Papua New Guinea

CONSTITUTIONAL & LAW REFORM COMMISSION

Review of Indictable Offences Triable Summarily

REPORT

REPORT 2
August 2007

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Date: 31st August, 2007
Reference:
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The Hon. Dr. Allan Marat D.Phil., MP
Attorney-General & Minister for Justice

Dear Attorney-General and Minister;

CLRC REFERENCE NO. 2 INDICTABLE OFFENCES TRIABLE SUMMARILY

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

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

Yours sincerely,

HON. JOE MEK TEINE LLB MP	**GERHARD LINGE**
Chairman	Deputy Chairman
PROFESSOR BETTY LOVAI	**TOM ANAYABERE**
Commissioner	Commissioner

Terms of Reference

CLRC Reference No. 2: Indictable Offences Triable Summarily

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

(1) I refer to the Constitutional and Law Reform Commission (the Commission) for enquiry and report on their systematic development and reform, in accordance with s.12 of the Act:

- the extent to which (if any) and how the specification of offences provided under Schedule 2 of the *PNG Criminal Code* 1975 listing indictable offences that may be tried summarily, should be modified so as to better serve the interests of justice, having particular regard to the impact on the persons, and the State, that are the subject of, or subject to, the laws under review; and
- to the extent necessary to secure the reforms proposed in relation to (1) whether and how any relevant associated laws and procedures associated with the determination of such decisions should also be modified or abolished.

(2) I direct that in undertaking the investigation and report, the Commission shall:

a) consider any relevant research or developments, whether in this or other jurisdictions on the matter for inquiry; and

b) consult widely within the community and the legal profession including and without limiting other consultation, regularly (whether separately or in a group or groups) with each of the Supreme Court, the National Court, the District Court and the Magistrates Court, the PNG Royal Constabulary, the Public Prosecutor, the Public Solicitor, the PNG Corrections Service, the Law Society of PNG, the Ombudsman Commission and the Department of Justice and Attorney General.

(3) The Commission shall report to me within 8 months of the date of publication of this reference in the Government Gazette.

(4) This reference shall be referred to as: *CLRC Reference No. 2: Indictable Offences Triable Summarily.*

Dated this ***2nd*** day of ***November*** 2006.

Hon. Bire Kimisopa MP
Minister for Justice

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Executive Summary

Introduction

'*Indictable Offences Triable Summarily*' (also referred to as Schedule 2 Offences) are less serious indictable offences that are currently housed under the *Criminal Code Act* Chapter 262 (Criminal Code).

There are two ways in which Schedule 2 Offences may be tried. They can be tried by the National Court upon an indictment or they can also be tried by a Grade 5 Court provided the Public Prosecutor has made an 'election' giving Principal Magistrates jurisdiction to summarily try these offences.

In essence, the current practice is such that these Schedule 2 Offences go through the normal committal proceedings until such time the Public Prosecutor decides otherwise through an election.

The intent of this executive summarily is to briefly highlight the 'proposals for reform' recommended in this Report. These proposals evolve from two (2) main problems associated with the current practice of prosecuting Schedule 2 Offences which are addressed under their respective headings below.

Primary Issues of this Reference

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

- Whether and how the specification of offences provided under Schedule 2 of the PNG *Criminal Code Act* listing indictable offences triable summarily, should be modified so as to better serve the interests of justice, having particular regard to the impact on the persons, and the State, that are the subject of, or subject to, the laws under review; and
- If the relevant laws and procedures associated with '*Indictable Offences Triable Summarily'* are to be modified, what should be done and how best should that be achieved.

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

The views, comments, observations and recommendations made in this Report represent the final Recommendations on the issues which were referred to the CLRC in this Reference. Relevant draft legislation is also attached as Appendix 2 reflecting the position in these final recommendations.

Public Prosecutor's Power of Election

The power of the Public Prosecutor to make an 'election' on whether an "*Indictable Offence Triable Summarily*" is to be tried summarily, or that the matter should go through the normal committal process and eventually tried at the National Court, accorded under Section 4(ga) of the *Public Prosecutor (Office and Functions) Act* 1977, on all Schedule 2 Offence has been identified as a productive source of delay and such other associated problems in the proper and efficient functioning of the criminal justice system.

Evidence from this review has established that this election process works very well for those Schedule 2 matters arising within the National Capital District, Morobe Province, Madang, Rabaul, Mount Hagen and to some extent Goroka, but not in the other centres. That is because in these named centres, there is on location an Office of the Public Prosecutor with a State Prosecutor, who is delegated the powers to make an election on behalf of the Public Prosecutor. For the other provinces, where there is not such an Office on location, serious problems of delay and other logistical problems are being experienced when attempting to obtain a 'Certificate of Election' from the Public Prosecutor to have a Schedule 2 Offence tried summarily. Unfortunately therefore this has resulted in situations where sometimes this Certificate has been obtained illegally without consent or authorisation by the Public Prosecutor or his delegate.

It is therefore recommended in this report that the Public Prosecutor's function to make this election be abolished by repealing Section 4(ga) of the *Public Prosecutor (Office and Functions Act* 1977. There is a further recommendation to remove majority of the Schedule 2 Offences from the *Criminal Code Act* and house them under a new legislation with summary jurisdiction conferred on the Grade 5 District Courts Magistrates to try them Summarily. This will of course negate the involvement of the Public Prosecutor in exercising the election powers. This would be achieved through a new legislation, to be know as the "*Indictable Offences Triable Summarily Act*" which were recommended in this Report. This law is discussed below and the proposed draft legislation is appended to this Report as Appendix 2.

Indictable Offences Triable Summarily Act

The main intention behind the *Indictable Offences Triable Summarily Act* (herein after the proposed law) is to give Principal Magistrates jurisdiction to preside over Schedule 2 Offences without the need for an election by the Public Prosecutor. However, it is important to note that the proposed law does not remove the supervisory powers of the Public Prosecutor. The proposed law will simply remove the Schedule 2 offences from the *Criminal Code Act* and house them separately under this proposed new legislation.

The two (2) main features of the proposed law will concern:

1. Jurisdiction of District Courts

- Section 2 (1) of the proposed law will allow for all Schedule 2 Offences to be heard and determined by a Principal Magistrate summarily.
- Section 2 (2) of the proposed law will allow for a situation where the alleged crime(s) and resultant prosecution are brought in respect of two offences where one is a Schedule 2 Offence; and the other is an indictable offence – both offences will proceed on indictment to be heard and determined together by the National Court.

2. Powers of the Public Prosecutor

The Public Prosecutor will be empowered under the proposed law to utilise his supervisory powers in the following manner:

- If the Public Prosecutor is of the opinion that it is necessary and in the interest of justice to do so, he may exercise his supervisory powers for the prosecution of a Schedule 2 Offence.
- The above supervisory powers include the right of appearance by the Public Prosecutor at the Grade 5 Courts.

The other important feature of the proposed law is that all *Criminal Code Act* penalty provisions pertaining to Schedule 2 Offences will now be housed under the proposed law. Hence, Grade 5 Courts will no longer have the problem of invoking penalty clauses outside of the relevant *Criminal Code Act* penalty provisions as these will be found in the proposed law. Under the current arrangements, a Grade 5 Court lacks the powers to invoke a relevant *Criminal Code Act* penalty provisions to impose on a Schedule 2 offender. This is because the matter has proceeded by way of an 'Information' filed by the Police. As such, a relevant *Criminal Code Act* penalty can only be applied if the matter had proceeded through an Indictment presented by the Public Prosecutor.

Participants

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

• Hon. Dr. Allan Marat	Chairman
• Mr Gerhard Linge	Deputy Chairman
• Dr. Betty Lovai	
• Mr Tom Anayabere	

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

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

The relevant sections of the *Criminal Code Act*, amended consistently with the proposals are set out in full in Appendix 2.

3. **Law and Practice on Indictable Offences Triable Summarily**

3-1 Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act* 1977 be repealed.
3-2 Schedule 2 Offences should be prosecuted summarily before Grade 5 Magistrates.
3-3 The Schedule 2 Offences should be made triable summarily by Grade 5 Magistrates.
3-4 That Schedule 2 Offences, with their relevant penalties, should be separated from the *Criminal Code Act* and housed under a new legislation and make them triable summarily by Grade 5 Magistrates.

4. **Reform Recommendations**

4-1 Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act* 1977 be repealed.
4-2. Grade 5 Magistrates must be given jurisdiction to summarily hear Schedule 2 Offences.
4-3. Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act* 1977 should be repealed.
4-4. The Schedule 2 Offences should be made triable summarily by Grade 5 Magistrates.
4-5. A new legislation should be enacted to be known as the *Indictable Offences Triable Summarily Act* which should then remove the current Schedule 2 Offences from the *Criminal Code Act* and house these offences under this new legislation. This legislation will then confer summary jurisdiction on Grade V Magistrates to summarily hear and determine these offences.

4-6. A new legislation be enacted to be known as Indictable Offences Triable Summarily Act as proposed above at Recommendation 4-5.

4-7. Section 4 (ga) of the *Public Prosecutors (Office and Functions) Act* 1977 (as amended) be repealed.

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1.1 The Constitutional & Law Reform Commission

The Constitutional and Law Reform Commission (the CLRC) was established after the enactment by the National Parliament of the *Constitutional and Law Reform Commission Act 2004 (No. 24 of 2004)* (the CLRC Act). The CLRC Act came into operation on March 4, 2005.

The *CLRC Act* repealed the *Constitutional Development Commission Act 1997* and the *Law Reform Commission Act (Chapter 18)* and merged the two institutions. Therefore, the CLRC by law succeeded the Constitutional Development Commission and the Law Reform Commission.

The CLRC is a constitutional office to which Part IX (Constitutional Office-Holders and Constitutional Institutions) of the *Constitution* applies.

The CLRC is comprised of one (1) Chairman and six (6) part-time members as Commissioners. Only the Chairman's office is a fulltime office. The part-time members consist of two (2) serving members of Parliament, an expert in Constitutional Law, in anthropology, sociology and political science, a representative of Papua New Guinea Council of Churches, and the Executive Dean of the School of Law, the University of Papua New Guinea as *ex officio*.

Under the *CLRC Act*, the Minister for Justice (the Minister) is empowered under Section 12 to issue 'Terms of Reference' (Reference) to the CLRC for it to do its work. Hence, the Minister, by virtue of this power issued two (2) separate but related Terms of Reference relating to the Review of the Criminal Justice System. The specific references are on Committal Proceedings and Indictable Offences triable Summarily. Hence, this Report deals with the second reference being CLRC Reference No.2.

1.2 Objectives of Reference No. 2

The main objectives of CLRC Reference No. 2 are to:

- Report on how the specification of offences provided under Schedule 2 of the PNG *Criminal Code Act* (Chapter 262) listing indictable offences that may be tried summarily, should be modified so as to better serve the interests of justice, having particular regard to the impact on the persons, and the State, that are the subject of, or subject to, the laws under review; and
- Report on the necessity to secure the reforms proposed above and, whether and how any relevant associated laws and procedures associated with the determination of such decisions should also be modified or abolished.

1.3 Conduct of the review

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

At the conclusion of the national consultations a recommendation implementation matrix' was then drawn up which gave us a synthesis of all the views collected during the national consultations. Those together with strong written submissions which we received such as that from the Office of the Public Prosecutor has enabled us to first produce and release a Draft Report in June 2007 which we then discussed extensively at a Seminar which we subsequently organized with the PNG Law Society and the views and comments from that Seminar together with other various inputs have been incorporated into this final Report. A full list of persons and organizations we consulted with together with those from whom we received written submission from is appended to this Report as Appendix 1.

1.4 Purpose of the Report

The primary purpose of this Report is to present the various reform initiatives which we are recommending after considering the various submissions, both written and oral which we have received in response to the issues we raised first in the Issues Paper, secondly, the Draft Report.

1.5 Structure of this Report

This Report is structured as follows:

- Chapter 2 provides a brief description of the different categories of offences as we understand them at common law. Furthermore, this Chapter also provides a brief background to the former Law Reform Commission's reviews and reports that led to the various amendments which have been enacted in this area;
- Chapter 3 discusses the applicable law and procedure governing indictable offences triable summarily; and
- Chapter 4 states the issues in this Reference and discusses the submissions received on the issues and then makes proposals for reform where appropriate.

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2.1 Introduction

In here we briefly discuss the nature of 'Indictable Offences Triable Summarily' and their application under our criminal justice system.

We also review the previous work undertaken by the Law Reform Commission on 'Indictable Offences Triable Summarily', calling for review of the criminal justice system on related court procedures and processes.

The part concludes with an insight into the amendments which gave effect to some of the recommendations of the previous work of the Law Reform Commission.

2.2 What are Indictable Offences Triable Summarily?

The *Criminal Code Act* (Chapter 262), at Schedule 2, lists 75 indictable offences which may be tried summarily', by a Principal Magistrate at the District Courts level. These indictable offences are less serious in nature whereby either a Principal Magistrate is able to try them summarily or they may be tried at the National Court by an indictment. As provided under Schedule 2, these indictable offences triable summarily (or Schedule 2 offences) are:

SCHEDULE 2.—INDICTABLE OFFENCES TRIABLE SUMMARILY.
Sec. 420.

Code Section No.	Brief description of offence.
64	Unlawful assembly
138	Aiding prisoners to escape
140	Permitting escape
141	Harbouring escaped prisoners
143	Removing, etc., property under lawful seizure
170	Intercepting things sent by post or telegraph
171	Tampering with things sent by post or telegraph
172	Wilful misdelivery of things sent by post or telegraph
173	Obtaining letters by false pretences
174	Secreting letters
175	Fraudulent issue of money orders and postal notes
176	Fraudulent messages respecting money orders
177	Sending dangerous or obscene things by post
207	Offering violence to officiating ministers of religion
227	Indecent acts
228	Obscene publications and exhibitions
230	Common nuisances
231	Bawdy houses
232	Gaming houses
233	Betting houses
234	Lotteries
237	False information as to health on foreign ships
238	Exposing for sale things unfit for food
239	Dealing in diseased meat
240	Adulterating liquor
322	Wounding and similar acts
328(5)	Dangerous driving of a motor vehicle causing death
335	Common assault
337	Indecent assault on males
340	Assault occasioning bodily harm
341	Serious assaults
349	Indecent assaults on females

359	Threats
362	Desertion of children
372(1)	Punishment of stealing
	Punishment in Special Cases:
372(2)	Stealing wills
372(3)	Stealing things sent by post
372(5)	Stealing from the person
372(5)	Stealing goods in transit
372(6)	Stealing by persons in the Public Service
372(7)	Stealing by clerks and servants
372(8)	Stealing by directors and officers of companies
372(9)	Stealing by agents, etc.
372(10)	Stealing property of value of K1,000.00
372(11)	Stealing by tenants and lodgers
372(12)	Stealing after previous conviction
376	Killing with intent to steal skin or carcass of animal
377	Making anything movable with intent to steal
383	Unlawful using motor vehicles
390A	Demands for compensation or other payment
395	House-breaking; burglary
396	Unlawful breaking and entering
397	Entering dwelling-house with intent to commit crime
398	Breaking into buildings and committing crime
399	Breaking into buildings with intent to commit crime
400	Breaking into place of worship and committing crime
401	Breaking into place of worship with intent to commit crime
404(1)	Obtaining or procuring anything by false pretence-Chattel, money or valuable security
404(3)	Obtaining or procuring anything by false pretence-Credit
406	Obtaining anything by fraudulent trick
409	Pretending to exercise witchcraft or tell fortunes
410	Receiving stolen property, etc. means by which obtained: if a crime in other cases
438	Setting fire to crops and growing plants
439	Attempting to set fire to crops, etc.
443	Injuring animals

444(1)	Malicious injuries in general; punishment in special cases
451	Travelling with infected animals
467	Obliterating crossing on cheques
468	Making documents without authority
472	Falsifying warrants for money payable under public authority
473	Falsification of registers
474	Sending false certificate of marriage to Registrar
475	False statement for purposes of Registers of Births, Deaths and Marriages
476	Attempts to procure an unauthorized status

The Public Prosecutor is vested with the power to decide (elect) whether an 'Indictable Offence Triable Summarily' could be tried by a Principal Magistrate or should proceed by way of committal for trial in the National Court. Hence, a Schedule 2 offence would have to go through the committal hearing process unless the Public Prosecutor decides otherwise.

2.3 Previous Law Reform Commission Work

The Law Reform Commission (the Commission) undertook a major project to review the Criminal Justice System between 1977 and 1980. During that period there was a huge work-load on the committal courts and the Commission felt that the court processes and procedures needed to be changed to alleviate the problems.

It was evident then that accused persons suffered seriously through protracted delays. The task of administering all the indictable offences at the committal courts was very agonizing. Thus, the Commission released working papers calling for changes to the system.

2.3.1 Law Reform Commission and the Chief Magistrate Joint Working Paper No.1 of February 1977

The first major work on the Criminal Justice System Review undertaken by the Law Reform Commission is the Working Paper No.1, published in February 1977 (Paper No.1), in conjunction with the Office of the Chief Magistrate. In Paper No.1, it was recommended then that some of the less serious indictable offences found in the *Criminal Code Act* become triable summarily by a Senior Magistrate, who were then Magistrate Grade 4. During that period all indictable offences were tried by a Judge of the National Court. The trial at the National Court usually follows after an

accused (or a defendant), charged with an indictable offence, had his or her case considered through a preliminary hearing commonly known as committal proceedings.

The perception at that time was that the whole process was very expensive and that for some smaller cases it was a waste of the country's limited resources. An example given, was; "if someone breaks into a house and steals some beer and some food, that person would have been tried at the National Court, and hence go through a very lengthy procedure, even though that person pleaded guilty to the charge".[1]

The Law Reform Commission also noted that the process was not only expensive, it was also taking a long time. Some studies conducted during that time indicated that it took from 2 to 4 months for a person charged with a less serious indictable offence to be committed for trial and a further 2 to 4 months from committal until the end of trial. The Commission was of the view that a person arrested for a less serious indictable offence would normally be waiting between 4 to 8 months before his or her case was completed. The said delays, as was noted, were compounded by the fact that about 70% of those charged with less serious indictable offences were held in custody from their initial arrest until the completion of their cases.[2]

In the light of these delays and expenses, the Commission proposed in the 1977 Working Paper No.1 that the jurisdiction of the senior magistrates, which was then Magistrates Grade 4, be increased to enable them to deal summarily with fourteen more indictable offences. The Commission also proposed that the senior magistrates be given powers to impose a maximum sentence of 2 years to offenders for these new categories of indictable offences.

The Commission in that 1977 Working Paper No.1 suggested the following offences to be triable summarily:-[3]

1. Offences relating to letters, telegrams and etc.;
2. Homosexual offences;
3. Indecent dealing and assaults on women and girls;
4. Pornography and gambling offences;

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1. Law Reform Commission and Acting Chief Magistrate, Indictable Offences Triable Summarily, Joint Working Paper No. 1, February 1977, at p.2

2. Ibid

3. Ibid at p.3

5. Assaults up to and including assaults occasioning bodily harm;
6. Stealing money or things up to the value of K1,000.00;
7. Most false pretence offences;
8. Breaking and entering offences;
9. Robbery (stealing with violence or threat of violence) money or things up to the value of K1,000.00;
10. Lesser forms of arson;
11. Forging and uttering offences;
12. Health and quarantine offences;
13. Miscellaneous offences such as unlawful assembly and unlawfully using a motor vehicle; and
14. Attempts to commit any of these offences.

The Commission was of the view that if the said proposals were implemented, then it would reduce the work load of the National Court criminal jurisdiction by between 30% and 40%. In support of its proposals, the Commission contended that "in the period 1st July 1975 to 31st July 1976, the National Court dealt with 907 criminal charges. The Commission held the view that approximately 599 cases or 66% of these were for offences which could have been tried summarily had these proposals been in force.[4]

The Commission observed that saving in District Courts and police time was difficult to estimate, but it would be significant. The Commission opined that should a defendant wishes to plead guilty to a less serious indictable offence, a Magistrate Grade 4 could hear his or her plea and sentence him without the prosecution witness being called. It was noted that this would save the District Court all the time wasted in a committal proceeding and it would also save the police the time and resources in preparing and presenting the case and in gathering the witness. The Commission was of the view that should a defendant decided to plead not guilty, the duration of his trial, in hearing all the prosecution and defence evidence would have been about the same as the duration of a committal proceeding. It was obvious that the saving in here would be the police obtaining further evidence at the request of the Public Prosecutor, organizing and gathering the witnesses again for the National Court

4. Ibid

hearing. Another advantage was that limited resources allocated to committal court staff would be utilized in far fewer cases. [5]

2.3.2 Law Reform Commission of Papua New Guinea: Indictable Offences Triable Summarily - (Report No.8) of August 1978

In its Report No. 8 of August 1978, the Law Reform Commission proposed amendments whereby 68 indictable offences that were only triable at the National Court through an indictment, could be tried summarily at the District Court. It was evident then that Committal Proceedings in the District Courts were time consuming. The Commission's view was that the adoption of the proposals in Report No. 8, Indictable Offences Triable Summarily, and eventually passing them into law would allow the District Courts to summarily hear many indictable offences which were then only triable at the National Court.[6]

This meant that there would not be any committal proceedings (preliminary hearing) for such offences. They would be disposed of summarily at the District Court by a senior magistrate. The senior magistrates, in determining these cases, could apply the general provisions of the *Criminal Code Act* as to matters of law, penalty, justification and other matters which are coincidental to a criminal trial.

However, it was also proposed that the District Court could refer to the National Court matters of law that were difficult and serious in nature.[7]

2.3.3 Law Reform Commission of Papua New Guinea: Committal Proceedings - (Report No. 10) of July 1980

The Law Reform Commission again, in its Report No.10 of July 1980, called for the implementation of the proposals it made earlier in (Report No.

5. However, the most frequent criticism of the proposal was lack of legal representation in the District Court. Bearing in mind that the majority of the cases proposed be tried summarily would have been dealt with the National Court where legal representation would have been available, it should not be impossible to provide sufficient representation in the lower court to provide the same coverage. This would no doubt require close cooperation between the senior magistrates and the Public Solicitor and his staff'. Per the Law Reform Commission of Papua New Guinea, Indictable Offences Triable Summarily, (Report No. 8) August 1978, at Chapter 3.
6. Law Reform Commission of Papua New Guinea, Indictable Offences Triable Summarily, (Report No. 8), August 1978, at p. 1.
7. See a full discussion of the issue at p.15 (infra).

8), published in August 1978. The Commission reiterated that the recommendations on a number of indictable offences, which were then tried by indictment at the National Court, should be tried summarily in the District Courts by Senior Magistrates as part of the overall review of the criminal justice system and in order to simplify criminal procedures and fast tract the hearings of criminal trials.

Further to its earlier reports, the Commission again held the view that the holding of committal proceedings in the District Courts was very time-consuming. It stated that if the proposals in Report No. 8, 'Indictable Offences Triable Summarily', were adopted and passed into law, the District Courts would greatly assist in summarily hearing many more indictable offences which were then only heard at the National Court.

In referring again to Report No. 8 of 1978, the Commission noted the other advantages of implementing its recommendation for 68 less serious offences be made triable summarily. However, it was also noted that the work of the District Courts and that of the Senior Magistrates would also increase accordingly in dealing with the anticipated work load.[8]

2.3.4 Intention of the Law Reform Commission Reports of 1977 to 1980.

Clearly the recommendations contained in the Reports were purposely to achieve an enlargement of jurisdiction of the District Court.

To quite a considerable degree, the implementation of the Commission's Reports would have the effect of reducing the number of committal proceedings to be held. Reduction in committal hearings would also mean considerable reduction on costs. Likewise, there would also be savings on the length of time taken in dealing with the proposed recommendations.

2.4. Amendments Incorporating Previous Law Reform Commission Recommendations.

The Law Reform Commission's Reports of 1977 to 1980 were gradually implemented between 1980 and 1991.

Schedule 2 of the *Criminal Code Act*, which replaced the old Sch 1A, through *Criminal Code (Amendment No 2) Act 1991* (Act No 18 of 1991) s 2, lists the various indictable offences triable summarily. This amendment

8. Law Reform Commission of Papua New Guinea, Committal Proceedings, Report No. 10, July 1980, at p. 3

also gave jurisdiction to Grade V Magistrates to try seventy-five (75) different indictable offences listed in Schedule 2. These offences are sometimes referred to as "Schedule 2 offences".

On 15 August 1981, by *Criminal Code (Indictable Offences) Act 1980 (Act No 28 of 1980)*, the District Court was given a greatly increased criminal jurisdiction under the control of the then newly created judicial officer known as the Magistrate Grade V. A large number of serious offences (indictable offences) could be dealt with either summarily by such officer, or on indictment by the National Court. Maximum periods of up to 4 years could be imposed summarily, although in a number of instances, these maximum sentences were considerably less than could be imposed under indictment. Observations were made that 'prior to this a more restricted area of minor offences could be dealt with summarily with a maximum sentence of 6 months or a fine of K200. Further, in order to overcome the procedural difficulty, whereby the more serious matters have to be commenced by information and not indictment, further amendments to the *Criminal Code Act (Chapter 262)* were brought down on 12 October 1982, *(Act No 12 of 1982).* The most prevalent section was Section 420. In 1983 Parliament started to introduce a large number of sentences under the *Criminal Code Act* which carried minimum penalties. The Schedule introduced by Act No. 28 of 1980, giving the heavier sentencing powers to the Grade V Magistrates was not repealed however.

Act No. 28 of 1980, is not strictly a penal statute. It does not create any new offences or impose any new penalties. It is a jurisdiction conferring statute giving the Grade V Magistrate power to try certain offences which formerly could only be tried by judges. [9]

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[9] Per Bredmeyer J., in *Kau Kepi v Micah Kaua (N378 (M)*) at p.3 (Access to Law CD).

Chapter 3. Existing Law and Process Concerning the Handling of Indictable Offences Triable Summarily

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3.1 Introduction

This part begins by highlighting the different categories of offences under the common law and the *Criminal Code Act (Ch 262).*

It concludes by stating the existing law and processes on 'Indictable Offences Triable Summarily', under the relevant legislations. However, it must be noted that some of these relevant provisions of the said legislation are quite confusing in their application.

3.2 Classification of Crimes Generally

Generally at common law (which we have adopted) crimes are classified into three categories:

(a) Summary only offences,
(b) Indictable offences triable either way,
(c) Indictable offences tried on indictment.

Under Section 3 of the *Criminal Code Act*, this common law classification of offences is codified and adopted. Section 3 thus states:

(1) Offences are of three kinds-
(a) crimes; and

(b) misdemeanours; and
(c) simple offences.

(2) Crimes and Misdemeanours are indictable offences for which offenders, unless otherwise expressly stated, shall be prosecuted or convicted-
(a) on indictment; or
(b) in accordance with Section 420; or
(c) in accordance with any other law.

(3) An offence not otherwise designated is a simple offence.

(4) Subject to any other law, a person guilty of a simple offence maybe summarily convicted before a court of summary jurisdiction.

The crucial distinction between the different categories is a procedural one.[10] Under the common law system, summary only offences are triable in the magistrates' court; whereas the indictable-only offences are tried by a judge and jury. The offences that fall under category (b) above are classified as triable either way. They may either be tried by a magistrate or by a judge and jury. Broadly speaking, the fact that an offence is to be found in a particular category is an indication of the seriousness with which it is to be regarded.[11]

The proceedings at the District Court for simple offences and for indictable offences triable summarily are commenced by an information and summons upon information. The information is usually laid by a police officer and the trial is then conducted and completed by a police prosecutor.[12]

Indictable offences normally proceed to trial at National Court, after consideration of evidence at a preliminary hearing in the District Court called committal proceedings. Only upon committal, indictable offences are then prosecuted in the National Court through presentation of an indictment by the Public Prosecutor or a State Prosecutor.

3.3 Public Prosecutor's Power to Elect on Method.

The power given to Principal Magistrates to summarily hear Schedule 2 Offences, upon the passage *of Criminal Code (Indictable Offences) Act 1980 (No. 28 of 1980)*, is not automatic.

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[10] See Stephen Seabrooke & John Sprack, *Criminal Evidence & Procedure: The Essential Framework*, (Second Edition) (London: Blackstone Press Limited) at p. 211.

[11] Ibid

[12] See Section 28 of the *District Courts Act 1963*.

The amendment through Act No. 12 of 1982, (which introduced Section 420 of the *Criminal Code*) is significant. It states:-

> "Where a person is charged before a District Court constituted by a Magistrate Grade V with an offence specified in Schedule 2, the Court may deal with the charge summarily according to the procedure set out in Section 421".

Section 421 of the *Criminal Code Act (Chapter 262*), then says that the procedure to be follow by the Magistrate Grade V is as set out under *Part VII of the District Courts Act 1963*. Sections 122 and 128 are of pertinence. Section 122 (5) in particular states:

> "An indictable offence triable summarily under Section 420 of the *Criminal Code* shall be heard and determined in a District Court constituted by a Principal Magistrate."

Subsection (6) goes on to state that the sittings of the District Court for the hearing and determination of indictable offences triable summarily may be held at such time and place as determined by the Court.

Section 128 (1) of the *District Courts Act* states:

> "At the time appointed for the hearing of an information of a simple offence or an indictable offence traible summarily, the defendant shall be informed in open court of the offence with which he is charged as set out in the information, and shall be called on to say if he is guilty or not guilty of the charge".

Subsection 128 (2) then provides when the defendant is called under Subsection (1), the hearing is deemed to commence.

The powers of the Principal Magistrate provided under s. 420 of the *Criminal Code Act (Chapter 262),* which are supplemented by the enactment of *Act No. 31 of 1981* (now Section 122 (5) *of the District Courts Act 1963),* are merely aimed at stating the new practice and procedure of hearing Schedule 2 offences summarily. This point is made by the Supreme Court in *The State v The Principal Magistrate, District Court, Port Moresby; Ex Parte The Public Prosecutor* [*1983] PNGLR 43,* at p.45 :-

> "To accommodate the new procedure it was necessary to rebuild the old rooms quite extensively. It is imperative however to bear in mind that Acts 31 and 32 and the parts they amended, have nothing to do with the decision as to which person is to walk in

> through which door, that is the door to summary procedure or the door to procedure by committal. The Acts have achieved considerable structural change to the furniture and fittings within the courtroom but, they are procedural and organizational changes only and do not affect the ultimate decision as to who shall or shall not walk in which particular door. **The crucial question is then who decides whether the person charged is to enter through one door or the other".** (Emphasis added).

If a person is to be dealt with by way of committal, the procedure to be followed is set down in *Part VI* of the *District Courts Act 1963*, which deals exclusively with persons who are to be processed by way of committal for trial by indictment at the National Court. On the other hand, *Part VII* of the *District Courts Act* deals with those persons whose cases will be heard summarily and details the procedures which will be followed at such hearings.[13]

Amendment No. 44 of 1980, which amended Section 4 of the *Public Prosecutor (Office and Functions) Act 1977*, subjects the powers of Magistrates Grade V to deal with 'Indictable Offences triable Summarily' to the decision of the Public Prosecutor to make an election on either to channel the crime concerned to the Grade 5 Court or to the National Court. This amendment added a clause "(ga)", giving absolute discretionary powers to the Public Prosecutor to decide "(or elect)" on the method of proceeding, whether to proceed under Section 420 of the *Criminal Code* and Section 122 (5) of the *District Courts Act* or to allow the matter to proceed with committal. In other words, a Magistrate Grade V shall not summarily hear a 'Schedule 2 Offence' unless the Public Prosecutor elects for that process.[14]

The Supreme Court case of *Ex Parte The Public Prosecutor (supra),* confirms the above statement of the law. In that case, the Public Prosecutor contended that a District Court may not proceed to hear summarily those offences listed under the then Schedule 1A (now Schedule 2) of the *Criminal Code,* until he has elected to proceed with that method. The presiding magistrate at the committal court took the opposite view that he need not await such election but, since the matter had been brought before him, he should proceed to hear the case.

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13 Per Pratt J. in *The State v The Principal Magistrate, District Court, Port Moresby; Ex Parte The Public Prosecutor [1983] PNGLR 43*, at p.46.

14 Ibid.

The factual background to this case is as follows. Two separate defendants had come before the Principal Magistrate in Port Moresby, separately charged with independent offences of break and enter. One of them originally appeared first before the Magistrate on 19 April and was subsequently dealt with by way of plea of guilty on 3 August. The other originally came before the Magistrate on 6 May and after pleading guilty on 3 August was remanded until 4 August for sentence. On that day, following discussions between the police prosecutor and the Public Prosecutor, the police made an application for adjournment of both cases to 9 August to allow the Public Prosecutor to examine the files and decide whether he should elect to proceed in a summary fashion or allow the matter to be pursued by way of committal and subsequently made subject of an indictment before the National Court.

The Magistrate pointed out to the police prosecutor that he had already dealt with one of the cases and on that basis refused the adjournment. In respect of the other matter, he refused the adjournment on the basis that it was not exclusively a question for the Public Prosecutor whether such cases proceed summarily, and again refused the adjournment. The Magistrate then proceeded to sentence both of the defendants.

The Public Prosecutor applied to the National Court to quash the decisions of the Magistrate on the basis of lack of jurisdiction.

Pratt J, in handing down an unanimous decision of the Supreme Court, made the following observations, at p.48:-

> "In all these matters it can be seen that the discretion is the Public Prosecutor's absolutely. It is not given to one of his staff, it is not given to the Minister or to the Secretary for Justice or to the Police Commissioner or to a magistrate grade V. It may well be that should the Public Prosecutor wish to delegate his discretion under this section, he may do so but, that is not of concern in this case.
>
> It may well be that the wording of s. 4 (ga) could have been more felicitously and lucidly expressed. But nevertheless its purpose is to vest a discretion in the Public Prosecutor to decide whether or not he shall have the matters listed in 1A (now 2) of the Schedule dealt with in a summary manner or permit them to proceed by way of committal. It is in him absolutely that the discretion to act in accordance with s. 4 (f), (g), (ga), and (h) vests. In my view the wording and the existence of paragraph "(ga)" is crucial to one's

> approach in endeavouring to interpret the entire composite of amendments".

His Honour, further states, at p.53:

> "The election in my view is essential to creating the jurisdiction of the grade V magistrate. Until that election is made, there is no jurisdiction because a person is not charged with a s. 432 (now s. 420) offence until such election is made. He is only charged with an offence under the *Criminal Code*.

The Court was unanimously in agreement that the learned magistrate did not have jurisdiction in dealing with the charges before him in a summary manner. Despite his status, no election had been made and that the Magistrate should have proceeded by way of committal.

This case clearly illustrates that the method of trying Schedule 2 offences is entirely dependent on the decision of the Public Prosecutor. As to criteria the Public Prosecutor uses to decide the appropriate method is entirely at his discretion.

Submissions and Consultations

The initial consultations conducted by the Constitutional and Law Reform Commission (CLRC) with the Public Prosecutor within the National Capital District (NCD) and the Central Province has revealed that the Public Prosecutor is quite efficient in his handling of Schedule 2 matters that are referred to him for election. On average, it takes the Public Prosecutor about ten (10) days to make the anticipated election for those matters that are referred to him from within the NCD and Central Province.

In a subsequent written submission, the Public Prosecutor states: "I concede that there is a need to improve efficiency, particularly in some of the provincial regions. In some cases officers are busy with cases in the National and Supreme Court. I also note that where matters take longer than ten (10) days, it is often the case that they involve more complex issues, or require further investigation before a decision can be made".[15]

Information the CLRC gathered from our inspection of the various offices of the Public Prosecutor in those provinces concerned during our recent national consultations confirms that the election period is similar for those

[15] Submissions by the Acting Public Prosecutor in response to the Issues Paper 2 on Indictable Offences Triable Summarily, dated 25th May, 2007 at p.10.

towns that have on location a Public Prosecutor's office such as Lae, Madang, Goroka, Hagen and Kokopo. However, on the contrary, there are major problems with those provincial centers that do not have a Public Prosecutor's office on location. The Public Prosecutor's election certificates in these places are unfortunately obtained irregularly and hence, contrary to Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act* 1977.[16] There is a common practice in the other provincial capitals whereby a pre-signed photocopied election certificate is originally relating to a previous matter by the Public Prosecutor usually kept on file by police prosecutors and used as an Election Certificate by the police prosecutor for an unrelated subsequent "Indictable offence to be tried Summarily" and to enable the matter to proceed summarily before a Principal Magistrate Grade 5. Effectively, therefore, the police prosecutors end up making the election on behalf of the Public Prosecutor without the knowledge nor the consent of the Public Prosecutor thereby in clear contravention of Section 4 (ga) of the Act.

In these provinces where the Public Prosecutor does not have a branch office, the police prosecutors and magistrates we consulted with during the national consultations, expressed concern that there are protracted delays experienced with the Schedule 2 matters. The majority of the stakeholders expressed concern that the Public Prosecutor must deliver the election certificate as soon as possible because some of the cases are not so serious and that there is a need for the Grade 5 Courts to deal with such cases quickly. It was also stated that in some instances, the non-availability of an election certificate compels the committal courts to commit Schedule 2 matters to the National Court. Judges we consulted with stated that in the absence of an election by the Public Prosecutor, the National Court judges usually send these matters back to the lower courts to be tried summarily.

CLRC Views.

The CLRC notes that the Public Prosecutor's powers of election under Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act 1977* is necessary under the current arrangements concerning the prosecution of Schedule 2 Offences. As noted above, unfortunately the current arrangements concerning the prosecution of Schedule 2 Offences in those provinces where there is no office of the Public Prosecutor is causing

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[16] Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act 1977* provides: "The Public Prosecutor may, in his absolute discretion, elect the method of proceeding under Section 420 of *the Criminal Code Act (Ch. 262)*, including the withdrawal of an information".

serious problems of delay and the resultant illegal practice whereby police prosecutors are exercising the election powers of the Public Prosecutor to address this resultant problem of delay. The Committal Court Magistrates, in their eagerness to overcome the problem of delay, simply turn a blind eye to such illegal practice of election.

There are two options available, in our view, to address this problem. The first is to maintain the current Schedule 2 Offences but repeal Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act 1977* and insert a provision under the *Criminal Code Act (Ch.262)* to authorize the police prosecutors to make the election. In saying this, we are mindful of the constitutional arrangements that all prosecutorial powers in this country are given to the Public Prosecutor under s. 177 of the *Constitution* and therefore it may not be conceptually and constitutionally tenable to effect such a change. We propose that we can get around this problem by acknowledging this constitutional arrangement and expressly stating that the police prosecutors are exercising the right of election or delegation from the Public Prosecutor just as they are now doing so in conducting the prosecution of summary criminal trials.

The second option is related to our other proposals which we take up further later but for the current purposes, we briefly mention. We propose that the current Schedule 2 Offences should be prosecuted summarily before Grade 5 District Court Magistrates. If this option is taken, then the need for exercise of the Public Prosecutor's powers of election would not arise. In the end result, the current problems of delay which are being experienced would be negated.

Recommendation 3-1. Section 4 (ga) of the Public Prosecutor (Office and Functions) Act 1977 be repealed and a new provision inserted under the Criminal Code Act (Ch. 262) to authorize police prosecutors to make the election.

Recommendation 3-2. Alternatively, Schedule 2 Offences should be prosecuted summarily before Grade 5 Magistrates.

At the Seminar we held in collaboration with the PNG Law Society soon after the release of the Draft Report to discuss the initial proposals it was strongly suggested that we should not give election powers to Police Prosecutors but rather prosecute Schedule 2 Offences summarily. We therefore prefer this option and we strongly recommend accordingly.

3.4 At What Stage does the Public Prosecutor makes the Election?

The entire amendments to the *Criminal Code Act (Ch 262)* and the *District Courts Act*, discussed above do not provide anything that otherwise suggests the time or stage at which the Public Prosecutor makes the anticipated election on the offences that may be tried summarily.

However, this issue has been discussed at length by the Supreme Court in *Ex parte; Public Prosecutor (supra).* The Court stated: "From a practical point of view, it is quite obvious that some means of bringing to the attention of the Public Prosecutor all matters listed in Schedule 2 must be worked out between himself and the prosecution's branch of the Police Department. In finding a solution to this problem the authorities must bear in mind s. 37 (3) of the *Constitution*, which directs, inter alia: **That a person charged with an offence shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time…".** (Emphasis added)**.**

The Supreme Court, also in *Ex Parte; Public Prosecutor (supra),* stated the procedure regarding the interval at which the Public Prosecutor may elect on a Schedule 2 Offence. Hence, the observations of Pratt J., who is speaking unanimously for the Court, at pp.53-54.:-

> "This leads me to the final problem, namely at what point must the Public Prosecutor make his election so that all parties, not least of whom are the defendant and the presiding magistrate, may know what cause they have to follow. If a person is to be dealt with summarily something must clearly occur before a stage is reached where documents are served under s. 101 (now s. 94) *(District Courts Act)* as amended. Once those documents have been drafted and served on the defendant it seems to me reasonable that both the prosecution and the defence would be entitled to believe that the matter was to be dealt with in the ordinary way of committal. Once the documents are served, in pursuance of s. 101 (now s. 94), committal proceedings have been

> commenced and the law must take its course. It would obviously be most unsatisfactory for the parties to be uncertain as to whether the matter was to be dealt with summarily or by way of committal once they had arrived at court. Admittedly that situation did exist under the pre-amended Code but, the great saving there was that the matter could not be dealt with summarily unless the defence agreed to such course. Consequently, any defendant being
>
> charged under the old s. 432 (now s. 420) would have a fair idea before the witnesses even commenced to give there own evidence as to whether he intended to take the course of a summary proceeding or whether he was going to approach the matter as a committal, and consequently leave his major submissions and evidence for a subsequent trial. I also consider that s. 101 (now 94) is the cut-off point because at the time when a defendant appears before the court …, certain procedures must be followed and I cannot see anything in these sections which would allow the Public Prosecutor to then interfere with the course which the law laid down and suddenly convert a matter which the court, the defendant and the police considered was a committal proceeding to a case triable summarily, especially when all the evidence is tendered by affidavit".

The "suggestions by the Supreme Court overcame the inconsistencies between the *Distict Courts Act* and the *Criminal Code Act* and gave rise to s 4 (ga) of the *Public Prosecutor (Office and Functions) Act".*[17] They resolved the apparently conflicting statutory provisions in a sensible way giving effect to the intent of the legislature and could be summarized as follows:-[18]

- When an information is laid in the District Court for an offence listed in Schedule 2 of the *Criminal Code*, the case is to be heard as a committal unless the Public Prosecutor elects to proceed by way of summary trial.
- If the Public Prosecutor elects for a summary trial, he must make that election before the committal papers – the information, witnesses' affidavits etc.- are served on the defendant under s. 94 of the *District Courts Act.*

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[17] Hill T and G Powes (2001) *Magistrates Manual of Papua New Guinea* (Sydney: Law Book Company) at p. 195.

[18] *Ex Parte Public Prosecutor (supra)* at p. 54.

- When a case is being heard as a committal the information may be withdrawn at any time by the informant in his discretion.
- Where a Schedule 2 offence is being heard summarily the information can only be withdrawn by the Public Prosecutor.

Submissions and Consultations

The majority of the stakeholders whom we consulted were confused about the time when the election is to be sought from the Public Prosecutor.

In his written submission to the CLRC on the issue of the appropriate time of election, the Public Prosecutor states:

"While indictable offences which may have been elected to proceed summarily by the Public Prosecutor may be regarded as less serious than indictable offences they are still serious offences and attract serious penalties which can have a severe impact on an accused person and his family. In addition they are also matters which the victim, and the community at large, would still regard as serious.

Further more, as discussed in the Issues Paper, pursuant to s 4(ga) of the *Public Prosecutor (Office and Functions) Act 1977* the Public Prosecutor has absolute discretion to decide whether those offences should be dealt with summarily or on indictment, or whether an information should be withdrawn at any stage of the trial process.

As a general rule, matters will proceed by way of indictment where the Public Prosecutor is of the view that the seriousness of the offence is such that it warrants hearing and sentence by the National Court.

While the seriousness of the offence and the likely sentence on indictment will be of paramount concern, in some cases it may also be appropriate to have regard to:

a) the greater deterrent effect of a conviction obtained on indictment;

b) the delay, if any, associated with proceeding on indictment and the likely effect thereof on the victim, witness, or defendant;

c) the desirability of early resolution, possibly occasioned by proceeding summarily, to deter future offences.

For all these reasons, it is important that a hand up brief be prepared prior to the election by the Public Prosecutor. This is to ensure that a proper assessment can be made as to whether the matter should be heard summarily or before the National Court. It is obviously important to ensure that the brief is prepared in a timely manner so that it is sufficiently

complete to allow a magistrate to assess it for the purposes of determining whether or not to convict on summary disposition. In addition if the matter is to proceed to trial at the National Court the brief must be ready to go through committal."

With respect, the practice adopted by the Public Prosecutor where a hand up brief has to be completed before an election is to be considered as stated above is unnecessary. This was prominently highlighted during the consultations. There are problems associated with airfreight costs, for the delivery of the files to be sent to a nearest branch of the Public Prosecutor's office, as well as delays experienced with manpower availability for the actual elections. These are some of the concerns which were expressed concerning the current practice.

CLRC View

The CLRC is of the view that referring a Schedule 2 Offence to the Public Prosecutor for election after the completion of the hand up brief is not necessary and unfortunately adds to the overall delay in the process. As a consequence, the entire process is prejudicial to the offender. As was noted by the Supreme Court in *The State v The Principal Magistrate, District Court, Port Moresby; Ex Parte The Public Prosecutor*[19], (discussed above) once the hand up brief is served on the defendant (Section 94 of the *District Courts Act*)[20] it would seem reasonable that both the prosecution and the

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[19] [1983] PNGLR 43

[20] Section 94 of the *District Courts Act* 1963 provides: Copy of information, etc., to be served.

(1) Subject to Subsection (6), where a person is charged with—

(a) an indictable offence that shall not be tried summarily; or

(b) an offence against Section 420 of the Criminal Code 1974 where the offence is not to be tried summarily,

the informant shall serve or caused to be served, in accordance with Subsection (3), on the defendant or his legal representative—

(c) a copy of the information; and

(d) a copy of each statement that the informant intends to tender at the committal hearing; and

(e) a list of documents and exhibits referred to in a statement referred to in Paragraph (d) that the informant intends to tender at the committal hearing; and

(f) a copy of each document referred to in Paragraph (e).

defence would be entitled to believe that the matter was to be dealt with in the ordinary way of committal.

The CLRC is of the view that the offender has already waited long enough during the period of compilation of the hand up brief. Hence, the offender need not wait any longer for an election by the Public Prosecutor. "If a

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

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

(2) Where an exhibit referred to in Subsection (1)(e) cannot be copied or adequately described, the defendant shall be notified of the place nominated by the informant where the exhibit may be inspected.

(3) Service of the documents and photographs (if any) under Subsection (1) shall be effected—

(a) in the case of a natural person—on the person to whom they are directed by delivering them to him personally; and

(b) in the case of a company incorporated under the Companies Act 1997—on the company in accordance with that Act; and

(c) in the case of any other corporation—

(i) on the secretary or public officer or other chief officer of the corporation in the country; or

(ii) by sending them by post to the secretary, public officer or chief officer at the last known address of the corporation in the country,

or in any other manner provided by law, at least 14 days before the date fixed for the hearing.

(4) A person who carries out the service under Subsection (3) shall—

(a) within seven days after service—make an affidavit stating the day and place of service; and

(b) at least 72 hours before the date fixed for hearing—transmit the affidavit to the Clerk for production at the time and place and before the Court before which the hearing is to take place.

(5) A document purporting to be an affidavit of service under Subsection (4) is prima facie evidence of service under this section.

(6) Where a Court considers it expedient to do so, it may—

(a) waive the requirements for service of documents or exhibits under this section; and

(b) allow the informant or defendant to call oral evidence and tender exhibits at a committal hearing.

person is to be dealt with summarily something must clearly occur before a stage is reached where the documents are served under Section 94 of the *District Courts Act.* Once the documents are served, in pursuance of s 94, committal proceedings have been commenced and the law must take its course. It would obviously be most unsatisfactory for the parties to be uncertain whether the matter was to be dealt with summarily unless the defence agreed to such course".[21]

The CLRC notes that if the other proposal to make the current Schedule 2 Offences triable summarily by the Grade 5 Magistrates is effected then the issues of concerns raised here would not arise.

Recommendation 3-3. The Schedule 2 Offences should be made triable summarily by Grade 5 Magistrates.

Comments and Submissions received when this recommendation was initially proposed in the Draft Report have been positive apart from reservations form the Public Prosecutor. We recommend accordingly.

3.5. Penalties for Indictable Offences Triable Summarily.

The election by the Public Prosecutor for a Schedule 2 offence to be tried summarily also entails some jurisdictional issues regarding the appropriateness of penalties that may be imposed by a Principal Magistrate. A Principal Magistrate would proceed to hear a Schedule 2 matter via an information filed by a police officer. If a conviction is recorded, then the penalty for that offence must also be derived from Schedule 2 itself, and not from the relevant *Criminal Code Act* penalty provision.

However, a situation may arise whereby a Principal Magistrate may refer a Schedule 2 matter to the National Court for greater penalty. This procedure is provided for under Section 421 (4) of the *Criminal Code Act* (Chapter 262):

> "Where the Court considers that the seriousness of the offence warrants a penalty for indictable offences triable summarily under

[21] *See The State v The Principal Magistrate, District Court, Port Moresby; Ex parte The Public Prosecutor* [1983] PNGLR 43, pp.53-54

> this Subdivision, the Court shall **commit the offender** to the National Court for sentence". (Emphasis added)

Section 421 (7) of the *Criminal Code Act*, goes onto to state:

> "Where an offender is committed to the National Court under Subsection (4), the Court shall inquire into the circumstances of the case and shall deal with the offender in any manner in which the Court may deal with an offender convicted of an offence **on indictment** by it". (Emphasis added)

In hindsight, Subsections (4) and (7) of Section 421 above, imply that a Principal Magistrate lacks the powers to impose a greater penalty other than those provided under Schedule 2. Subsections 421 (4) and (7), do not in any way authorize the Principal Magistrate to impose a greater penalty under the *Criminal Code Act.* The Principal Magistrate cannot legitimately invoke the relevant penalty provisions provided under the *Criminal Code Act* when dealing with a Schedule 2 offence. The only legitimate manner through which a relevant *Criminal Code Act* penalty provision may be invoked on an *'indictable offence triable summarily'*, is by **indictment** at the National Court. This would mean that the Principal Magistrate shall **commit the matter for sentence** to the National Court for that purpose. In other words, "if there are reasons which indicate that the National Court should more properly deal with penalty, then the magistrate should commit for sentence. If, on the other hand, he considers that the powers of sentence available to him are adequate then he will proceed to determine the question in accordance with the law".[22]

The case of *The State v. Kenny Lau* [1990] PNGLR 191, confirms the jurisdictional issue on penalties on the above propositions. This case involved a decision of a Grade V Magistrate, sitting as a District Court in Port Moresby. The appellant was convicted, having pleaded guilty, of the offence of dangerous driving causing grievous bodily harm, contrary to section 328 (5) of the *Criminal Code Act* (Ch 262*)*. The court imposed penalties including imprisonment for a period of 8 months (suspended). In addition, the court further ordered that the appellant's driving license be suspended for a period of 11 months as from 25 October 1989 and he was disqualified from holding or obtaining any driving license or permit for that period.

---

[22] Per Pratt J., *InThe Matter of an Application Pursuant to S. 42 (9) of the Criminal Code Act* (Ch. 262); *Sai Isara v Jonathan Klei* [1983] PNGLR 217, at p. 219.

The appeal was against the magistrate's order in relation to his driving license.

In that case the Grade V Magistrate dealt with the offence under the enabling provisions of s 420 of the *Criminal Code Act.*

The National Court (the Court) confirmed that the Grade V Magistrate was within his powers in relation to penalty, when he imposed the sentence of eight (8) months imprisonment since the penalty is within the maximum provided by the last column of Schedule 2 and, did not exceed the ceiling prescribed by s 420 (2).[23]

The question however, was whether the Magistrate had the power to impose a penalty of suspension when he disqualified the appellant from holding or obtaining any driving license for a period of 11 months.

In trying to rationalize its findings, the Court cited the penalty provision for the "offence of dangerous driving causing grievous bodily harm" (s 328 (5)) of the *Criminal Code Act*. Hence, s 330 (2) of the *Criminal Code Act* provides:

> "Where a person is convicted on indictment of an offence in connexion with or arising out of the driving of a motor vehicle by him, the court may, in addition to any sentence it may pass, order that the offender be, from the date of conviction, disqualified –
>
> (a) absolutely; or
> (b) for such period as the court shall specify in its order, from holding or obtaining a driver's license to operate a motor vehicle.

Hence, the Court's observations:[24]

> "Clearly this is a 'penalty' provision. As such the magistrate may only impose such penalty if so provided for by s 420, his only source of power to deal with this offence of 'dangerous driving'. Schedule 2 prescribes the penalty. … But there is no other penalty prescribed by the Schedule 2 and consequently, as a matter of law, the Grade V magistrate cannot impose any other. That part of the sentence purporting to disqualify the appellant from holding a license is void ab initio".

---

23 Per Brown J., *The State v Kenny Lau [1990] PNGLR 191*, at p. 193.

24 Ibid.

The Court also noted that "there has been **no conviction on indictment**, a prerequisite in s 330 (2) before further penalty can be imposed. The magistrate's power to embark on the hearing of an indictable offence is found only in s 420. (Emphasis added)

Having convicted the only penalty available is that prescribed by Schedule 2. The Court observed that it was "erroneous to consider, as has happened here, the power to embark on the hearing carries with it the power to apply penalties generally available. The statutory limitation on Grade V magistrates is found in s 420 read with Schedule 2".[25]

There was also another important observation made by the Court in *Kenny Lau's case (supra)*. The Court stated, at p 194:

> "That disposes of the argument but I sound a cautionary note. If pursuant to s 420 (4) (procedure) the Grade V magistrate commits an offender to the National Court for sentence, there has been a conviction recorded. In that case, again, there has been no conviction "on indictment" and it will not be available to the National Court to apply the provisions of s 330 (2) and disqualify the offender from driving, although the National Court may exercise greater powers of imprisonment. In such a case, an offender should be committed for trial in the National Court, if disqualification from driving on conviction under s 328 (5) were considered appropriate".

The Court allowed the appeal, and the order suspending the appellant's license for a period of eleven (11) months and, disqualifying him from holding or obtaining any driving license or permit for that period was quashed.[26]

This case clearly illustrates the powers of a Principal Magistrate on imposing penalties for an *'indictable offence triable summarily'*. The penalties must be derived from Schedule 2 itself because the matter proceeded by way of information. On the other hand, should a Principal Magistrate, during the course of summary trial, realizes that the particular offence requires a greater penalty other than that provided under Schedule 2 then, the Magistrate must immediately commit the matter to the National Court whereby the matter could be presented by indictment at the National

[25] Ibid.
[26] *The State v Kenny Lau* [1990] PNGLR 191 at pp. 193-194.

Court. A greater penalty under the relevant penalty provisions of the *Criminal Code Act* (Ch 262) could then be legitimately imposed.

Submissions and Consultations

As mentioned at Paragraph 3.5, above, when a Principal Magistrate (Magistrate) assumes jurisdiction to hear a Schedule 2 matter, through election by the Public Prosecutor and subsequently convicts the offender, then the penalty to be imposed by that Magistrate must be derived from Schedule 2 itself and not from the relevant penalty provisions of the *Criminal Code Act* (Ch 262).

During the national consultations, the majority of the stakeholders were in agreement that nearly all Grade 5 Magistrates are now properly qualified with a law degree and that they are capable of handling "*Indictable Offences triable Summarily*". This includes the ability to properly and judicially impose relevant Schedule 2 penalty provisions provided under the *Criminal Code Act* (Ch. 262).

The Acting Public Prosecutor, in his submission,[27] however, is totally against the idea of giving Magistrates the jurisdiction to invoke relevant penalty provisions of the *Criminal Code Act* to impose on Schedule 2 offences. Hence, he states:

"I would strongly object to any suggestions that magistrates be given powers to invoke penalties under the *Criminal Code Act*.

The legislative amendments which permitted the hearing of certain indictable matters before magistrates were designed to reduce the long delays in bringing an accused to trial in the National Court given the over crowded lists. The amendments recognize that not all breaches of Schedule 2 offences are as serious as others, and that such should be subject to less severe penalties.

As discussed above, one of the key considerations on election is whether the offence is serious enough to warrant trial in the National Court, and the sentences that may be imposed by that court upon conviction. If a matter is of such seriousness that it should attract a penalty under the *Criminal Code Act* then the accused must be given a trial on indictment in the National Court.

With respect to magistrates, they do not have the same authority as justices of the National Court. It is not appropriate for the magistrate having heard a

[27] Ibid at n. 23

matter summarily to be able to impose a sentence which could be imposed by the National Court. For such a sentence to be available the matter must be heard in the National Court where the State is represented by the Public Prosecutor and the accused has the opportunity to be represented if he so chooses, either by a private lawyer or the Public Solicitor. The Court through its judicial officer is properly able to control proceedings to ensure compliance with the rules of procedure and evidence. The judge may also be required to apply various principles of law in determining the guilt or innocence of the accused. The conduct of the matter by the Court and its rulings may be subject to appeal in the Supreme Court.

In addition, it is important for consistency and fairness, and to maintain confidence in sentencing and the criminal justice system generally, that the National Court is responsible for determining sentences where the maximum penalties under the *Criminal Code Act* are available.

There is also a need for consistency and fairness to be maintained by the District Courts in imposing sentences on Schedule 2 offences".

CLRC View

With respect, the Public Prosecutor is rather unfair in his lack of confidence in Principal Magistrates and fails to address the serious issues and concerns over the gross unfairness in sentencing that the "current dual system" presents.

We firmly holds the view that this area of the criminal justice system warrants immediate attention and reform. We believe that the conferral of jurisdiction on a Principal Magistrate to try a Schedule 2 matter, through election by the Public Prosecutor, is in itself a vote-of-confidence in a Principal Magistrate to run a trial and determine the appropriate penalties, including those provided for under the *Criminal Code Act*. Principal Magistrates nowadays are experienced judicial officers and most have the potential to be appointed as judges.

The CLRC has noted that the practice within the Public Prosecutor's Office in Port Moresby is that the Public Prosecutor makes an election after receiving the hand-up brief, which contains all the evidence from potential witnesses. We are therefore of the view that it would be obvious at this stage for the Public Prosecutor to prudently exercise his discretion to decide, depending on the weight and gravity of the evidence as compiled, whether the matter proceeds by way of committal and eventually to trial at the National Court, in order that the maximum penalty under the *Criminal Code Act* is attracted. We regret to say that it is quite absurd for the Public

Prosecutor to initially have confidence in a Principal Magistrate to try a Schedule 2 offence based on the whole of the evidence, but then that Magistrate is denied the opportunity, by operation of law, to invoke the relevant *Criminal Code Act* penalty provisions, to be imposed as punishment.

We point out that transferring a Schedule 2 matter from a Grade 5 Court to the National Court on indictment, under Sub-Sections 421 (4) and (7) of the *Criminal Code Act* for a heavier sentence, causes further delay and hence, is prejudicial to the offender. The point that needs to be emphasized from these two (2) Sub-Sections is that when a Grade 5 Court commits an offender to the National Court for the imposition of a greater penalty, the matter just does not immediately go before the National Court for sentencing. The matter would have to be initially presented by the Public Prosecutor via an indictment in the National Court. Hence, the mere presentation of the indictment entails fresh evidence and other procedural requirements would have to be adduced and complied with before sentencing takes place. In other words, the offender would have to under-go a somewhat new criminal trial at the National Court before he or she is sentenced. The new trial at the National Court would ensue because a conviction is yet to be recorded by the National Court – the only conviction on record is that of the Grade 5 Court which was entered upon the presentation of an information by the police. Hence, sentencing for a higher penalty by the National Court is initially channeled by way of an indictment. The indictment then gives the National Court jurisdiction to record a new conviction, after a new trial, before the National Court could legitimately consider a penalty under the *Criminal Code Act*. A conviction on indictment is a prerequisite before a *Criminal Code Act* penalty could be imposed on a Schedule 2 offender by the National Court.[28]

The case of *The State v Kenny Lau*[29] clearly illustrates the procedural intricacies that would occur should a Grade 5 Magistrate decide to commit a Schedule 2 offender to the National Court for a greater sentence. Thus, the CLRC holds the view that further protracted delays occasioned through the National Court Criminal tracts, taking into consideration the length of time spent at the committal stages and the Grade 5 Court may obviously do a substantial injustice to the offender.

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[28] See the comments by Brown J., in *The State v. Kenny Lau* [1990] PNGLR 191

[29] Ibid

We are of the view that that the requirements of Sub-Sections 421 (4) and (7) of the *Criminal Code Act*, are cumbersome and, when applied, may render the offender to be tried twice for the same offence – this second trial at the National Court may be an infringement of the Constitutional rights of the offender, in that, any further and prolonged delays are tantamount to violating the offender's constitutional right of a "fair hearing within a reasonable time".[30] This view is substantiated by the fact that a Schedule 2 matter proceeds by way of committal hearings for about four (4) months for a hand-up brief to be completed. The Public Prosecutor, upon the completion of the hand-up brief by police, then elects for the matter to be either tried by a Grade 5 Court or the matter proceeds by way of committal. Should the Public Prosecutor so decide that the matter is heard summarily, the offender is then tried by a Grade 5 Magistrate for an indefinite period. Hence, when the Magistrates, after running a summary trial, decides that a greater penalty under the *Criminal Code Act* is warranted, then the matter is committed to the National Court and subsequently, the matter would have to join the never ending criminal court listings. In hindsight, any further protracted delays at the National Court may incur substantial injustice on the offender.[31]

We are therefore adamant that reform in this area of the criminal justice system is necessary. The Schedule 2 offences must be separated from the *Criminal Code Act* to avoid doing injustice to an offender. The CLRC view is that the inclusion of Schedule 2 offences in the *Criminal Code Act* gives rise to the procedural complications and the constitutional implications referred above. We reiterate that nearly all Grade 5 Magistrates are very experienced and well qualified, with a law degree, and thus are capable of doing and delivering justice as and when required to do so.

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[30] Section 37 of the *Constitution* states: "A person charged with an offence shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time, by an independent and impartial court.

[31] In *The State v Peter Painke* [1976] PNGLR 210, O'Leary AJ, made these observations: "In the result then it is now some 14-16 months since the allege offence was committed; 11 months since the accused was committed for trial; and six months since the case came before the Court for trial. In these circumstances, I thought that to postpone the trial any longer would be, as Mr. Cavit submitted, to deny to the accused his "right to be afforded a fair hearing within a reasonable time" as guaranteed by the Constitution. Although he has been on bail throughout, I thought the accused had already been under the cloud of the charge for far too long, and to allow that position to continue any longer, would be to do a substantial injustice to him. I therefore refused the application."

Recommendation 3-4. That Schedule 2 Offences, with their relevant penalties, should be separated from the Criminal Code Act and housed under a new legislation and make them triable summarily by Grade 5 Magistrates.

This recommendation received overwhelming support from Justice Mogish at the Seminar we organised with the PNG Law Society to discuss the proposals we made in the Draft Report. Justice Mogish commented that Schedule 2 matters heard by Grade 5 Magistrates have never been referred to the National Court for imposition of a greater penalty under the *Criminal Code Act*. He supports the idea that Schedule 2 matters must be housed under a new legislation to be heard summarily by Grade 5 Magistrates. Hence, we recommend accordingly.

Chapter 4. Other Recommendations for Reform

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4.1 Public Prosecutor's Power to Elect on Method.

As stated above, the Public Prosecutor, may, in his absolute discretion, elect the method of proceeding under Section 420 of the *Criminal Code Act* (Ch. 262), including the withdrawal of an information. [32]

The Public Prosecutor has reiterated that this function remains with him. He thinks that vesting the power with another entity may not be in the best interest of justice. For instance, an accused person may be charged for a lesser offence and that an injustice may be done to victims or, that lesser offence may be contrary to public policy.

The question then remains whether the Public Prosecutor is efficient in executing the election process on *'Indictable Offences Triable Summarily'*.

The CLRC in its enquiry with the Public Prosecutor obtained some statistics which indicate the period it takes the Public Prosecutor to make the purported election. These statistics are for the years 1997 to 2006, and they are mainly for the National Capital District and Central Province, Committal Courts.

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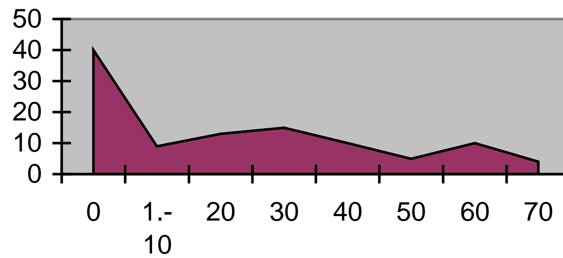
[32] See Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act 1977*

The statistics are shown in the form of line-graphs and these graphs indicate the number of matters referred and the number of days it takes, for the Public Prosecutor to make the anticipated election.

Fig 4.1.1- 2006 Election Files

No of cases



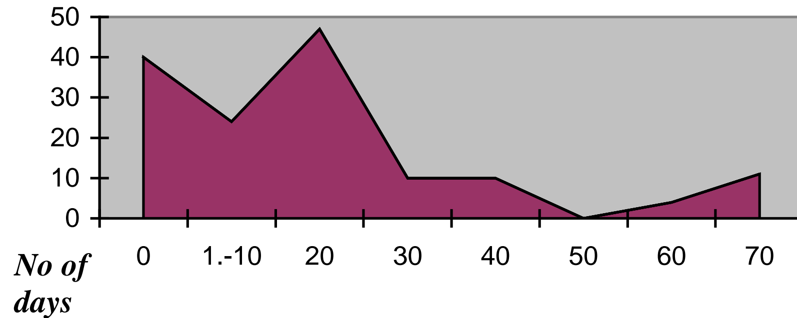
No of days

In 2006, a total of 105 matters were referred to the Public Prosecutor for election on method. Two quarters of those referred took an average of 20 to 30 days for the purported election to be made wherein the Public Prosecutor elected for these matters to be tried at the National Court by indictment. One quarter of the files took less than 10 days to be elected on. Only a few were delayed for 60 to 75 days because the offences were serious in nature and that the police needed sufficient time to complete a brief. Another quarter of the files do not indicate anything, which reflects that the matters may have been heard by way of committal and hence, committed to the National Court.

The above 2006 graph shows that the Public Prosecutor is quite efficient in the election process in the National Capital District and Central Province. Most of the files are elected upon, within an average of 20 days, of reaching the Public Prosecutor's Office.

Fig 4.1.2- 2005 Election Files

No of cases

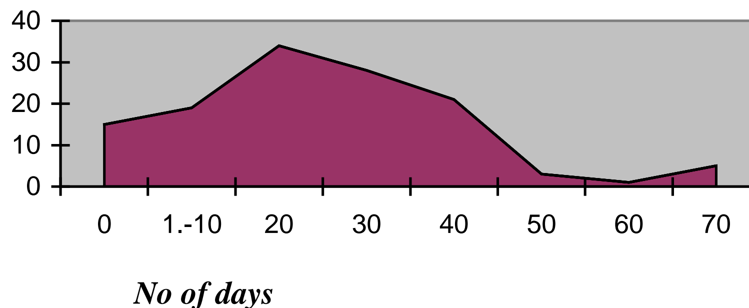


In 2005, about 145 matters were referred to the Public Prosecutor for election. Two thirds of these took an average of 1 to 20 days for election and the matters were committed for trial at the National Court. One third of the matters took more than 40 days but, less than 50 days for election. Only a few matters were delayed for 60 to 75 days - the reason being that the matters were serious in nature. However, a large number of files, about 45, do not indicate anything which means that the matters were heard by the Committal Court despite the referral for election.

This graph also shows that the Public Prosecutor is efficient in the election process. Almost all the files would have taken less than 20 days for election.

Fig 4.1.3- 2004 Election Files

No of cases



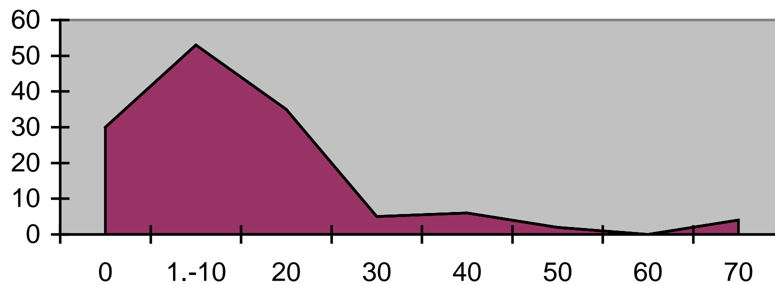
In 2004, 127 matters were referred to the Public Prosecutor for election. almost half of those matters referred took an average of 11 to 30 days for

election and were committed for trial at the National Courts. One quarter of the files took more than 40 days and less than 50 days to elect and, only a few were delayed for 60 to 75 days. However, less than a quarter files, about 15, did not indicate anything and, this reflects that the matters were heard by the Committal Court despite the anticipated election.

This graph also shows that the Public Prosecutor is efficient in the election process.

4.1.4- 2003 Election Files

No of cases



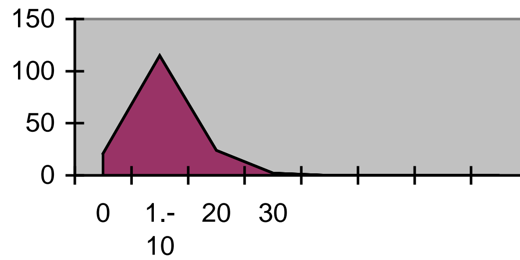
No of days

In 2003, 138 matters were referred to Public Prosecutor for election. About 85 percent of these took an average of 1 to 20 days for election and these matters were committed for trial at the National Court. Almost 5 percent of the matters took more than 20 days to elect and a further 5 percent were delayed for 60 to 70days - the reason being that they were considered as serious offences in nature. However, the other 5 percent of the matters referred have no indication which reflects that the matters were heard by the Committal Court despite the referral for election.

The graph also shows that the matters that were sent to the Public Prosecutor were dealt with efficiently.

4.1.5- 2002 Election Files

No of cases



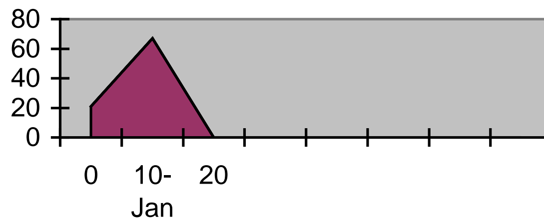
No of days

In 2002, 162 matters were referred to Public Prosecutor for election. About 90 percent of them took an average of 1 to 10 days for election. The other 5 percent took less than 25 days and the other 5 percent had no indications. That shows that the matters were dealt with by way of committal despite the referral for election.

This graph shows that the Public Prosecutor is quite efficient in doing the election.

4.1.6- 2001 Election Files

No of cases



No of days

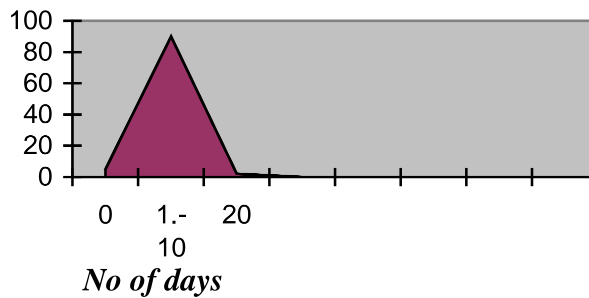
In 2001, 88 matters were referred to the Public Prosecutor for election. Almost 95 percent of them took an average of 10 days to elect. The other 5

percent do not indicate anything which may mean that such matters were dealt with by way of committal.

Thus, in 2001 the Public Prosecutor was very efficient in making the election.

4.1.7- 2000 Election Files

No of cases



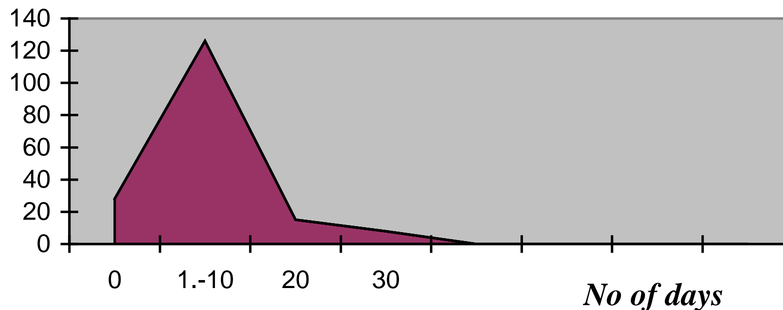
No of days

In 2000, 98 matters were referred to the Public Prosecutor for election. Almost 95 percent of the files took an average of 10 days to elect. The other 5 percent do not indicate anything which means that the matters may have been dealt with by way of committal despite the referral for election.

It can then be stated that in 2000, the Public Prosecutor was very efficient in the election process.

4.1.8- 1999 Election Files

No of cases

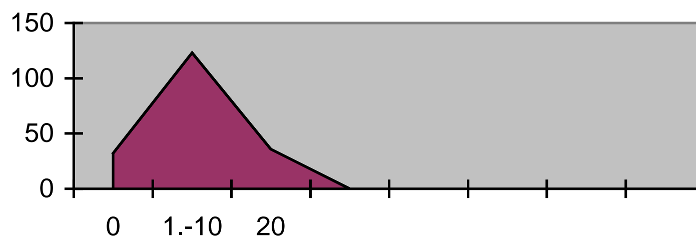


In 1999, 175 matters were referred to Public Prosecutor for election. About 85 percent of these matters took less than 10 days, and 5 percent took less than 20 days for the purported election. 5 percent of the matters took almost 30 days for the election. The other 5 percent do not indicate anything which may mean that the matters were dealt with by way of committal despite the referral for election.

The graph also shows that the Public Prosecutor is efficient in doing the elections.

4.1.9- 1998 Election Files

No of cases



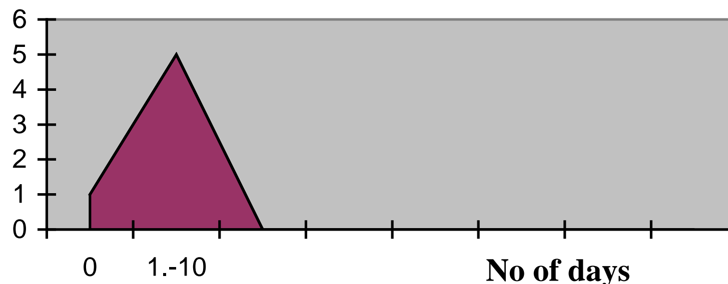
No of days

In 1998, 195 matters were referred to the Public Prosecutor for election. 80 percent of these matters took less than 10 days, and 10 percent took less than 20 days to elect, and 2 percent took almost 25 days. The other 8 percent had no indication which suggests that the matters were dealt with by way of committal despite the referral for election.

This graph also shows that the Public Prosecutor is quite efficient in the election process.

4.1.10 1997 Election Files

No of cases



In 1997, only 9 matters were referred to Public Prosecutor for election and it took less than 10 days to elect. Perhaps those 9 are the only ones that are recorded. About 7 of these matters took less than 10 days, and 2 are not recorded and it is assumed that they were dealt with by way of committal.

This final graph also confirms that the Public Prosecutor is efficient in his handling of the elections.

Summary

The National Capital District and Central Province Committal Courts statistics from the Office of Public Prosecutor for the last ten (10) years, i.e., 1997 to 2006, clearly show that the Public Prosecutor, on average, is quite efficient in his handling of Schedule 2 offences that are referred to him for election.

The statistics indicate that the there is less delay in the election process. This may, quite obviously, be attributed to the fact that the Public Prosecutor is located within the National Capital District and the Schedule 2 matters referred to him are determined and sent back to the District Courts within a reasonable time.

Submissions and Consultations.

The common perception among the majority of those that were consulted is that the election by the Public Prosecutor should de done away with. The thinking gathered is that these elections are a significant cause for delay and the whole process is causing a lot of confusion in the provincial centres around the country. The elections undertaken in the provinces are not consistent with the practices of the Public Prosecutor's Office in the National Capital District. The scenario within the provinces is that the election certificate is often obtained irregularly through the presentation of a pre-signed photocopied certificate, which is kept by police prosecutors and presented at the committal courts. The decision to elect is illegally taken by the police prosecutor concerned on behalf of the Public Prosecutor.

CLRC Views.

Our more elaborate views for this particular issue are as provided under paragraph 3.3 above.

As stated above, the CLRC has two (2) proposals on this issue. The first option is to maintain the current Schedule 2 Offences but repeal Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act 1977* and insert a provision under the *Criminal Code Act* (Ch. 262) to allow police

prosecutors to make the election. This would be done by expressly stating that the police prosecutors are exercising the right of election or delegation from the Public Prosecutor just as they are now doing so in conducting the prosecution of summary criminal trials.

The second option is to give jurisdiction to Grade 5 Magistrates to summarily hear Schedule 2 Offences. The consequential effect of this would be that the powers of the Public Prosecutor to make an election, pursuant to Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act 1977* would be negated and therefore would have to be repealed. Hence, the problems of delay and the irregularities experienced in obtaining election certificates would be addressed.

Recommendation 4-1. Section 4 (ga) of the Public Prosecutor (Office and Functions) Act 1977 be repealed.

Recommendation 4-2. Grade 5 Magistrates must be given jurisdiction to summarily hear Schedule 2 Offences.

Comments and Submissions we received on the initial proposals to these recommendations after we released the Draft Report have been very supportive. Hence, we recommend accordingly.

4.2. Time of the Election by the Public Prosecutor.

During the course of consultations with the Public Prosecutor within the National Capital District, it was revealed that the purported election on Schedule 2 offences is carried out as soon as the ‘Hand-up Brief’ is fully completed by the police and sent to the Public Prosecutor. The ‘Hand-up Brief’ is normally completed after three (3) months of investigations and compilation of evidence by the police.

The CLRC would like comments from stakeholders on whether the election should be done prior to the completion of the ‘Hand-up Brief.’

Submissions and Consultations.

The majority of the stakeholders who were consulted expressed the view that there are protracted delays experienced in having to wait for a hand up brief to be completed before a matter is sent to the Public Prosecutor for election on the method. For those provinces that do not have on location a Public Prosecutor's office, the problem is rather serious. The police prosecutors in such provinces would usually send the bulky files by air or through facsimile transmissions to the nearest located Public Prosecutor's office. The CLRC notes that it costs a lot of money for having to meet the statutory requirement of obtaining an election certificate.

We take note of the comments by the Acting Public Prosecutor, where he states:[33]

> "… it is important that a hand up brief be prepared prior to the election by the Public Prosecutor. This is to ensure that a proper assessment can be made as to whether the matter should be heard summarily or before the National Court. It is obviously important to ensure that the brief is prepared in a timely manner so that it is sufficiently complete to allow a magistrate to assess it for the purposes of determining whether or not to convict on summary disposition. In addition, if the matter is to proceed to trial at the National Court the brief must be ready to go through committal.

With respect, the above views by the Public Prosecutor stand contradicted by some magistrates during the national consultations. The Magistrates stated that the compilation of the hand up brief by the police investigating officers was also a cause for the delay at the committal courts. Sometimes the arresting officers go on leave or do not turn up for work at all. The end result is that there is nobody available to compile a hand up brief within a reasonable time which would in effect result in a speedy committal hearing.

CLRC Views.

We are of the view that referring a Schedule 2 matter for election by the Public Prosecutor after the completion of a hand up brief is prejudicial to the offender. The offender, after waiting for months for the hand up brief to be completed, should not be left with a cloud over his/her mind for having to again wait to find out about the next process for the offence he/she has committed. We venture onto suggest that this waiting business may even be

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[33] Submissions by the Acting Public Prosecutor in response to the Issues Paper 2 on *Indictable Offences Triable Summarily*, dated 25th May 2007 at p.11

detrimental to the offender's psychological condition and that such should be prevented.

We are adamant firmly of the view that Schedule 2 Offences must be made triable summarily by Grade 5 Magistrates. This proposal would ensue in the repeal of Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act* 1977. Hence, there would not be any further need for an election by the Public Prosecutor.

Recommendation 4-3. Section 4 (ga) of the Public Prosecutor (Office and Functions) Act 1977 should be repealed.

Recommendation 4-4. The Schedule 2 Offences should be made triable summarily by Grade 5 Magistrates.

The Comments and Submissions we received on these recommendations after the release of the Draft Report initially proposing the above recommendations have been extremely supportive. We therefore recommend strongly.

4.3. Appropriate Penalties for Indictable Offences Triable Summarily.

As discussed above, should the Public Prosecutor elects for a Schedule 2 offence to be tried summarily, then upon conviction, the Grade V Court must impose a penalty that is provided under Schedule 2 itself. The Grade V Court will fall into error should it invoke a penalty under the relevant *Criminal Code Act* provision. In the other words, the Grade V Court lacks jurisdiction to impose a penalty provided for under the *Criminal Code Act*.

The CLRC invites comments from stakeholders regarding the imposition of penalties on Schedule 2 offences that are tried by Grade V Courts. The CLRC further invites stakeholders to comment whether Grade V Courts should be given powers to invoke relevant *Criminal Code Act* **provisions to apply as penalties.**

Submissions and Consultations.

During the national consultations, the majority of those consulted were of the view that nearly all Grade 5 Magistrates nowadays are experienced judicial officers and that most of them have law degrees and are competent in acting judicially. Even the judges who were consulted were in agreement that Grade 5 Magistrates are capable of delivering justice, as and when they are expected to do so.

CLRC Views.

The CLRC is of the opinion that the conferral of jurisdiction on Grade 5 Magistrates, by the Public Prosecutor, through election on a Schedule 2 matter can be treated as an indication of the overwhelming confidence the Public Prosecutor has on the Grade 5 Magistrate. However, to deny these Grade 5 Magistrates the opportunity to invoke the relevant provisions of the *Criminal Code Act* and impose upon them a lower sentence under Schedule 2 for an offender is rather offensive as such an action implies a certain degree of inferiority.

The CLRC proposes that most of the Schedule 2 Offences currently housed under the *Criminal Code Act* should be removed and housed under a new legislation to be known as the *Indictable Offences Triable Summarily Act*. The consequential effects of this new legislation would be that there will no longer be any need for an election by the Public Prosecutor. Hence, the new legislation should give the Grade 5 Magistrates jurisdiction to summarily hear Schedule 2 Offences. The new legislation would also contain the penalty provisions currently housed under the *Criminal Code Act*.

We are of the view that the proposed reforms should put an end to all the problems associated with elections conducted by the Public Prosecutor.

Recommendation 4-5. A new legislation should be enacted to be known as the Indictable Offences Triable Summarily Act which should then remove the current Schedule 2 Offences from the Criminal Code Act and house these offences under this new legislation. This legislation will then confer summary jurisdiction on Grade V Magistrates to summarily hear and determine these offences.

This proposal received the strong endorsement from Justice Mogish during a Seminar we organized with the PNG Law Society to discuss the Draft Report. Justice Mogish commented that his experience in the management of the criminal cases at the National Court is such that this area of criminal practice drastically requires reform, in that, Schedule 2 matters must be disposed at the Grade 5 Courts. Hence, we recommend accordingly.

4.4. Whether the Schedule 2 offences should be vacated and transferred to the *Summary Offences Act* and then be simply tried summarily by the District Courts.

An opinion has been expressed during our initial National Capital District consultation in February 2007 that perhaps we should look at the 'indictable offences triable summarily' as contained in Schedule 2 of the *Criminal Code* (see paragraph 2.2 above) and remove them from the *Criminal Code* and house them under the *Summary Offences Act* or some new and separate crimes law and make them triable summarily only. If we do this the following consequences will follow:

- that the current District Court Grade V jurisdiction will be affected in so far as it relates to its current role in the trials of the Schedule 2 Offences to the point where its current necessity in the criminal jurisdiction may even be negated;
- the need for the Public Prosecutor to conduct elections under s 4 (ga) of the *Public Prosecutors (Office and Functions) Act* 1997 will be negated. This would then take care of the issue of delay in the election process;

- there will be a reduction in committal matters and trial matters in the National Court since the opportunity for these Schedule 2 Offences to be processed through the committal process and eventual trial in the National Court will be negated.

The CLRC is seeking your views on whether or not the current Schedule 2 Offences should be removed from the *Criminal Code* **and housed either under the** *Summary Offences Act* **or a separate legislation and be prosecuted summarily in the District Court Grade V jurisdiction.**

Submissions and Consultations.

The Acting Public Prosecutor, in his submission on this issue, has expressed his opposition on the idea of housing the Schedule 2 Offences under the *Summary Offences Act*. Hence, he states:

> "I would strongly object to the removal of Schedule 2 Offences to the *Summary Offences Act*.
>
> While not all breaches of Schedule 2 Offences are serious, others may be and it will depend on the circumstances of the breach as to whether or not it should be tried summarily or on indictment.
>
> In addition, some of the offences in Schedule 2 may be charged together with other indictable offences. Removing such offences to the Summary Offences Act would mean that separate proceedings would have to be taken.
>
> I would, however, seek to have a number on indictable matters included in Schedule 2. For example, forging, uttering, impersonation".

The majority of the stakeholders agreed during the nationwide consultations that a new legislation should be enacted to give jurisdiction to Grade 5 Magistrates to summarily hear Schedule 2 Offences. During the consultations, it was stated that there are longer periods of delays experienced with those provincial centres that do not have resident Grade 5

Magistrates. For instance, when the Public Prosecutor elects for a Schedule 2 matter to be tried summarily, then that particular matter would have to wait until a Grade 5 Magistrate goes on circuit, usually after 5-6 months from the time of election by the Public Prosecutor. Even during the circuit, the Grade 5 Magistrate hears both criminal cases and civil cases that come under the Magistrate's jurisdiction. It was pointed out during the consultations that there are instances where the Magistrate is unable to hear all the matters during that circuit. Hence, some matters are stood over for the next circuit and then they get to wait for up to 3 to 4 months, again.

CLRC Views.

We are firmly of the view that a new legislation must be enacted to house most of the Schedule 2 Offences that are currently contained in the *Criminal Code Act*. This new legislation would also contain those Schedule 2 penalty provisions that are at present housed under the *Criminal Code Act* and confer summary jurisdiction on Principal Magistrates (Grade 5 Magistrates) to hear and dispose of these matters summarily.

We are convinced that by taking this option, we are not reducing the seriousness of indictable offences triable summarily. If we had taken the other option and simply moved the current Schedule 2 Offences and house them under the *Summary Offences Act*, then we would be conceptually challenging our traditional perception of and classification of crimes at common law.

We propose that we simply move all the current Schedule 2 Offences out of the *Criminal Code Act* as they currently are and house them under a separate legislation to be called *Indictable Offences Triable Summarily Act* with the express aim of conferring summary jurisdiction on Principal Magistrates – Magistrates Grade 5. If we take this option, there would be necessary consequential amendments. One of which is the repeal of Section 4 (ga) of the *Public Prosecutor (Office and Functions) Act 1977* as the reforms would make this provision redundant.

Recommendation 4-6. A new legislation be enacted to be known as Indictable Offences Triable Summarily Act as proposed.

Recommendation 4-7. Section 4 (ga) of the Public Prosecutors (Office and Functions) Act 1977 (as amended) be repealed.

Comments and Submissions we received on these recommendations have been extremely supportive. Hence, we recommend accordingly.

Appendix 1 List of Consulted People

NORTH SOLOMONS PROVINCE

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

EAST NEW BRITAIN PROVINCE

Akuila Tubal	Provincial Administrator
Ben Mangeju	OIC Prosecution, Police
Boas Binuali	Grade 5 Prosecutor, Police
Narral Kadamai	Committal Court Prosecutor, Police
Kevin Bulu	Investigator, Police

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

NEW IRELAND PROVINCE

Mr Aquilah Tokanini	Provincial Police Commander
Sergant Andrew Tunuma	Police Prosecutor
Aiyofa Faregere	Police CID
Greg Toxie Seth	Town Mayor
Mathew Asio	Town Law Inspector
Orim Karapo	Senior Magistrate
Thomas Vogusang	Magistrate
Joram Boram	Probation Officer – CBC
Jerum Melim	Probation Officer – CBC
Esmah Daniel	Probation Officer – CBC

Samuel Tabairua	District Administrator – Namatanai
Meksen Darius	Provincial Legal Officer
Francis Gahuye	Gaol Commander, Correctional Services
Margaret Boskuru	S/SGT – OIC Prosecution
Sergeant Wilson Sogang	CID – Police
Senior Constable Steven Lassingan	CID – Police
Constable Tosinel Waton	CID – Police
PWC Cathy Bongut	Police Prosecutor
PWC Janet Ezekiel	Police Prosecutor
Mr. Zacchaeus Malingan	Magistrate
Mr. Matus Gugu Ignatius	Namatanai Town Manager
Mr. Elias Talom	Ex Magistrate (Businessman)

LORENGAU PROVINCE

POLICE

Inspector Alex NDrasal	Provincial Police Commander, Manus
Inspector Gabriel NDrihin	Police Station Commander, Lorengau
Lawrence Sanais	OIC – Prosecution, Police
Andrew Sweli	Police Prosecutor
Lynnette Watah	OIC – CID, Police
Robert Pondikou	CID, Police
Margaret Kumasi	CID, Police

COURT HOUSE

Gami Madu	Senior Provincial Magistrate

Lucy Mutambeck	Clerk of Court
Niachalau Posakei	Deputy Clerk of Court
Charlie Pokambut	Registry Clerk
Randolph Scottie	Acting Commander, Correctional Services
Mr Pomat P Paliau	Provincial Legal Officer
PW Sgt. Lynne Watah	OIC - CID
Sergeant Lawrence Sanae	OIC Prosecutions

WEST SEPIK PROVINCE

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

EAST SEPIK PROVINCE

Mr. Thomas Morabang	Senior Provincial Magistrate
Mr Leo Kabilo	Provincial Police Commander
Mr. David Susame	Senior Magistrate – Grade 4
Mrs. Christine Anawe	Senior Magistrate.

MADANG PROVINCE

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

MOROBE PROVINCE

Justice George Manuhu	Supreme & Nat. Court Judge
Mr. Iova Geita	Senior Provincial Magistrate
Mr. Sasa Ikung	Magistrate – Juvenile Court
Ms. Cosmos	Magistrate
Mr. Caspo Koi	Magistate
Mrs. Oiti Malala	Clerk of Court, Committal Court
Mr. Nicholas Miviri	Senior State Prosecutor
Mr. Melchoir Gawi	OIC – Prosecution
Mr. Hove Genderiso	OIC – Prosecution
Mr. Robert Numbos	Prosecutor, Committal Court
Mr. Galus Gumbia	Police Prosecutor
Mr. Sakarias Albert	Police Prosecutor
Mr. Francis Tommy	OIC – Reception/Discharge
Mr. Samson N. Jaro	Chief Superintendent – DCS Commanding Officer
Mr. Simon Lakeng	Superintendent – Manager, Operations
Mrs. Judy Tara	Superintendent – Manager, Administration
Sergeant Major Mr. Jack B. Teana	Station-In-Charge

EASTERN HIGHLANDS PROVINCE

Mr Mekeo Gauli	Senior Provincial Magistrate
Mr Ignatius Kurei	District Court Magistrate
Inspector John Haua	Police Station Commander
Chief Inspector Timbi Kugula	Gaol Commander
Inspector Peter Marl	Acting Gaol Commander
Mr Frank Manue	Coroner Magistrate

Mr Gerald Vetunawa	Juvenile Court Magistrate
Mr Martin Ipang	Local Land Court Magistrate
Mr Munare Uyassi	Provincial Administrator
Mr John Gimiseve	Deputy Administrator
Dr Musawe Sinebare	Deputy Administrator
Mr Ignatius Kurei	Senior District Court Magistrate

SIMBU PROVINCE

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

SOUTHERN HIGHLANDS PROVINCE

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

WESTERN HIGHLANDS PROVINCE

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

ENGA PROVINCE

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

ORO PROVINCE

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

MILNE BAY PROVINCE

Mr. Henry Bailasi	Provincial Administrator
Mrs. Sisi Jonathan	Senior Community Corrections Officer
Mr. Edward Dermot	Education Advisor
Mr. Nimrod Mark	Director – Div. of Law & Order
Mrs. Elaine	E/O to the Provincial Administrator

Mrs. Florence Peter	Coordinator, Social Welfare
Mrs. Sunema Bagita	Principal Advisor – Comm. Dev. Office
Mr Michael Kape	Principal Advisor – LLG Affairs
Mr. Thomas Pilai	District Administrator
Mrs. Ibonigu Kapigeno	Senior District Court Magistrate
Mrs. Miriam Jack	Clerk of Court
Mr. Joe Samson	Station Commander
Mr. Natapu	OIC/CID
Mr. Mang	OIC – Prosecutions
Mr. Steven Mati	Community Policing
Mr. Bamua Kubu	Jail Commander
Mr. Kosia Ban	Senior Inspector
Mr. Uliowa Sulo	Correctional Officer
Ms. Eve Ngen	Correctional Officer
Mr. Liwonei Donald	Correctional Officer
Mr. Apilom Alunkalu	Correctional Officer
Mrs. Josephine Onesi	Correctional Officer
Mr. Saulas Lauis	Correctional Officer
Mr. Nansen Deilala	Correctional Officer
Mr. Philip Dotana	Correctional Officer
Hon. Ila Paku MPA	Major
Mr. Sanori Elliot	Manager
Mr. Amos Mangoson	D/Manager
The Principal & Teaching Staff	Cameron Secondary School

WESTERN PROVINCE

Sergeant Aliba Kawaki	Police Prosecutor

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

GULF PROVINCE

Chief Sergeant Michael Takyei	Police CID
Alva Arua	District Court Magistrate

THE FOLLOWING PERSONS OR ORGANISATIONS MADE WRITEN SUBMISSION:

Mr Jack Pambel, Acting Public Prosecutor of Papua New Guinea

Hon. Justice (retired) Maurice Sheehan

Mr Lawrence Newel

Mrs Dessie Magaru

Sup. Jimmy P Inopia

PNG Law Society

Appendix 2 Proposed Draft Legislation

INDEPENDENT STATE OF PAPUA NEW GUINEA

Indictable Offences Triable Summarily Bill 2007

Being a Bill relating to Indictable Offences Triable Summarily.

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

PART I – PRELIMINARY

1. Interpretation.

(1) In this Bill, unless the contrary intention appears—

"aircraft" includes any machine or apparatus designed to support itself in the atmosphere, whether or not—

(a) it is incapable of use through mechanical defect; or

(b) any part or parts of it have been removed for any purpose or by any person;

"bodily harm " means any bodily injury that interferes with health or comfort;

"circumstances of aggravation" includes any circumstances by reason of which an offender is liable to a greater punishment than that to which he would be liable if the offence were committed without the existence of that circumstance;

"clerk" includes—

(a) any person employed for any purpose as or in the capacity of a clerk or servant, or as a collector of money, even if temporarily only, or if—

(i) employed also by other persons than the person alleged to be his employer; or

(ii) employed to pay as well as receive money; and

(b) any person employed as or in the capacity of a commission agent for the collection or disbursement of money, or in any similar capacity, although he has no authority from his employer to receive money or other property on his account; and

(c) any person who acts in the capacity of an officer of a Friendly Society or branch of a Friendly Society;

"company" means an incorporated company;

"criminally responsible" means liable to punishment as for an offence;

"dwelling-house" includes any building or structure, or part of a building or structure, that is for the time being kept by the owner or occupier for the residence of himself, his family, or servants, or any of them, whether or not it is from time to time uninhabited;

"explosive substance" includes a gaseous substance in such a state of compression as to be capable of explosion;

"gratification" includes—

(a) money, loans, rewards or an interest in property; or

(b) an office or employment; or

(c) a payment of or release from a loan or liability; or

(d) valuable consideration of any kind; or

(e) forbearance to demand money or money's worth; or

(f) aid, a vote, consent or influence; or

(g) a service, favour or advantage of any description whatsoever; or

(h) an offer or promise of any kind of gratification as described in Paragraphs (a) to (g) inclusive;

"grievous bodily harm" means any bodily injury of such a nature as to endanger or be likely to endanger life, or to cause or be likely to cause permanent injury to health;

"have in possession" includes having under control in any place, whether for the use or benefit of the person of whom the term is used or of another person, whether or not another person has the actual possession or custody of the thing in question;

"indictment" means a written charge preferred against an accused person in order to his trial before some court other than a court of summary jurisdiction;

"knowingly", when used in connection with an expression denoting uttering, implies a knowledge of the character of the thing uttered or used;

"liable", used alone, means liable on conviction on indictment;

"mail" includes anything sent by post that is in actual course of transmission from one place to another;

"mail conveyance" includes—

(a) any conveyance of any kind by which a mail is carried; and

(b) any vessel employed by or under the Post PNG Limited or the postal authority of any other country, or the Admiralty, for the conveyance of mails, whether under contract or not; and

(c) a ship of war or other vessel in the service of Her Majesty in respect of letters conveyed by it;

"money" includes bank notes, bank drafts, cheques, and any other orders, warrants, authorities, or requests for the payment of money;

"motor vehicle" includes—

(a) any machine or apparatus designed for propulsion wholly or partly by gas, motor spirit, oil, electricity, steam or other mechanical power; and

(b) a motor cycle; and

(c) a caravan, caravan trailer or other trailer designed to be attached to a motor vehicle,

whether or not the machine or apparatus—

(d) is incapable of use through mechanical defect; or

(e) has had any part or parts of it removed for any purpose or by any person;

"night" means the interval between 9 p.m. and 6 a.m.;

"night-time" has the same meaning as "night";

"owner", and other like terms, when used with reference to property, include—

(a) a corporation; and

(b) any other association of persons capable of owning property; and

(c) the State;

"person employed in the Public Service" includes officers and men of the Defence Force, members of the Police Force and persons employed to execute any process of a court of justice;

"post office" means any structure, room, place or receptacle established by Post PNG Limited for the provision of postal services (and includes, without limitation, a house, building, room, place, or structure where postal articles are by permission or under the authority of Post PNG Limited received, delivered, sorted or made up from or from which postal articles are despatched);

“Principal Magistrate” means a Principal Magistrate appointed under the *Magisterial Services Act* (Chapter 43).

"property" includes every thing, animate or inanimate, capable of being the subject of ownership;

"public body" means—

(a) the State; or

(b) a province; or

(c) a provincial government; or

(d) a State Service established under or by authority of Section 188 (Establishment of State Services) of the Constitution; or

(e) a constitutional institution, being any office or institution established or provided for by the Constitution including the Head of State, a Minister or the National Executive Council; or

(f) a body or corporation established by statute;

"registered brand" means a brand that is registered under a law relating to brands;

"registered mark" means a mark that is registered under a law relating to brands;

"servant" has the same meaning as "clerk";

"ship" includes every kind of vessel used in navigation not propelled by oars;

"summary conviction" means conviction by a court of summary jurisdiction;

"telegram" means a thing sent by telegraph, and includes any written message delivered at a telegraph office or post office for transmission by telegraph, or delivered or prepared for delivery from a telegraph office or post office as a message transmitted by telegraph for delivery;

"telegraph" includes a telephone;

"telegraph office" means any structure, room, place or receptacle appointed by authority of the Postmaster-General for the receipt, dispatch or delivery of anything sent by telegraph, or for the transaction of the business of the Department of Posts and Telegraphs relating to telegraphs;

"thing sent by post" includes—

(a) any letter, newspaper, packet, parcel or other thing authorized by law to be transmitted by post, that—

(i) has been posted or received at a post office for delivery or transmission by post; and

(ii) is in course of transmission by post; and

(b) any movable receptacle that—

(i) contains any such thing; and

(ii) is in course of transmission by post;

"uncorroborated testimony", in relation to an accused person, means testimony that is not corroborated in some material particular by other evidence implicating him;

"utter" means—

(a) use or deal with; or

(b) attempt to use or deal with; or

(c) attempt to induce any person to use, deal with, or act on,

the thing in question;

"valuable security" includes any document that—

(a) is the property of any person; and

(b) is evidence of the ownership of any property or of the right to recover or receive any property;

"vessel" includes a ship or boat, and every other kind of vessel used in navigation.

(2) A flight of an aircraft shall be deemed to commence—

(a) at the time of the closing of the external door of the aircraft last to be closed before the aircraft first moves for the purpose of taking off from any place; or

(b) if Paragraph (a) is not applicable—at the time at which the aircraft first moves for the purpose of taking off from any place,

and shall be deemed to end—

(c) at the time of the opening of the external door of the aircraft first to be opened after the aircraft comes to rest after its next landing after the commencement of the flight; or

(d) if Paragraph (c) is not applicable—at the time at which the aircraft comes to rest after its next landing after the commencement of the flight,

or, if the aircraft is destroyed, or the flight is abandoned, before either Paragraph (c) or (d) becomes applicable, at the time at which the aircraft is destroyed or the flight is abandoned, as the case may be.

(3) A building or structure adjacent to, and occupied with, a dwelling-house shall be deemed to be part of the dwelling-house if there is a communication between the building or structure and the dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise.

(4) For the purposes of the definition "thing sent by post" in Subsection (1)—

(a) a thing shall be deemed to be in course of transmission by post or telegraph from the time of its being delivered to a post office or telegraph office to the time of its being delivered to the person to whom it is addressed; and

(b) a delivery at the house or office of the person to whom anything sent by post or telegraph is addressed, to him or to some person apparently authorized to receive it according to the usual manner of delivering that person's letters or telegrams, shall be deemed a delivery to the person addressed.

PART II - Jurisdiction of District Courts

2. Jurisdiction of Courts.

(1) Proceedings for offences under this Bill shall be heard and determined by a District Court constituted by a Principal Magistrate.

(2) Where proceedings are brought in respect of two offences of which-

(a) one offence is an offence under this Bill; and

(b) the other offence is an indictable offence to which Subsection (2) (a)

does not apply,

both offences shall proceed on indictment to be heard and determined together by the National Court.

PART III – Powers of the Public Prosecutor

3. Supervisory powers of the Public Prosecutor.

(1) Where, in the opinion of the Public Prosecutor it is necessary in the interests of justice to do so, he may exercise supervisory powers for the prosecution of any offence under this Bill.

(2) The supervisory powers under Subsection (1) above, includes the right of appearance by the Public Prosecutor at the Grade V courts.

PART IV - Unlawful Assembly

4. Punishment of unlawful assembly.

(1) A person who takes part in an unlawful assembly is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding one year."

PART V - Escapes: Rescues

5. Aiding prisoners to escape.

A person who—

(a) aids a prisoner in escaping or attempting to escape from lawful custody; or

(b) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner, is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding seven years."

6. Permitting escape.

A person who, being an officer of a prison or police officer, and being charged with the custody of a prisoner in lawful custody, willfully permits him to escape from custody is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

7. Harbouring escaped prisoners.

A person who harbours, maintains or employs a person who is, to his knowledge, a prisoner who has escaped from custody, and is illegally at large, is guilty of a misdemeanour.

"Penalty: A fine not exceeding K400.00, or imprisonment for a term not exceeding two years."

8. Removing, etc., property under lawful seizure.

A person who, when any property has been attached or taken under the process or authority of any court, knowingly, and with intent to hinder or defeat the attachment or process, receives, removes, retains, conceals, or disposes of the property is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

PART VI - Offences Relating to Posts and Telegraphs

9. Intercepting things sent by post or telegraph.

A person who unlawfully secretes or destroys any thing that is in course of transmission by post or telegraph, or any part of any such thing, is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding seven years."

10. Tampering with things sent by post or telegraph.

A person who, being employed by or under Post PNG Limited or Telikom PNG Limited—

(a) does with respect to any thing that is in course of transmission by post or telegraph any act that he is not authorized to do by virtue of his employment; or

(b) knowingly permits any other person to do any such act with respect to any such thing, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

11. Willful misdelivery of things sent by post or telegraph.

A person who, being charged, by virtue of his employment or a contract with the delivery of any thing sent by post or telegraph, willfully delivers it to a person other than the person to whom it is addressed, or his authorized agent for that purpose, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

12. Obtaining letters by false pretences.

A person who, by means of a false pretence, induces a person employed by or under Post PNG Limited or Telikom PNG Limited to

deliver to him any thing sent by post or telegraph that is not addressed to him is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding two years."

13.Secreting letters.

A person who willfully secretes or detains any thing sent by post or telegraph that—

(a) is found by him; or

(b) is wrongly delivered to him, and that ought, to his knowledge, to have been delivered to another person, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding two years."

14.Fraudulent issue of money orders and postal notes.

A person who being—

(a) employed by or under Post PNG Limited or Telikom PNG Limited; and

(b) charged by virtue of his employment with any duty in connection with the issue of money orders or postal notes, unlawfully, and with intent to defraud, issues a money order or postal note is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding seven years."

15.Fraudulent messages respecting money orders.

A person who being—

(a) employed by or under Post PNG Limited or Telikom PNG Limited; and

(b) charged by virtue of his employment with any duty in connection with money orders, sends to any other person, with

intent to defraud, a false or misleading letter, telegram or message concerning—

(c) a money order; or

(d) money payable under a money order, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

16. Sending dangerous or obscene things by post.

A person who knowingly sends, or attempts to send, by post any thing that—

(a) encloses any thing, whether living or inanimate, of such a nature as to be likely to injure—

(i) any other things in the course of conveyance; or

(ii) any person; or

(b) encloses an indecent or obscene print, painting, photograph, lithograph, engraving, book, card or article; or

(c) has on it, in it or on its cover any indecent, obscene or grossly offensive words, marks or designs, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding one year."

PART VII - Offences Relating to Religious Worship

17. Offering violence to officiating ministers of religion.

A person who—

(a) by threats or force—

(i) prevents or attempts to prevent any minister of religion from—

(A) lawfully officiating in any place of religious worship; or

(B) performing his duty in the lawful burial of the dead in any cemetery or other burial place; or

(ii) obstructs or attempts to obstruct any minister of religion while so officiating or performing that duty; or

(b) assaults, or, on the pretence of executing any civil process, arrests any minister of religion who—

(i) is engaged in; or

(ii) is, to the knowledge of the offender, about to engage in, any of the offices or duties referred to in Paragraph (a), or who is, to the knowledge of the offender—

(iii) going to perform them; or

(iv) returning from performing them, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding two years."

18. Indecent acts.

(1) A person who—

(a) willfully and without lawful excuse does an indecent act in a place to which the public are permitted to have access, whether or not on payment of a charge for admission; or

(b) willfully does an indecent act in a place with intent to insult or offend a person, or by which any person is reasonably insulted or offended, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding two years."

(2) For the purposes of Subsection (1), the uttering of indecent words or the making of an indecent suggestion shall be deemed to be an indecent act.

19. Obscene publications and exhibitions.

(1) A person who knowingly, and without lawful justification or excuse—

(a) publicly sells or exposes for sale—

(i) an obscene book or other obscene printed or written matter; or

(ii) an obscene picture, photograph, drawing or model; or

(iii) any other object tending to corrupt morals; or

(b) exposes to view in a place to which the public are permitted to have access, whether or not on payment of a charge for admission—

(i) an obscene picture, photograph, drawing or model; or

(ii) any other object tending to corrupt morals; or

(c) publicly exhibits any indecent show or performance, whether or not on payment of a charge for admission to see the show or performance; or

(d) for the purposes of, or by way of, trade or sale, or for distribution or public exhibition, makes, produces or has in his possession an obscene writing, drawing, print, painting, picture, poster, emblem, photograph or cinematograph film, or any other obscene object; or

(e) for a purpose referred to in Paragraph (d)—

(i) imports, conveys, or exports; or

(ii) causes to be imported or exported; or

(iii) puts into circulation, any obscene matter or thing referred to in that paragraph; or

(f) carries on or takes part in a business (whether public or private) concerned with any obscene matter or thing referred to in this section, or deals in, distributes, exhibits publicly or makes a business of lending any such obscene matter or thing; or

(g) with a view to assisting in an act made punishable by this section, advertises or makes known by any means

that a person is engaged in any such act, or how or from whom any obscene matter or thing referred to in this section can, directly or indirectly, be procured, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding two years."

(2) It is a defence to a charge of an offence against Subsection (1) to prove that it was for the public benefit that the act complained of should be done.

(3) Whether the doing of an act referred to in Subsection (1) is or is not for the public benefit is a question of fact.

PART VIII - Nuisances

20. Common nuisances.

A person who—

(a) without lawful justification or excuse (proof of which is on him) does any act, or omits to do any act with respect to any property under his control, by which act or omission danger is caused to the lives, safety, or health, of the public; or

(b) without lawful justification or excuse, (proof of which is on him) does any act, or omits to do any act with respect to any property under his control, by which act or omission—

(i) danger is caused to the property or comfort of the public or the public are obstructed in the exercise or enjoyment of any right common to all inhabitants of Papua New Guinea; and

(ii) injury is caused to the person of some person, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding two years."

21. Bawdy houses.

A person who keeps a house, room, set of rooms or place of any kind for purposes of prostitution is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

22. Gaming houses.

(1) A person who—

(a) keeps for gain a place to which persons resort for the purpose of playing at a game of chance; or

(b) keeps a place that is kept or used for playing in it a game of chance, or a game of mixed chance and skill, and in which—

(i) a bank is kept by one or more of the players exclusively of the others; or

(ii) a game is played the chances of which are not alike favourable to all the players, including the banker or other persons by whom the game is managed, or against whom the other players stake, play, or bet, is said to keep a common gaming house.

(2) A person who keeps a common gaming house is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

23. Betting houses.

(1) A house, room or place that is used—

(a) for the purpose of bets being made in it between persons resorting to it and—

(i) the owner, occupier or keeper of the place; or

(ii) any person using the place; or

(iii) any person procured or employed by or acting for or on behalf of the owner, occupier or keeper of the place, or a person using the place; or

(iv) any person having the care or management, or in any manner conducting the business, of the place; or

(b) for the purpose of any money or other property being paid or received in it by or on behalf of the owner, occupier or keeper of the place or a person using the place, as or for the consideration—

(i) for an assurance, undertaking, promise, or agreement, express or implied, to later pay or give any money or other property on any event or contingency of or relating to any horse race, or other race, fight, game, sport or exercise; or

(ii) for securing the paying or giving by some other person of any money or other property on the event or contingency, is called a common betting house.

(2) A person who opens, keeps or uses a common betting house is guilty of a misdemeanour.

"Penalty: On conviction on indictment—imprisonment for a term not exceeding three years."

On summary conviction—a fine not exceeding K1,000.00 and imprisonment for a term not exceeding one year.

(3) A person who—

(a) is the owner or occupier of any house, room or place and knowingly and willfully permits it to be opened, kept or used, as a common betting house by another person; or

(b) has the use or management or assists in conducting the business, of a common betting house, is guilty of an offence.

"Penalty: A fine not exceeding K1,000.00 and imprisonment for a term not exceeding one year."

24. Lotteries.

(1) In this section, "lottery" includes any scheme or device for the sale, gift, disposal, or distribution, of any property depending on or to be determined by lot or chance, whether—

(a) by the throwing or casting of dice; or

(b) the drawing of tickets, cards, lots, number or figures; or

(c) by means of a wheel or trained animal; or

(d) by any other means.

(2) Subject to Subsection (3), a person who opens, keeps or uses any place for carrying on a lottery of any kind is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

The section does not apply to any lottery approved under Section 3 of the *Gaming Act* 1959.

PART IX - Offences Against Public Health

25. False information as to health on foreign ships.

A person who, being the master or medical officer of a ship arriving from overseas—

(a) neglects or refuses to give to any officer employed in the Public Service any information that he is required by law to give to him; or

(b) gives to any such officer, orally or in writing, any information touching any matter as to which he is required by law to give him information, which information is, to his knowledge, false in a material particular, is guilty of a misdemeanour.

"Penalty: A fine not exceeding K400.00 and imprisonment for a term not exceeding one year."

26. Exposing for sale things unfit for food.

A person who—

(a) knowingly exposes for sale for the food of man; or

(b) has in his possession with intent to sell it for the food of man, any article that he knows to be unfit for the food of man, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding two years."

27. Dealing in diseased meat.

A person who knowingly—

(a) takes into a slaughter-house used for the slaughter of animals intended for the food of man the whole or any part of the carcass of an animal that has died of a disease; or

(b) sells or exposes for sale the whole or part of the carcass of an animal that has died of a disease, or that was diseased when slaughtered, unless the dressing of the animal was authorized under the Slaughtering Act 1964, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding two years."

28. Adulterating liquor

A person who—

(a) puts a deleterious or poisonous substance into any spirituous or fermented liquor, or mixes any such substance with any such liquor; or

(b) sells or otherwise disposes of, or keeps for sale, any spirituous or fermented liquor into which any such substance has been put, or with which any such substance has been mixed, is guilty of a misdemeanour.

"Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year."

PART X - Offences Endangering Life or Health

29. Wounding and similar acts.

(1) A person who—

(a) unlawfully wounds another person; or

(b) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or to be taken by, any person, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

[Repealed.]

30. Dangerous driving of a motor vehicle.

(1) If the offender causes the death of or grievous bodily harm to another person he is liable on conviction on indictment to imprisonment for a term not exceeding five years.

PART XI - Assaults

31. Common assault.

A person who unlawfully assaults another person is guilty of a misdemeanour.

"Penalty: If no greater punishment is provided, imprisonment for a term not exceeding one year."

32. Indecent assault on males.

A person who unlawfully and indecently assaults a male person is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

33. Assaults occasioning bodily harm.

(1) A person who unlawfully assaults another and by doing so does him bodily harm is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

34. Serious assaults.

A person who—

(a) assaults another with intent—

(i) to commit a crime; or

(ii) to resist or prevent the lawful arrest or detention of himself or of any other person; or

(b) assaults, resists or willfully obstructs—

(i) a member of the Police Force while acting in the execution of his duty; or

(ii) any person acting in aid of a member of the Police Force while so acting; or

(c) unlawfully assaults, resists or obstructs a person who is engaged in the lawful execution of any process against any property, or in making a lawful distress; or

(d) assaults, resists or obstructs a person engaged in such a lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under the process or distress; or

(e) assaults a person on account of an act done by him in the execution of a duty imposed on him by law; or

(f) assaults a person in pursuance of an unlawful conspiracy respecting—

(i) a manufacture, trade, business or occupation; or

(ii) any person or persons concerned or employed in a manufacture, trade, business or occupation; or

(iii) the wages of any such person or persons, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years."

PART XII - Assaults on Females

35. Indecent assaults on females.

A person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding two years."

PART XIII - Offences Against Liberty

36. Threats.

A person who threatens to do any injury or cause any detriment, to another person with intent—

(a) to prevent or hinder the other person from doing an act that he is lawfully entitled to do; or

(b) to compel him to do an act that he is lawfully entitled to abstain from doing, is guilty of a misdemeanour.

"Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year."

PART XIV - Offences Relating to Parental Rights and Duties

37.Desertion of children.

A parent of a child under the age of 14 years who is able to maintain the child and who willfully and without lawful or reasonable cause deserts the child and leaves it without means of support is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding one year."

PART XV -The Offence of Stealing

38.Stealing.

(1) Any person who steals anything capable of being stolen is guilty of a crime.

"Penalty: Subject to this section, imprisonment for a term not exceeding three years."

(2) If the thing stolen is a testamentary instrument, (whether the testator is living or dead), the offender is liable, subject to Section 19, to imprisonment for life.

(3) If the thing stolen is anything in course of transmission by post, the offender is liable, subject to Section 19 to imprisonment for life.

(4) If the thing stolen is an aircraft, the offender is liable to imprisonment for a term not exceeding 14 years.

(5) If—

(a) the thing is stolen from the person of another person; or

(b) the thing is stolen in a dwelling-house, and—

(i) its value exceeds K10.00; or

(ii) the offender at or immediately before or after the time of stealing uses or threatens to use

violence to any person in the dwelling-house; or

(c) the thing is stolen from a vessel, vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another; or

(d) the thing is stolen from a vessel that is in distress or wrecked or stranded; or

(e) the thing is stolen from a public office in which it is deposited or kept; or

(f) the offender, in order to commit the offence, opens a locked room, box or other receptacle by means of a key or other instrument, the offender is liable to imprisonment for a term not exceeding seven years.

(6) If the offender is a person employed in the Public Service, and the thing stolen—

(a) is the property of the State; or

(b) came into the possession of the offender by virtue of his employment, he is liable to imprisonment for a term not exceeding seven years.

(7) If the offender is a clerk or servant, and the thing stolen—

(a) is the property of his employer; or

(b) came into the possession of the offender on account of his employer, he is liable to imprisonment for a term not exceeding seven years.

(8) If the offender is a director or officer of a corporation, and the thing stolen is the property of the corporation, he is liable to imprisonment for a term not exceeding seven years.

(9) If the thing stolen is—

(a) property that has been received by the offender with a power of attorney for its disposition; or

(b) money received by the offender with a direction that it should be applied to any purpose or paid to any person specified in the direction; or

(c) the whole or part of the proceeds of a valuable security that was received by the offender with a direction that

the proceeds of it should be applied to a purpose or paid to a person specified in the direction; or

(d) the whole or part of the proceeds arising from a disposition of any property that have been received by the offender by virtue of a power of attorney for such disposition, the power of attorney having been received by the offender with a direction that the proceeds be applied to a purpose or paid to a person specified in the direction, the offender is liable to imprisonment for a term not exceeding seven years.

(10) If the thing stolen is of the value of K1,000.00 or upwards, the offender is liable to imprisonment for a term not exceeding seven years.

(11) If the thing stolen is a fixture or chattel let to the offender to be used by him with a house or lodging, and its value exceeds K100.00, he is liable to imprisonment for a term not exceeding seven years.

(12) If the offender, before committing the offence—

(a) had been convicted on indictment of an indictable offence against any provision of this Division; or

(b) had been twice previously summarily convicted of an offence against any such provision punishable on summary conviction whether or not each of the convictions was in respect of an offence of the same character, he is liable to imprisonment for a term not exceeding seven years.

PART XVI - Offences Analogous To Stealing

39. Killing animals with intent to steal.

A person who kills an animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of a crime, and is liable to the same punishment as if he had stolen the animal.

40. Severing with intent to steal.

A person who makes anything movable with intent to steal it is guilty of a crime, and is liable to the same punishment as if he had stolen the thing after it became movable.

41. Unlawfully using motor vehicles, etc.

(1) In this section, "unlawfully uses" includes the unlawful possession by any person of any motor vehicle or aircraft—

(a) without the consent of the owner or of the person in lawful possession of it; and

(b) with intent to deprive the owner or person in lawful possession of it of the use and possession of it temporarily or permanently.

(2) A person who unlawfully uses a motor vehicle or aircraft without the consent of the owner or of the person in lawful possession of the vehicle or aircraft is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding five years."

This section applies without prejudice to any provision relating to the unlawful use of motor vehicles or aircraft of any other law, but an offender is not liable to be convicted under both this section and such a provision in respect of any one and the same unlawful use.

PART XVII - Extortion By Threats

42. Demands for compensation or other payment.

A person who, with intent to extort or gain any thing, payment, or compensation from any person—

(a) demands the thing, payment or compensation; and

(b) in order to obtain compliance with the demand—

(i) causes or threatens to cause injury to any person or damage to any property; or

(ii) does or threatens to do any act which renders, or is likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property; or

(iii) otherwise unlawfully threatens or intimidates any person, is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding seven years."

PART XVIII - Burglary: House Breaking and Like Offences

43. Housebreaking: Burglary.

(1) A person who—

(a) breaks and enters the dwelling-house of another with intent to commit a crime in it; or

(b) having—

(i) entered the dwelling-house of another with intent to commit a crime in it; or

(ii) committed a crime in the dwelling-house of another, breaks out of the dwelling-house; or

(c) breaks and enters the dwelling-house of another and commits a crime in it, is guilty of a crime.

"Penalty: Subject to Subsection (2), imprisonment for a term not exceeding 14 years."

(2) If the offence is committed in the night, the offender is liable, subject to Section 19, to imprisonment for life.

44. Unlawful breaking and entering.

A person who, without lawful excuse (proof of which is on him) breaks and enters the dwelling-house of another is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding three years."

45. Entering dwelling-house with intent to commit crime.

(1) A person who enters or is in the dwelling-house of another with intent to commit a crime in it is guilty of a crime.

"Penalty: Subject to Subsection (2), imprisonment for a term not exceeding seven years."

(2) If the offence is committed in the night, the offender is liable to imprisonment for a term not exceeding 14 years.

46. Breaking into buildings and committing crime.

A person who—

(a) breaks and enters—

(i) a schoolhouse, shop, warehouse, counting-house, office, store, vehicle, garage, hangar, pavilion, factory, workshop, tent, caravan, petrol-station, ship, aircraft, vessel or club; or

(ii) a building that is adjacent to a dwelling-house and occupied with it, but is not part of it, and commits a crime in it; or

(b) having committed a crime in—

(i) a schoolhouse, shop, warehouse, counting-house, office, store, vehicle, garage, hangar, pavilion, factory, workshop, tent, caravan, petrol-station, ship, aircraft, vessel or club; or

(ii) a building that is adjacent to a dwelling-house and occupied with it, but is not part of it, breaks out of it, is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding 14 years."

47. Breaking into building with intent to commit crime.

A person who breaks and enters—

(a) a schoolhouse, shop, warehouse, counting-house, office, store, vehicle, garage, hangar, pavilion, factory, workshop, tent, caravan, petrol-station, ship, aircraft, vessel or club; or

(b) a building that is adjacent to a dwelling-house and occupied with it, but is not part of it, with intent to commit a crime in it, is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding seven years."

48. Breaking into place of worship and committing crime.

A person who—

(a) breaks and enters a building ordinarily used for religious worship and commits a crime in it; or

(b) having committed a crime in any such building breaks out of it, is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding 14 years."

49. Breaking into place of worship with intent to commit a crime.

A person who breaks and enters a building ordinarily used for religious worship, with intent to commit a crime in it, is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding seven years."

PART XIX - Obtaining Property by False Pretences: Cheating

50. Obtaining goods or credit by false pretence or willfully false promise.

(1) A person who by a false pretence or willfully false promise, or partly by a false pretence and partly by a willfully false promise, and with intent to defraud—

(a) obtains from any other person any chattel, money or valuable security; or

(b) induces any other person to deliver to any person any chattel, money or valuable security, is guilty of a crime.

(2) A person incurring a debt or liability who obtains credit by a false pretence or willfully false promise, or partly by a false pretence and partly by a willfully false promise, or by any other fraud, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding one year."

51. Cheating.

(1) A person who, by means of any fraudulent trick or device—

(a) obtains from any other person any thing capable of being stolen; or

(b) induces any other person—

(i) to deliver to any person any thing capable of being stolen; or

(ii) to pay or deliver to any person any money or goods, or any greater sum of money or greater quantity of goods than he would have paid or delivered but for the trick or device, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding two years."

52. Pretending to exercise witchcraft or tell fortunes.

A person who—

(a) pretends to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration; or

(b) undertakes to tell fortunes; or

(c) pretends from his skill or knowledge in any occult science to discover where or in what manner any thing supposed to have been stolen or lost may be found, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding one year."

PART XX - Receiving Stolen Property

53. Receiving stolen property, etc.

(1) A person who receives any thing that has been obtained by means of—

(a) any act constituting an indictable offence; or

(b) any act done at a place outside Papua New Guinea that—

(i) if it had been done in Papua New Guinea would have constituted an indictable offence; and

(ii) is an offence under the laws in force in the place where it was done, knowing it to have been so obtained, is guilty of a crime.

"Penalty: Subject to Subsection (2), imprisonment for a term not exceeding seven years."

(2) If the offence by means of which the thing was obtained is a crime, the offender is liable to imprisonment for a term not exceeding 14 years.

(3) Where a thing referred to in Subsection (1) has been—

(a) converted into other property; or

(b) mortgaged, pledged or exchanged for any other property, a person knowing that—

(c) the property is wholly or in part the property into which the thing so obtained has been converted or for which it has been mortgaged or pledged or exchanged; and

(d) the thing so obtained was obtained under such circumstances as to constitute an offence against Subsection (1), who receives the whole or any part of the property into which the thing so obtained has been converted, or for which it has been mortgaged or

pledged or exchanged, is guilty of an offence against Subsection (1).

(4) For the purpose of proving the receiving of any thing for the purposes of this section, it is sufficient to show that the accused person—

(a) has, alone or jointly with some other person, had the thing in his possession; or

(b) has aided in concealing it or disposing of it.

PART XXI - Offences

54.Setting fire to crops and growing plants.

A person who willfully and unlawfully sets fire to—

(a) a crop of cultivated vegetable produce, whether standing or cut; or

(b) a crop of hay or grass, whether—

(i) the natural or indigenous product of the soil or not; or

(ii) under cultivation or not; or

(iii) standing or cut; or

(c) any standing trees, saplings or shrubs, whether indigenous or cultivated; or

(d) any heath, gorse, furze, or fern, is guilty of a crime.

“Penalty: Imprisonment for a term not exceeding 14 years.”

55.Attempting to set fire to crops, etc.

A person who attempts unlawfully to set fire to any thing referred to in Section 438 is guilty of a crime.

“Penalty: Imprisonment for a term not exceeding seven years.”

56. Injuring animals.

(1) A person who willfully and unlawfully kills, maims or wounds an animal capable of being stolen is guilty of a misdemeanour.

"Penalty: Subject to Subsection (2), imprisonment for a term not exceeding two years."

(2) If an offence against Subsection (1) is committed by night, the offender is liable to imprisonment for a term not exceeding three years.

57. Malicious injuries in general: punishment in special cases.

(1) A person who willfully and unlawfully destroys or damages any property is guilty of an offence that, unless otherwise stated, is a misdemeanour.

"Penalty: If no other punishment is provided by this section—imprisonment for a term not exceeding two years."

58. Traveling with infected animals.

A person who—

(a) causes any four-footed animal that is infected with an infectious disease to travel; or

(b) being the owner, or one of the joint owners, of any four-footed animal that is infected with an infectious disease, permits or connives at the traveling of any such animal, contrary to any law relating to infected animals of that kind, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding two years."

59. Falsifying warrants for money payable under public authority.

A person employed in the Public Service who knowingly and with intent to defraud makes out or delivers to any person a warrant for the payment of any money payable by public authority for a greater or less amount than that to which the person on whose behalf the warrant is made out is entitled, is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding seven years."

60. Falsification of registers.

(1) A person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry that is to his knowledge false in a material particular to be made in the register or record is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding seven years."

61. Sending false certificate of marriage to Registrar.

A person who signs or transmits to a person authorized by law to register marriages—

(a) a certificate of marriage; or

(b) a document purporting to be a certificate of marriage, that is to his knowledge false in a material particular, is guilty of a crime.

"Penalty: Imprisonment for a term not exceeding seven years."

62. False statements for the purpose of registers of births, deaths and marriages.

A person who knowingly, and with intent to procure it to be inserted in a register of births, deaths or marriages, makes a false statement concerning a matter required by law to be registered in any such register is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years.

63.Attempts to procure unauthorized status.

A person who—

(a) by a false representation procures any authority authorized by any law to issue certificates testifying that the holders of them are entitled to any right or privilege, or to enjoy any rank or status, to issue to himself or any other person any such certificate; or

(b) falsely represents to any person that he has obtained a certificate issued by any such authority; or

(c) by a false representation procures himself or any other person to be registered on a register kept by lawful authority as a person entitled—

(i) to such a certificate; or

(ii) to any right or privilege; or

(iii) to enjoy any rank or status, is guilty of a misdemeanour.

"Penalty: Imprisonment for a term not exceeding three years.

PART XXII - MISCELLANEOUS

64.Procedure.

Proceedings under this Bill shall be in accordance with the Procedure laid down in Part VII of the ***District Courts Act*** (Chapter 40).

65.Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Bill, prescribing all matters that by this Bill are required or permitted to be prescribed, for carrying out and giving effect to this Bill, and in particular for prescribing—

(a) the form in which charges under the several sections of this Bill may be laid; and

(b) the imposition of penalties of fines not exceeding K10,000.00 or imprisonment for terms not exceeding ten (10) years, or both, for offences against the regulations.

PART XXIII - REPEAL

66. Repeal.

(1) The ***Criminal Code Act*** (Chapter 262), Sections 420, 421, 421A, 425 and Schedule 2 are repealed; and

(2) The ***District Courts Act*** (Chapter 40), Section 20 is repealed; and

(3) ***The Public Prosecutor (Office and Functions) Act 1977***, Section 4 (ga) is repealed.