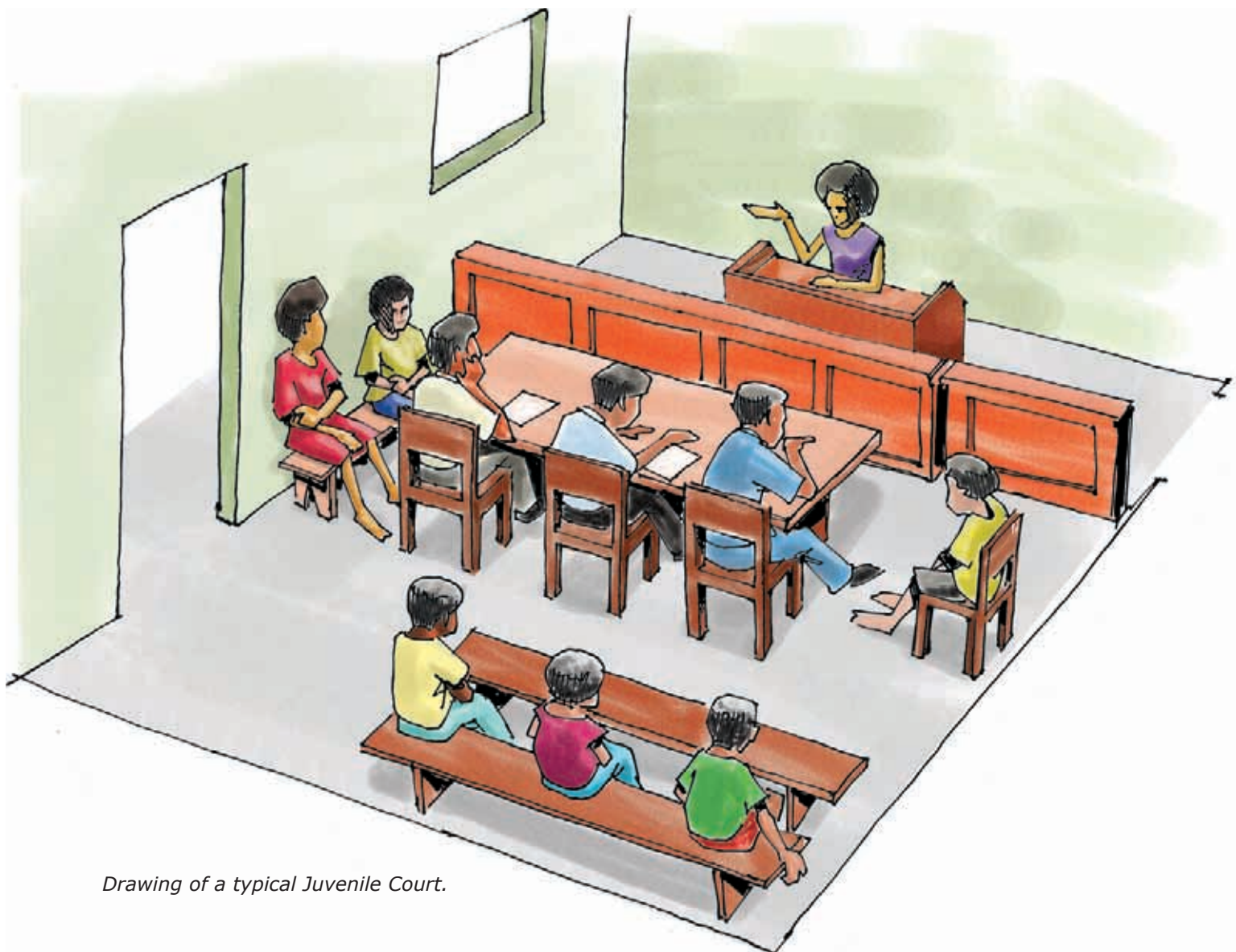
Supreme Court Act, Chapter 37 of 1975

JUVENILE COURT

For the purpose of this court, a juvenile is defined as a child between the age of 7 and less than 18 years of age. If you have been requested or summonsed by the Juvenile Court or the police to attend as a witness in court, there are several things you need to know. The summons may tell you the place, time and date, but police will also be able to tell you where the court is if you are unsure; that may happen if you witness a crime, or you are a victim of crime, in another place rather than where you live or work. There are some important points to know about the juvenile court.

1. What is the layout of the court?

There may or may not be a dock in which the juvenile defendant sits. Also, there may or may not be a witness box in which a witness will sit. Where this is the case, the defendant and the witness will sit on chairs on opposite sides of the court. The defendant may sit on the right side of the bar table as seen by the magistrate. The witness may sit on the left side of the bar table as seen by the magistrate.



Drawing of a typical Juvenile Court.

2. Who are the people in the court and what do they do?

- There will be the magistrate, who controls the court.
- The prosecutor (usually a police prosecutor) will present the case against the juvenile defendant for the informant.
- The defence lawyer (either a private lawyer or from the Public Solicitor's Office) will represent the juvenile defendant either by challenging the evidence or providing facts to the magistrate if the defendant pleads guilty.
- The juvenile court officer is a person who might sit with the juvenile during interviews, advise the juvenile of their rights, or make submissions on behalf of the juvenile to the magistrate. A volunteer juvenile court officer may attend where there is no appointed juvenile court officer.
- The juvenile defendant who is accused of committing the crime will attend.
- An interpreter may be present if language is a problem for the defendant or a witness prefers to speak in a language other than English. (Most proceedings will be in *Tok Pisin*.)

- A witness – including a victim – will attend the court as required by the prosecutor and give their evidence.
- If the juvenile defendant is on remand in a CS facility, he or she will be guarded by CS personnel. If the juvenile defendant is on remand in a juvenile remand centre, then an officer of the remand centre will accompany them. If the juvenile defendant is on bail, he or she will just walk into the court and sit on the chair, when their name is called. A parent or guardian of a juvenile will also be required to attend the court regardless of whether the juvenile is in custody or on bail.
- Because the Juvenile Court is a closed court, members of the public, other than the parents or guardians of the juvenile, will not be allowed in the court.

3. What is the dress of the people in the court?

The magistrate will wear ordinary clothes. The prosecutor will be in ordinary clothes, not a police uniform. Lawyers will appear in ordinary clothes.

All other people in the court, with the exception of the CS personnel, will be in ordinary clothes. A juvenile defendant on remand will wear civilian clothes.

A magistrate in the Juvenile Court.



4. General information:

The case is called by the police prosecutor. The defendant takes their place in the dock. The charge is read by the court and the defendant enters a plea. If the plea is a "guilty" plea, the police prosecutor reads the statement of facts, then both the defence and the police prosecutor make submissions on the appropriate punishment. A pre-sentence report completed by the juvenile court officer or the volunteer juvenile court officer and given to the court, will also be considered in the sentencing process. The magistrate will consider all submissions and ultimately hand down their decision.

In a summary trial, the evidence is presented and then witnesses may be cross examined or asked questions about their story. Because people take an oath or affirmation to tell the truth, it is important that all the evidence given or presented is the truth. Where it is suspected that the evidence is false, the witness can be charged with a serious offence called "perjury".

The magistrate considers all of the evidence and can do one of a number of things.

- In relation to summary offences or an indictable offence triable summarily, the defendant may plead either "guilty" or "not guilty". If the defendant pleads guilty, the facts are read to the court, and the magistrate asks the defendant whether he or she agrees with the facts read out. If the defendant does not agree with the facts very relevant to the law under which they have been charged, the plea will be changed to a not guilty plea; then there will be a full hearing with witnesses called to give evidence at some later date.
- If a juvenile defendant pleads "not guilty", the magistrate will tell the juvenile about their right to prepare their case and have their witnesses come to court on the date of the hearing to give evidence.
- If the magistrate makes a ruling that the charge is proven, consideration is then given by the magistrate to sentencing. It is up to the magistrate to decide whether on finding the defendant guilty, to convict and sentence the defendant, or to make some alternative order. The magistrate will always require a pre-sentence report for cases with juvenile defendants.
- If the juvenile defendant pleads "not guilty", the police prosecutor will present evidence through witnesses who may be cross examined by the defence. Then the defence can elect to say nothing, or give an unsworn statement, or give a sworn statement on the case, or call witnesses to give evidence in support of the defence case. If the sworn statement is presented, the police prosecutor can cross-examine the witness. If witnesses are called by the defence, the police prosecutor can cross-examine those witnesses. Then submissions are made to the court and the magistrate decides whether there is sufficient, admissible evidence of proof beyond reasonable doubt to find the accused guilty or not guilty. If guilty, then the situation is as above. If the juvenile defendant is found "not guilty" the magistrate dismisses the case and the defendant is discharged.

- If the charge is for murder, rape or other offence where the penalty is life imprisonment or death, then the law says that the National Court must hear those cases. Witnesses are generally not called to give evidence at a committal proceeding in the Juvenile Court. The charge is read and an explanation is given to the defendant about the process for a committal proceeding. It will be explained that the role of the court is to look at the evidence that the police have gathered and decide whether there is sufficient evidence against the defendant. The juvenile defendant or their legal representative may make a no case submission to the magistrate in relation to the case. If the magistrate decides there is **not** enough evidence, they will refuse to commit and the defendant will be discharged. However, if the magistrate decides there **is** sufficient evidence, they will commit the defendant to trial in the National Court. Bail is a matter for the National Court to consider in these very serious matters.

Notes:

1. Where there is no Juvenile Court, then a Court of Summary Jurisdiction may sit as a Juvenile Court. The procedures will still be the same as if a Juvenile Court was sitting.
2. There are some very important provisions about the publicity of cases in the Juvenile Courts. If a witness has given evidence in a case in a Juvenile Court, the results cannot be published unless the court has authorised it. The name of the juvenile, the school they attend, or other matters that could lead to the identification of a juvenile defendant or victim can never be published. Therefore, witnesses in a Juvenile Court should always be careful not to talk about the identity of the defendant or the case in general to any journalist or author.
3. The right to appeal decisions of the Juvenile Court lie with Grade 5 magistrates in the District Court or the National Court. There is a time period of one month in which to lodge an appeal against the procedures, the conviction, the sentence or an order of the court.



*Outside the Juvenile Court
in Port Moresby.*

DISTRICT COURT

If you have been requested or summonsed to attend the District Court as a witness, there are several things you need to know. The police will be able to tell you where the court is if you are unsure. That may happen if you witness a crime, or you are a victim of crime, in another place rather than where you live or work. There are some important points to know about the District Court.

1. What is the layout of the court?



Drawing of a typical District Court.

2. Who are the people in the court and what do they do?

- There will be the magistrate, who controls the court and hears the cases.
- The prosecutor (usually a police prosecutor) will present the case against the defendant. The informant is usually the police.
- The defence lawyer (either a private lawyer or from the Public Solicitor's Office) will represent the defendant. The defendant may not have money to pay a lawyer, and the Public Solicitor may have no available lawyer to attend so the defendant can speak for themselves.
- The defendant who is accused of committing the crime.
- An interpreter may be present if the defendant or a witness prefers to speak in a language other than English. (Most proceedings will be in *Tok Pisin*.)
- Because most courts are public, there may be people from the media, the general public, and other people with an interest in the case who attend and sit in the court. Sometimes, a magistrate may close the court and order people to leave because of the particular case.
- The defendant is seated in the dock. If on remand, he or she will be guarded by CS personnel. If the person is on bail, they walk into the court and sit in the dock when their name is called.
- There may be someone representing the defendant, with special leave of the court, who is not a lawyer. This only occurs after consideration by the magistrate.

- A court attendant is there to provide administrative assistance to the magistrate (in some cases).
- A probation officer may compile a probation report that can assist the magistrate to consider an appropriate sentence if the defendant is found guilty or pleads guilty. This may occur where a defendant is already on probation or in special cases.
- A child welfare officer does welfare reports and presents them to court in cases where there is a juvenile offender. The welfare report basically comprises details on the juvenile's background information. This occurs only where the District Court is sitting as a Juvenile Court.

3. What is the dress of the people in the court?

A magistrate will generally wear robes. However, she or he may also appear in ordinary clothes. The *Evidence Act* makes allowance for ordinary clothes to be worn by the magistrates under certain circumstances.



Typical dress of a District Court magistrate.

Under normal circumstances, detectives will be in ordinary clothes; however, the police prosecutor, public safety officers or other police personnel will be in police uniform.

Lawyers will be in their gowns. However, under the *Evidence Act*, if an application has been successful in doing away with the formalities, lawyers may be required to take off their gowns and appear in ordinary clothes.

The interpreters, the support persons and any person who has leave of the court, will wear ordinary clothes.

The defendant will wear ordinary clothes, even if on remand in custody.

4. General information:

The case is called by the police prosecutor. The defendant takes their place in the dock. The charge is read by the court and the defendant enters a plea. If the plea is a "guilty" plea, the police prosecutor reads the statement of facts, then both the defence and the police prosecutor make submissions on the appropriate punishment.

If the defendant pleads "not guilty", the police prosecutor will open the prosecution case by presenting evidence through witnesses. In a hearing, the evidence is presented and then witnesses may be cross-examined or asked questions about their story. The prosecution tells their story first, and then the defence may cross-examine the witness. Because people take an oath or affirmation to tell the truth, it is important that all evidence given or presented is the truth. Where it is suspected that the evidence is false, the witness can be charged with a serious offence called "perjury".

At the close of the prosecution's case, the defence may make a no case to answer submission if they hold the view that there is not enough *prima facie* evidence to call the defendant to answer the charge. The magistrate will then make a ruling on whether or not the defendant has a case to answer. If the magistrate rules that there is no case to answer, the charge against the defendant is dismissed.

If the magistrate rules that there is a case to answer, the defendant can elect to do one of the following. The defendant can elect to say nothing and remain silent, give an unsworn statement from the dock which means they are not subject to be cross-examined, or give a sworn statement from the witness box and be subject of cross-examination. In addition, the defence may call other witnesses to give evidence in support of the defence case. Where the witnesses give sworn statements, they are also subject to cross-examination by the police prosecutor.

Submissions on verdict are then made to the court and the magistrate will decide on whether there is sufficient evidence of proof beyond reasonable doubt to find the defendant "guilty" or "not guilty". If "guilty" the magistrate passes the appropriate sentence or penalty. If "not guilty", the case is dismissed and the defendant is discharged.

The defendant in a committal case does not formally enter a plea in open court. The magistrate however, considers whether there is sufficient evidence from the police hand-up brief and decides to either refuse to commit, or to commit the defendant to the National Court for trial before a judge. The magistrate will only send the accused to the National Court for trial if there is *prima facie* evidence. Bail may be reviewed at the first mention in the National Court.

However, through a request of the Police Prosecutor or a complainant, the Public Prosecutor on looking at the evidence in an indictable case may decide to present an ex officio indictment to the National Court. In that case, the defendant may stand trial, and the witnesses will be required to give evidence.

In relation to summary offences, or an indictable offence triable summarily, the defendant may plead either "guilty" or "not guilty". If the defendant pleads guilty, the facts are read to the court, and if satisfied, the magistrate convicts the defendant. Then there is consideration by the magistrate of the good things about a defendant that can help in deciding to reduce the penalty. The prosecutor will outline the matters the magistrate should take into account on sentence, including the impact of the crime on the victim and the appropriate type and range of sentence. Either the defendant or their lawyer may also outline matters that a magistrate can take account of when sentencing. Then a decision is made by the magistrate about the penalty.

Notes:

1. Any magistrate may hear a committal case.
2. Grade 5 Magistrates deal with indictable offences triable summarily (Schedule 2 offences in the *Criminal Code*). These offences may only be dealt with by the magistrate if the police prosecutors file an election certificate with the court. If the election certificate is not filed, the magistrate can not deal with the case.
3. The right to appeal a decision of the District Court lies with the National Court. There is a time period of one month allowed to lodge the appeal from the date of the decision of the District Court.



During a typical District Court session.

NATIONAL COURT

If you have been summonsed by the court or requested by the Public Prosecutor to appear as a witness in the National Court, there are several things you need to know. The police will be able to tell you where the court is if you are unsure. You may be required to attend if you witness a crime, or you are a victim of crime. There are some important points to know about the National Court.



1. What is the layout of the court?



Drawing of a typical National Court.

2. Who are the people in the court and what do they do?

- There will be the judge, who controls the court.
- There will be the judge's associate, who helps the judge both in the court room and out of court by doing research and advising lawyers of administrative matters. The judge's associate will also administer the oath to all witnesses.
- A court reporter is also in the court room. This person is responsible for tape recording the whole proceedings of a court case from the start to the finish.
- A lawyer from the Public Prosecutor's Office will present the case for the State of Papua New Guinea against the accused.
- The defence lawyer (either a private lawyer or one from the Public Solicitor's Office) will represent the accused either with challenging the evidence if the accused has pleaded "not guilty", or by making submissions on sentence to the judge if the accused pleads "guilty".
- An interpreter may be present if the accused or a witness prefers to speak in a language other than English.
- The juvenile court officer or a volunteer juvenile court officer is a person who might sit with the juvenile during the trial or sentence. This officer will also complete the pre-sentence report on the juvenile if required.
- A court room attendant will be in the court. That person calls out the names of the people required to attend and give evidence before the court. If someone is disturbing the business of the court, a judge may ask the

attendant to remove that person from the court room.

- Correctional Service officers will appear in uniform with the accused, if that person is in custody. The CS officers escort the remandees from prison to the court and take them back at the conclusion of each day's court hearing.
- Because most courts are public, there may be people from the media, the general public, and other people with an interest in the case who attend and sit in the court. Sometimes, a judge may close the court and order the public to leave because of the circumstances of the particular case. The *Evidence Act* provides for the judge to allow in some cases a person to support the victim in court, for example by sitting near them while they give evidence; that person will stay. The Constitution allows for an interpreter under certain circumstances and that person will stay where necessary.
- The accused is seated in the dock and if on remand, they will be guarded by CS personnel. If the person is on bail, they walk into the court and sit in the dock when their name is called.

3. What is the dress of the people in the court?

A judge will wear robes and a white bib. In criminal cases, judges wear red robes, and in civil cases, the robes will be black. Judges wear white wigs. She or he will appear in those robes, but under some circumstances, they may be required to appear in ordinary clothes. The *Evidence Act* provides that in some cases a judge may decide that civilian clothes will be worn by the judge. The public prosecutor may make an application for doing away with the formalities.

The judge's associate will wear a black robe and a white bib. He or she will not wear a wig.

Under normal circumstances, detectives will be in civilian clothes, other police will be in police uniform, and lawyers may be in their gowns. However, under the *Evidence Act*, if an application has been successful in doing away with the formalities, lawyers too may be required to take off their gowns and appear in ordinary clothes.

The interpreters, the support persons, the court reporters and the court room attendants will wear ordinary clothes.

The accused will wear ordinary clothes, even if in custody on remand.

4. General information:

Because people take an oath to tell the truth, it is important that all evidence given or presented is the truth. Where it is suspected that the evidence is false, the witness can be charged with a serious offence called "perjury".

- In relation to the trial, the accused may indicate that he or she will make a plea of either "guilty" or "not guilty".
- If it is a "guilty" plea, the brief facts are read to the court, and the judge then reads the file and if satisfied of the guilt of the accused, confirms the plea. The defence and the prosecutor will make submissions as to the matters the judge should take into account in imposing sentence. As well, the prosecutor may present a victim impact statement as to the impact of the crime on the victim. The judge will then decide the appropriate sentence.



The National Court in Waigani, Port Moresby.

- If the accused pleads “not guilty”, the lawyer from the Public Prosecutor’s Office who appears for the State will present evidence through witnesses who may be cross examined by the defence. Then the accused can elect to say nothing, make an unsworn statement from the dock, call other witnesses to give evidence in support of the defence case, or give sworn evidence. If sworn evidence is given, the prosecutor can cross examine the accused or witness. After hearing the evidence the judge will decide whether he or she is satisfied beyond reasonable doubt that the accused is guilty of the offence alleged. If guilty, the judge listens to submissions by the defence and the prosecution on sentence. The prosecutor may present a victim impact statement as to the impact of the crime on the victim. If the judge finds the accused not guilty, the accused is acquitted of the charge; he or she is then set free.
- A listings court or callover is conducted each week at Waigani. In other centres, a callover may either be done monthly or at the start of a circuit. That allows the judges to hear of the status and progress of each case. It is also the time when judges review the bail status of each accused person.

Notes:

1. In an appeal against conviction or sentence, the judge wears a black robe.
2. Appeals may also be lodged in the National Court in regard to a decision of a District Court magistrate.
3. Appeals can be made by the public prosecutor to the Supreme Court in relation to sentence, but not conviction. However, the accused or their lawyer can appeal to the Supreme Court on both conviction and sentence.



SUPREME COURT

In a Supreme Court case, you are allowed to attend, but usually the lawyers attend on behalf of the parties to the particular case. Your lawyer will be able to tell you where the court is being held if you want to attend and you are unsure of the location. Witnesses are generally not called to give evidence in the Supreme Court. However, there may be instances where a person is called to give evidence. This may happen where the court decides to hear fresh evidence or evidence which for some reason was not presented before the National Court.

Judges and lawyers rely on appeal books to present their cases in this Court. Everything that happens in the National Court is recorded and later printed so that the Supreme Court can follow exactly what happened in the court below.

This court is where appeals may be heard in respect of convictions and/or sentencing of criminal matters. The Supreme Court can overturn a conviction or sentence, or increase or decrease a sentence. Where a National Court has refused to grant bail to an accused person, the lawyers may apply to the Supreme Court for bail to be granted.

Where there is an appeal by the accused against a conviction or sentence, three judges sit as the Supreme Court. Each judge makes their decision based

on the facts presented and law involved, then the senior judge reads the majority verdict in the court. A time limit of 40 days is set for the lodgement of an appeal. There is a fee for submitting an appeal. A person aggrieved by a decision of the National Court can also apply to the Supreme Court by way of a judicial review application. This often occurs where the person has not filed an appeal within the 40 days' period. In such an application, the person or their lawyer must explain why he or she did not appeal within the 40 days and make a very good case to be heard in the Supreme Court.

The Public Solicitor's Office, private lawyers or a prisoner may lodge appeals against either conviction or sentence or both.

The Public Prosecutor's Office, by law, **cannot** appeal a conviction. However, the Public Prosecutor's Office may, in certain cases, appeal against sentence if it is too lenient.

In appeal cases, judges wear red robes and a white wig. Lawyers appearing in the Supreme Court wear black gowns and a white bib. There is nothing stopping an appellant from arguing his/her own case. In such cases, he or she would wear ordinary clothes and be invited by the court to sit at the bar table and present the appeal.



POLICE INVESTIGATION PROCESSES

When a crime is committed, police will investigate it if someone reports it to them. They will usually write something in an Occurrence Book [OB] at the Police Station, and complete a Crime Report. Once police have a statement about the complaint, they begin their investigation. Before you sign a statement, or make your mark on it, you should be sure that it says what happened and also, that you agree with what is written in it. If you cannot read and write, you can ask for someone you trust to read it over to you, and if you agree, you then sign it or make your mark on it.



Language may be a problem in relation to what is written in the statement. It is **your** statement, and you must be sure that what is written is what you say or mean. Sometimes, a police officer may write something in English when you have said something in *Tok Ples*. **Make sure that you really do understand what has been written and that it means what you said.** If there is any language difficulty, you may ask for an interpreter both at the police station

and in court. Always ask the police for a copy of your statement so that you can take it home.

Sometimes, police may come across a crime being committed and then they start their investigation based on what they see and hear from those present. An important part of the police investigation is making sure they keep the evidence safe and available to be presented in court. Sometimes, they can photograph the evidence and return the actual property to the owner but usually they will have to keep the item to be presented in court as an exhibit.

An important part of the investigation process used by the police is to keep the area where the crime happened free from interference. Evidence can be gathered from that crime scene and if it is relevant, it will be presented in court. Police will have tape or there may be police officers who tell people they are not allowed to enter into a crime scene for a while. Once the police gather the evidence, people will be allowed to go about their business. Do not touch the evidence. Call the police to collect the evidence.

Once police have enough information or evidence that they can present to the court, they arrest and formally charge the person or people whom they suspect committed the crime. The police officer must believe on reasonable grounds that the person or people they arrest, actually committed the crime. In the District Court, that person is known as the defendant and in the National Court, that person is known as the accused.

The police or the court will decide on whether the defendant will be allowed out on bail. There may be conditions attached to the bail, like staying away from the victim, or reporting regularly to police, or not consuming any alcohol or drugs; that is up to the police, or the magistrates or judges to decide. If you are worried about payback if the defendant is released, you should tell the police. If you fear for your safety or the safety of your family or other witnesses when the defendant is released, you should call the police immediately so that action can be taken.

The police also collect evidence from people other than the person directly affected by the crime, like a robbery victim or victim of any sexual assault. They interview people who know something about the incident and put the whole picture together. They then have to complete a brief with all the facts and gather up all the physical evidence. A copy of the file is then served on the defendant. At the first available court sitting, the defendant appears before the magistrate.

Before going to court, the prosecutor must check all the statements and physical evidence that the police have gathered. They will make sure that the legal points are covered and that the charges are correct. Witnesses may be spoken to by the prosecutors, and the defendants or accused may be spoken to by their lawyers or staff of the public solicitor's office.

If you receive a summons to appear in court, you must appear or you risk being charged with an offence. **Sometimes, people think that if compensation is paid, that they do not have to go to court. That is not true.** They still have to go to court where they have been summonsed and the magistrate or judge will listen to the details of the compensation that has been paid. The fact that compensation has been paid does not mean the case will not go ahead. It is only a matter that the magistrate or judge may take into account when determining sentence.



In some cases the judge may allow you to have a person to support you through the court process. The magistrate or judge may allow that person to sit with you when you give evidence but they are not permitted to speak to you or anyone else while doing so. Do not talk to other people, particularly those who may be called as witnesses, about the case. If the defence lawyers want to talk to you, you can tell the prosecutor but it is up to you whether or not you speak to the defence lawyer. You do not have to. If you make a complaint to police about a criminal case, or if you are to give evidence in a court case, you have a right to be protected. Should any person make threats to you, or try to intimidate you into withdrawing your complaint or not giving evidence, you should talk to police or the prosecutor as soon as possible.

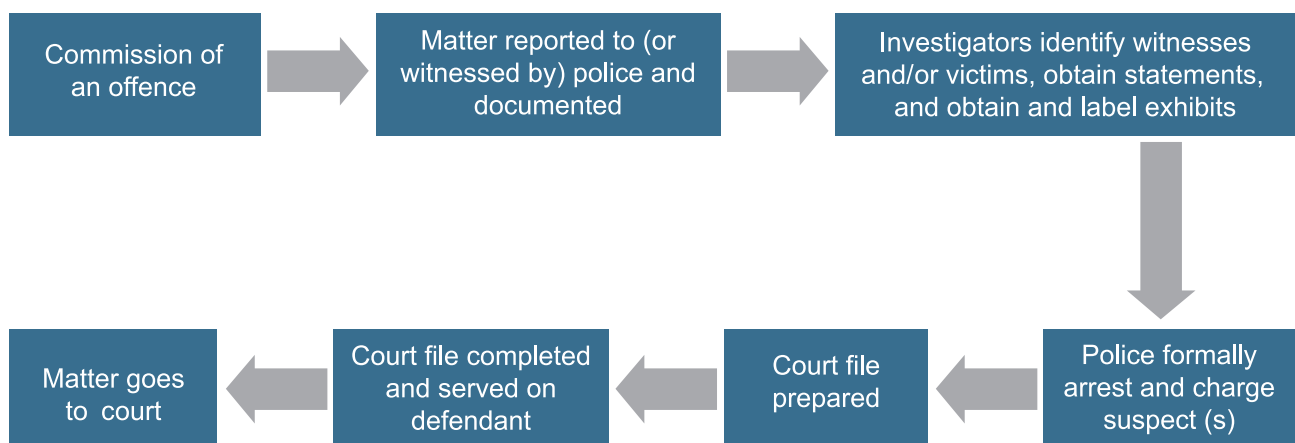
Police may be involved in taking victims/witnesses to and from the court. The RPNGC personnel will make any travel and accommodation arrangements from another province or district if necessary. The police budget allows for those expenses to be met. However, there is NO allowance paid to witnesses.

The State will make an application for any exhibits or property used in a trial to be returned to the lawful owner. The court will make an order for the return of the property to the owner. If there are problems in getting any property returned to the owner, a letter should be written to the registrar of the court in question.

Note:

In rare circumstances, a person may be given immunity from prosecution for an offence. That means that the person will not be prosecuted for the offence in which they will be giving evidence in a trial against another person. This may happen because the evidence the person has is vital for a successful prosecution. If there is sufficient cause for immunity to be granted, the public prosecutor may decide to grant it. The public prosecutor is the only person who can grant immunity; other officers of the Public Prosecutor’s Office may make recommendations only.

Investigation Process:



PREPARATION OF THE VICTIM OR WITNESS FOR THEIR APPEARANCE IN COURT

Either the police prosecutor or the lawyer from the Public Prosecutor's Office will need to talk to a victim or witness before the court case. They may go over your statement with you and ask you questions to make sure that they understand what actually happened, or understand what evidence you will be giving to the court. Depending on time available, some prosecutors may even take you to the court to show you where everyone sits, and where you will sit on the day.

During the time the prosecutors are talking with you, if you tell them things that are relevant to the case, but that are not in your statement, they may need to get that information from you by having you give an additional statement. You might want to give them things like a clinic book, or other documents that were not available when you first talked to police. They need to take a record of that.

Prosecutors may also ask you to take them to the crime scene to show them where and how the crime happened. Courts may also ask to be taken to the crime scene so that the judge or magistrate has a deeper understanding and appreciation of what actually happened.

If a witness needs an interpreter for any part of the process, it is important to tell the police or prosecutor well before hand. The interpreter must be someone who knows the witness's or victim's *Tok Ples* **and** English so that they can tell the police or court what is being said.

Under the law, a judge or a magistrate may allow a witness in certain circumstances to have a person to support them while they give evidence

in the court. The prosecutor can also ask for a screen to be placed between the accused and the witness so that victims or witnesses do not have to look at the accused or defendant while they tell their story to the court.

There is a process in giving evidence. Witnesses are not allowed to sit in the court and listen before giving their evidence. A court attendant will call the witness's name three times to get them to go into the court room. After an oath to God is taken to tell the truth (or take an affirmation if someone is a non-Christian), the witness will sit down in the witness box. First the witness tells their story and the prosecutor will ask questions. Then the defence may ask questions of the witness about the story that was told to the court. They do that to compare what the accused person or defendant has said to them as his/her representative, and what the witness says happened at the time.

The defence lawyer then finishes asking questions of the witness and the prosecutor continues, if she or he needs to get any further explanation of the story. Once the prosecutor has finished this re-examination, the judge or magistrate may also ask some questions of a witness. The reason that happens is for the magistrate or judge to gain a deeper understanding and appreciation of the facts of the case.

When giving evidence, a witness will need to speak loudly so that everyone in the court can hear what is being said. If a witness does not understand a question, or can not hear a question, they can ask for it to be repeated or explained further. If the magistrate or judge talks



to a witness, look at them, and answer the question. **A magistrate is called "Your Worship" and a judge is called "Your Honour". If a witness forgets those terms, they may say "sir" or "madam", depending on the sex of the magistrate or judge.**

When coming to court, a witness should dress in clean, neat clothes with clean teeth and combed hair. Witnesses must wear footwear. Because the length of time a witness has to stay at the court is unknown, they may want to bring some water to drink and some food for lunch. However, they can not take a bilum into the court room before it is screened by security personnel. Also, the courts do not want to hear mobile phones ringing so you are to leave them switched off while in any court room. As well, children and babies should be cared for by someone so that they are not in court and making noise by playing or crying.

After giving evidence, a witness may be excused by the court. At that time, they can either sit in the court room and listen to what is said, or they can leave. Once they have given evidence, they are not allowed to discuss the evidence they have given with any other witness still to be called to give their evidence.

Remember, that if a witness changes jobs or their addresses, they should advise the police immediately. The witness should try to contact the investigating officer, but if that is not possible, they should advise the police prosecutions office; if the case has already been committed for trial, then the witness should advise the Public Prosecutor's office staff of the change of details.

VICTIM IMPACT STATEMENTS

Under the amendments to the *Criminal Code*, a victim can tell the court about how the crime has affected them. It can be done in any of three ways. The first is by the prosecutor's submission to the magistrate or judge, the second is sworn evidence by the victim as a witness at the sentencing, and the third is by completing a victim impact statement [VIS]. Refer to "Appendix B" for notes on the VIS.



WITHDRAWAL OF CHARGES

When an investigation is done by police, and where evidence exists, the police may arrest and charge a person with an offence. Once that is done, the charges cannot usually be withdrawn. For example, payment of compensation cannot be used as a reason to withdraw charges. **Payment of compensation does NOT mean that the charges are withdrawn.**

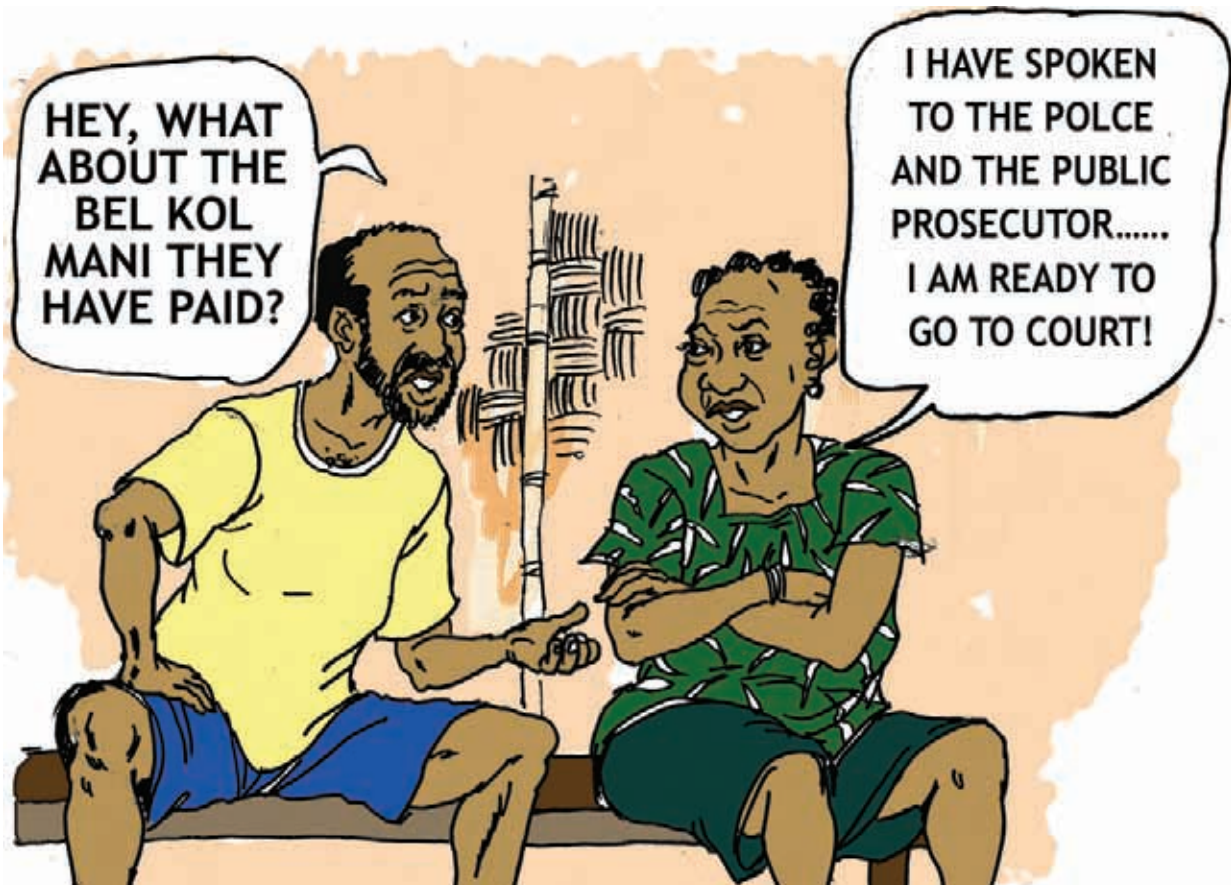
Payment of compensation or interference in other ways, may be deemed to be perverting the course of justice. That is a very serious criminal offence. The payment of compensation only means that a prosecutor can tell the magistrate or judge about the compensation payment or other restorative justice process; the judge or magistrate will consider those facts when sentencing the prisoner, when he or she is found guilty.

If it is a family or clan member who

has been charged and there has been intimidation of the witness, the charges should still proceed. It is not up to the complainant or witness to withdraw the charges; only a police prosecutor, with approval of their senior personnel, may withdraw charges in the District Court. In the National Court, the public prosecutor may authorise the prosecutor handling the case to withdraw a charge.

On some occasions, a prosecutor may present a *nolle prosequi*, if evidence is not available to present to the court. In that case, when evidence becomes available a prosecutor may reopen the case.

If a victim or any other witness is **forced** by anyone to sign a statement saying that the offence did not happen, or that they did not wish to go ahead with the case, they should immediately tell the police or the prosecutor.



APPENDIX A

Information for victims of family or sexual violence going to court

What types of criminal offences are covered by the term “family violence”?

Family violence includes those offences where a member of the family, often the husband or wife, or partner, commits the crime or breaks the law where another family member is the victim. It can include offences committed by children, or other relatives like parents, uncles, aunties, brothers, sisters, grandparents, or step-parents on another family member. The types of offences covered include common assault, serious assaults like bodily harm or grievous bodily harm, unlawful wounding, attempted murder, murder, manslaughter, OR stealing, fraud, wilful damage, or wilful destruction of the victim’s clothing, money or other property. It is sometimes done when no one is watching.

What types of criminal offences are covered by the term “sexual violence”?

Such crimes as rape, sexual penetration of a child, sexual touching of a child, sexual assault, sexual offences against the order of nature, incest, indecent acts directed at a child, persistent sexual abuse of a child, obtaining the services of a child for prostitution, offering or engaging a child for prostitution, and receiving a benefit from child prostitution are covered. But there are many others. **[See also Appendix C regarding consent.]**

What do I need to do if I have been a victim?

Sometimes, you would have been examined by a health officer or doctor. Then you probably were interviewed by police and made a statement to them. After making sure the statement is correct, you should sign the statement, or make your mark on it. Police will give you a copy of that statement and you should keep it with your important papers. When the police have enough information to charge the suspect, they arrest the person whom they believe committed the crime.

That person is then either kept in the police cells, or bailed to appear in court at another time. If the person is kept in the cells, they must be taken before a court at the first available time. However, even though the person is arrested, the police may still be collecting evidence, and interviewing people who may know something about the crime. If you fear payback for reporting the matter, tell the police as soon as possible. The police will tell you about court dates.

What if the accused person admits to committing the crime?

That person will still have to go to court. They can then plead “guilty” and the magistrate or judge sentences them for the offence. The accused person can be given a good behaviour bond, or probation, or a fine, or be sent to prison. The law sets out what the penalties **may** be for any given offence. In the District Court, the defendants will possibly not be helped by a lawyer. In the National Courts, the accused will either be assisted by the Public Solicitor or a private lawyer to defend the charge.

Will the accused person be kept in prison until the court case?

Not always. For some sexual offences, the law does allow for the police to grant bail to them when they are first arrested. For other offences, the court may decide at a bail hearing or listing. Usually, the police or the courts may set special conditions if they let an accused person out on bail. They may make the person report to police on a regular basis, they may prevent the person visiting certain people (usually state witnesses), or they may ban the consumption of alcohol or drugs by that person; there are many conditions that the police or courts can impose. If you as a witness or victim have concerns about the accused person harming you, tell the police immediately.

How do I know when I will have to go to court?

The police will contact you and let you know. It may be that you will be asked to visit a prosecutor before the case so that you can talk about the evidence (that is your story about what happened) you will give. You may have received a summons. The summons is an order to attend at the court, and if you fail to attend, you can be arrested and brought to the court to give the evidence. After that, you may be charged with an offence. Sometimes, the prosecutor may not call you to give evidence in court, even after interviewing you – and even if you are at the court house.

Who pays my travel and accommodation if I have to go away from home to the court?

It is the duty of the police to find you and bring you to court. You have to be available to go to court. But sometimes there is no money in the police budget to pay the costs. You may be requested to fund your own way to court.

What is my role in the trial process?

The police prosecutor or the lawyer of the Public Prosecutor’s office will call you to give evidence of the offence committed in court. There are no fees for this service.

Generally you will be spoken to by a prosecutor before the trial. The police will let you know the timing. Remember, if you move house or change contact details, you must always let the police know so that they can find you for the trial. It is hard for the police or prosecutors to work out the timing of trials, so they may not be in contact with you until just a day or two before the trial.

On the day of the trial, you wait outside the courtroom until your name is called. You will be taken inside and shown where the witness box is; that is where you will sit to tell your story. Where the witness is a child or a victim of a sexual or violent offence, the judge or magistrate may direct the court room be cleared of non-officials. It is a matter for the magistrate or judge to decide.

You will be asked questions that may be upsetting or embarrassing. But, you must give all the details of the crime to the court. You must consider the questions carefully, and speak loudly. If you do not understand the question or you cannot hear clearly, then you may ask for the person to repeat their question, or ask them to explain it to you.

Once you have finished telling your story and questioned by the lawyer for a defendant or accused, you are free to go or stay. Then, you can leave the court. Make sure that you are able to be contacted in case the prosecutor needs to get you back for some reason. You can stay in the courtroom and listen to the rest of the trial, the verdict of guilty or not guilty, and the sentencing – if it happens that day.

What exactly do I have to tell the court?

You will have to take an oath to God on a bible, or an affirmation, to tell the truth about the offence. Then you introduce yourself. The prosecutor will ask you to tell the court what happened. When you tell your story you will have to speak loudly so the people in the court can hear you. You must say everything about the offence that you are asked by the prosecutor. Because courts deal with many of these types of offences, the judge or magistrate will not be worried if the things you say are very personal.

What about children telling their story in court?

Children can tell their story in court. However, before going to court the prosecutor will ask the child some questions to make sure that the child knows the difference between the truth and a lie. If the court is satisfied that the child knows that they could be punished for telling lies to the court, they will be allowed to tell their story.

Can they ask me about my previous sex life?

When the offence is a sexual offence, questions about your sex life are **not** usually allowed. Also, the complainant in a sexual offence shall not be questioned about their sexual activities, unless the magistrate or judge allows it. There are special circumstances required before the judge or magistrate will allow it but generally the questions have to be specifically about the offence being considered by the court.

Can the accused directly ask me questions in the court?

The lawyer for the accused may ask you questions. If you are under 18 years of age, or the trial is about a sexual offence, then the accused is **not** allowed to ask you any questions himself or herself, but may ask questions through their lawyer.

Do I get paid for going to court?

No, you do not get paid. Our PNG legal system is based on cooperation. Be sure to bring some water and food (and reading material) in case you are required to sit at court for a whole day.

What about talking with other people about the trial and what I am going to say?

It is suggested that you talk to the prosecutor as soon as possible if you are approached, before talking about your story. You can talk with any other person, but not with other witnesses or people who may be called to give evidence in that particular trial. You may choose to speak to the defence lawyer but you do not have to.

What about compensation?

You should **never** try to settle the matter by compensation payments. If you or your relatives do receive payment of compensation from the accused or their family, then you report all the details to the prosecutor or police. The magistrate or judge can listen to the details of compensation payments and consider that when sentencing the accused. Compensation **cannot** be used to avoid giving evidence, or to have charges withdrawn.

What if I am frightened by the accused or worry that I will be attacked if I give evidence?

In Papua New Guinea, there is no witness protection program at this time. You should tell the police or the prosecutor if you are frightened of payback. When an accused is on bail, if approaches are made by them to the witness to withdraw the charges, or if the accused is interfering with or threatening the witnesses, the prosecutor can make an application to the court to have the bail revoked. That may mean that the accused waits in prison, on remand, until the case is heard in the courts.

What are some reasons the accused is discharged or found not guilty?

Many things are thought about when deciding guilt or innocence. It may be that the evidence was not strong enough, or that some evidence was disallowed, or some other legal reason. **It does not necessarily mean the magistrate or judge didn't believe you.** The judge or magistrate will usually give reasons for their decision.

Can the court make it easier for me to tell my story?

Yes, the law says that where a witness is under 18 years of age, or in cases of sexual offences, or for crimes of violence, some changes can be made. However, it is always a matter for the magistrate or judge to decide. You do not have to ask for the changes, you tell the prosecutor and they ask the court for the changes to happen. The changes that can be made, while the witness gives their story, include:

- The use of a screen or other way to stop the witness from seeing the accused; (For example, if you are not feeling good about telling your story, the prosecutor may ask for a screen to be placed between yourself and the accused so that you do not have to look at him/her.) and/or
- The presence of a support person chosen by the witness to sit with them; (For example, sometimes the judge or magistrate may allow a support person to sit in the court with you while you tell your story. Tell the prosecutor if you are feeling anxious or upset or worried. The police who dealt with your case will be there. Someone from a support centre at a hospital may also attend if you need them and have trust in them.) and/or
- Having the judge or magistrate dress in ordinary clothes; (For example, if you feel uncomfortable about the way the officials are dressed, you can tell the prosecutor how you feel and how it will affect the way you tell your story. The prosecutor can ask for things to change.) and/or
- Changing the seating positions for people in the court; (For example, the judge or magistrate can make changes to where people normally sit in the court.) and/or
- Changing the place where the court is sitting; (For example, the magistrate or judge may decide to move the court to another building.) and/or
- Not allowing other people in the court room; (For example, the judge or magistrate will tell some people they must leave the court while the witness is telling their story.) and/or
- Having another person explain the questions and answers of the witness in a language that the witness understands; (For example, a person who can explain the questions and answers in *Tok Ples*, or in *Tok Pisin*, or some other language will be used to help the court hear the story of the witness.) and/or
- Using television or other ways. (For example, the witness will be in a place and the court is in another place so television or other ways will be used to tell the story so the court can hear it.)

APPENDIX B

Victim impact statement

Introduction:

The law allows for victims of offences in Papua New Guinea to tell the courts how they have suffered from those offences committed against them. One way to do that now is through a victim impact statement [VIS]. The law allows for that. If for any reason, **the victim** cannot do that, then some other categories of people identified in the law, may make the statement [VIS]. Those other people include the wife or husband of the victim of the victim, or any other relative of the victim, or any person who has custody of the victim, or someone who has responsibility for the care or support of the victim, or any dependent of the victim. The VIS means that victims have a chance to take an active part in the criminal justice process [Section 21 of the *Criminal Code*].

There are **two other ways** for a court to hear about how the offence affected a person – with or without a VIS. The **other ways** are:

- **Prosecutor’s submissions.** With or without a VIS, the prosecutor tells the court about the harm that has been done to or the loss suffered by the victim; OR
- **Sworn evidence.** With or without a VIS, the prosecutor calls a victim as a witness at the sentence hearing. The victim is then asked about how the offence has affected them in regard to the harm done or loss suffered.

So, what is a VIS?

A VIS explains to the court the harm done or loss suffered by a victim. It is a written statement signed by the victim or one of the people mentioned above. It is given to the court before the offender is sentenced and when found “guilty”.

Will a victim be awarded compensation or payment if they make a VIS?

That is a matter for the court to decide.

How does a victim make a VIS?

They tell the police or public prosecutor all the details. It has to be completed in writing and it has to be filed with the court. It must be signed by the victim or person who actually makes the statement. If a person cannot sign the document they can make their mark on it. Remember, a victim doesn’t have to describe how the offence happened—the prosecutor will do that. The victim just talks about how the offence has affected their life.

Who can make a VIS?

The law says that the **only** people who can make a VIS are:

- the actual victim; or, if the actual victim is dead, sick, or not able to make a statement, then
- a husband or wife; or
- a dependent; or
- other relatives; or
- a person who has custody of the victim; or
- a person who is responsible for care or support of the victim.

What information should be included?

Include details of any physical injury, emotional harm, financial loss, or other loss or damage a victim has suffered as a result of the offence.

- If there were physical injuries, describe the injuries, the pain suffered, the medical treatment received at the time, any ongoing treatment and any long-term physical effects. Outline any permanent physical injuries.
- If there was also emotional harm, it is important to describe how the victim felt at the time of the offence and afterwards, if possible. It is also necessary to explain how one's way of living, whether one feels good about themselves, and how their relationships with other people have been affected by the offence. Here, a victim may include any details of counselling or medical advice received as a result of the offence.
- If there has been any financial loss suffered, explain how this has happened—how the capacity to earn money has been reduced, for example. It is also important to explain any additional expenses such as medical, dental, or counselling costs, or the cost of repairing damage to property or replacing stolen items.

Documents, such as medical reports and receipts, may be attached if they support the story in the VIS. Everything in the VIS must be true, as well as being about the offence for which the accused has been found guilty.

Should a victim tell the magistrate or judge what the punishment should be?

No. It is not proper for the victim to comment on how the offender should be punished. The harm done to or loss suffered by the victim is only one piece of many things the judge or magistrate must consider when passing sentence.

Will a victim have to read the VIS out in court?

No. The prosecutor gives the statement to the judge or magistrate. The prosecutor may read out sections of the statement or draw the magistrate's / judge's attention to particular points in the VIS.

Will a victim have to go to court if they make a VIS?

Not necessarily. However, the lawyer representing the accused in court may want to question the victim about their statement. The prosecutor – sometimes through the investigating police – will tell the victim if they are required to attend court.

Who will see the VIS?

Obviously, the prosecutor preparing the case will read the statement. If a copy of the VIS is given to the judge or magistrate, it must also be given to the defence lawyer. The accused will read it if they can read, but their lawyer will usually explain it to them.

Does a victim HAVE to make a VIS?

No, it is their choice. However, it is important for victims to participate in the legal process so that they can attempt to achieve some just results. If a victim decides not to make a VIS, they can still tell the prosecutor about how the offence has affected them. It is important for the courts to hear about the impact of offences on victims and consider that when passing sentence; that is why parliament passed this legislation.

An example is provided of the suggested content for a VIS on the next page.

VICTIM IMPACT STATEMENT

Name: _____ **Insert Name**

The victim must be informed:

- *that the information is being gathered for submission to the judicial officer sentencing the offender if the accused is found guilty or pleads guilty;*
- *that the information must be true;*
- *that the information must be recorded and may be verified in the manner set out at the bottom of this form; and*
- *about who may properly see or make or keep copies of the information ascertained, and about the orders, directions, and conditions, relating to disclosure and distribution of it that may be made.*

Statement to take story form and to cover the following:

Victims details if appropriate

- e.g. age, occupation, sex, living arrangements/marital status, relationship to offender (if any), ethnic origin.

Physical injuries

- include type and extent of injuries, long/short term effects, whether treatment/absence from work/hospitalisation was required. Attach any medical/dental reports.

Financial costs

- include costs of treatment, replacement/repair costs, loss of wages/income, incidental costs, funeral costs for a murder/manslaughter case, etc. Attach any receipts.

Emotional harm

- include changes in behaviour, lifestyle, personal reaction. Include details of treatment or counselling as appropriate. Attach any relevant reports.

Any other harm or effects

Victim or other person making the VIS:

I have given the information in this Victim Impact Statement knowing that it is for submission to the judicial officer sentencing the offender and know that the information must be true. The information 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.

Signature/Mark: _____ (victim)

Name: _____ (printed)

Date: _____

OR (if it is not practicable for the victim to sign):

I have advised the victim that the information in this Victim Impact Statement is for submission to the judicial officer sentencing the offender and that the information must be true. I have read it to the victim and am satisfied that the victim approves of it. 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.

Signature:

Name: _____ (printed)

Designation: _____ Date: _____

APPENDIX C

Consent

Rape is defined in Section 347 of Papua New Guinea's *Criminal Code*. The crime of rape is that a person sexually penetrates another person, without that other person's consent. The meaning of consent is set out in Section 347A of that same law. It says that "consent" means happy and willing voluntary agreement. Then the law explains situations where a person does **NOT** consent. They are –

- (a) the person gives in because of the use of violence or force on themselves or someone else; or
- (b) the person gives in because of threats against themselves or someone else; or
- (c) the person gives in because of fear of harm to themselves or to someone else; or
- (d) the person gives in because he or she is held against their will; or
- (e) the person is asleep, unconscious or drunk or drugged; or
- (f) the person is unable to understand the nature of the act or of saying they are unwilling to take part in the act due to mental or physical disability; or
- (g) the person is mistaken about the sexual nature of the act or the identity of the person; or
- (h) the person mistakenly believes that the act is for medical or health purposes; or
- (i) the accused abused a position of trust, power or authority; or
- (j) the person agrees then says no by words or actions;
- (k) the agreement for sex is by the words or actions of a person other than the victim.

The judge or magistrate will still have to consider other issues like whether the victim did not say or do anything to indicate consent to sex. That is normally enough to show that sex took place without the person's consent. Also the person is **NOT REGARDED AS CONSENTING** to sex just because:

- (i) they did not physically resist; or
- (ii) they did not receive physical injury; or
- (iii) then or before they freely agreed to engage in sex with that person or some other person.

It is **not** a defence to a charge that the accused believed the person consented to the activity that forms the subject matter of the charge where:

- (a) the accused's belief arose from –
 - (i) being drunk; or
 - (ii) not caring; or
- (b) the accused did not try to find out whether the person was consenting or agreed.

What you should know about consent?

What is consent?

- Consent means that everyone has the right to say yes or no.
- Consent means no one has the right to have sex with someone until and unless that person says yes.
- Consent means two people have agreed to have sex, in the same way, at the same time, with each other.

Types of consent

- Consent may be for only certain types of sexual activity, but not others.
- Consent to one type of sexual activity does not mean consent to another type of sexual activity.

Examples of what consent means

- A sexual partner should not think they know what the other partner does or does not want.
- A victim does **not** need to show the other person or persons used force.
- There is **no duty** for a victim to fight off or resist the attacker.

When to give consent

- Consent must be given before or at the same time as the sex takes place.
- Consent may be withdrawn at any time, as long as it is made clear.

How consent can be given

- Consent may be given by words or action.
- The person must say "yes" for the sex to occur.

Examples of where there is no consent

- Silence is not consent.
- Just allowing someone to sexually touch another is not consent.
- Failing to stop the attacker is not consent.
- When it has been forced or threatened or given by a mentally or physically disabled adult or child is not consent.
- Physically allowing another person to touch him/her is not free consent.

Thoughts or beliefs about consent

- Simply because someone wants to be alone with you does not mean they agree to sex.
- Simply because someone kisses you does not mean they consent to sex.

"No means no"

- Consent can be withdrawn at any time, as long as it is made clear.
- "No" means it is time to back off completely.
- Continuing to push ahead after "no" may be forcing the other person against their will.