

No. 37 of 1989.

***Village Courts Act 1989.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 37 of 1989.

***Village Courts Act 1989.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Village Courts Act 1989,*

Being an Act as authorized by Section 172 of the *Constitution* to provide for a system of Village Courts and Village Peace Officers, their jurisdiction, powers, duties, practice and procedure, and for other purposes.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears–

“**Deputy Provincial Supervising Magistrate**” means a Magistrate appointed as such under Section 15(1)(b);

“**Deputy Village Court Clerk**” means a Deputy Village Court Clerk appointed under Section 22 and, in relation to a Village Court, means a Deputy Village Court Clerk appointed for the Court;

“**dispute**” includes any case where a person complains of, and is genuinely aggrieved by, the actions or likely actions of another person but does not include any case in which the complaint–

- (a) is made in an official capacity; or
- (b) is a complaint against an official act;

“**land**” includes a reef or bank and a house or other structure built on or over water, but does not include things growing on land;

“**Local Land Court**” has the meaning given to it in Section 2 of the *Land Disputes Settlement Act 1975*;

“**Local-level Government**”, in relation to a Village Court, means the Local-level Government for the area in which the Village Court is established;

“**Magistrate**” means–

- (a) a District Court Magistrate; or
- (b) [repealed by implication]
- (c) a Reserve District Court Magistrate; or
- (d) a Deputy Local Court Magistrate;

**“Peace and Good Order Committee”** means a Peace and Good Order Committee established under Section 5 of the *Inter-Group Fighting Act 1977*;

**“Provincial Executive”**, in relation to a Village Court, means the Provincial Executive for the province in which the Village Court is established;

**“Provincial Gazette”**, in relation to a Village Court, means the Provincial Gazette for the province in which the Village Court is established;

**“Provincial Government”**, in relation to a Village Court, means the Provincial Government for the province in which the Village Court is established;

**“Provincial Land Court”** has the meaning given to it in Section 2 of the *Land Disputes Settlement Act 1975*;

**“Provincial Legislature”**, in relation to a Village Court, means the Provincial Legislature for the province in which the Village Court is established;

**“Provincial Minister”**, in relation to a Village Court, means the Minister of the Provincial Government or person or Committee of the Provincial Government having responsibility for matters relating to Village Courts;

**“Provincial Supervising Magistrate”** means a District Court Magistrate appointed as such under Section 15(1)(a) and includes a Deputy Provincial Supervising Magistrate exercising or performing any power or function of a Provincial Supervising Magistrate under Section 15(3);

**“Provincial Village Courts Officer”**, in relation to a Village Court, means the Provincial Village Courts Officer for the province in which the Village Court is established;

**“Secretary”** means the head of the Village Courts Secretariat;

**“The Provincial Supervising Magistrate”**, in relation to a Village Court, means the Provincial Supervising Magistrate for the province in which the Village Court is situated;

**“this Act”** includes the Regulations;

**“Village Court”** means a Village Court established under Section 4 and includes a joint sitting of Village Courts under Section 56;

**“Village Court Clerk”** means a Village Court Clerk appointed under Section 22, and, in relation to a Village Court, means the Village Court Clerk appointed for the Court;

**“Village Court Inspector”**, in relation to a Village Court, means the Village Court Inspector for the District in which the Village Court is established;

**“Village Court Officer”** includes Provincial Village Courts Officer and Village Court Inspector;

**“Village Court Official”** means—

- (a) a Village Magistrate; or
- (b) a Village Court Clerk; or
- (c) a Deputy Village Court Clerk; or
- (d) a Village Peace Officer;

**“Village Magistrate”** means a Village Magistrate appointed under Section 17, and, in relation to a Village Court, means a Village Magistrate appointed for the Court;

**“Village Peace Officer”** means a Village Peace Officer appointed under Section 26, and, in relation to a Village Court, means a Village Peace Officer appointed for the area of the Court.

## 12. APPLICATION.

(1) Where, pursuant to Section 42 of the *Organic Law on Provincial Governments and Local-level Governments*, a Provincial Legislature enacts legislation in respect of the establishment and administration of Village Courts, to the extent that that legislation conflicts with this Act, that legislation shall have effect and this Act shall not apply.

(2) Nothing contained in Subsection (1) shall be construed as derogating, or in any way restricting, the power of the Minister to cause an inspection of a Village Court under Section 10.

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<sup>1</sup> Section 1 (definition of “Provincial Minister”) repealed and replaced by the *Provincial Governments and Local-level Governments (Consequential Amendments) Act* 1995 (No. 17 of 1995), s5.

**PART II. – VILLAGE COURTS SECRETARIAT.**

**3. VILLAGE COURTS SECRETARIAT.**

(1) There is established a Village Courts Secretariat, located within the Department responsible for justice matters, comprising such number of officers as are necessary for the carrying out of its function.

(2) The function of the Village Courts Secretariat is the efficient management of the system of Village Courts and Village Peace Officers.

**PART III. – VILLAGE COURTS.**

***Division 1.***

***Establishment, Suspension and abolition etc.***

**4. ESTABLISHMENT OF VILLAGE COURTS.**

The Minister may, by notice in the National Gazette, establish a Village Court in and for an area specified in the notice.

**5. SUSPENSION AND ABOLITION OF VILLAGE COURTS.**

The Minister may, by notice in the National Gazette—

- (a) suspend a Village Court; or
- (b) abolish a Village Court,

established under Section 4.

**6. PROCEDURE WHERE VILLAGE COURT SUSPENDED OR ABOLISHED.**

(1) Where a Village Court is suspended or abolished under Section 5, the Provincial Supervising Magistrate shall—

- (a) take possession and provide for the safe custody of—
  - (i) the books and records of the Village Court; and
  - (ii) the badges and other insignia of office issued under Section 106; and
  - (iii) the certificates of appointment (if any) of the Village Court Officials;
- (b) in the case of the suspension of a Village Court, transfer to a specified District Court such proceedings pending in the suspended Village Court at the date of the suspension as he considers necessary, in the interest of justice, so to do; and
- (c) in the case of the abolition of a Village Court, transfer to a specified District Court all proceedings pending in the abolished Village Court at the date of the abolition; and
- (d) publicize, by notice in the Provincial Gazette and by such other means as he considers appropriate,—
  - (i) the suspension or abolition of the Village Court; and
  - (ii) proceedings transferred under Paragraph (b) or (c).

(2) Proceedings transferred under Subsection (1)(b) or (c) shall be heard and determined in the District Court specified.

(3) Where a Village Court is suspended under Section 5, during the period of suspension, the Village Court Officials shall be suspended without pay.

(4) Where a Village Court is abolished under Section 5, the appointment of all Village Court Officials is deemed to be revoked.

***Division 2.***

***Constitution and sitting of Village Courts.***

**7. CONSTITUTION OF VILLAGE COURTS.**

(1) Subject to Section 8, a Village Court shall be constituted by an odd number (not being less than three) of Village Magistrates.

(2) Subject to Subsection (3), at a sitting of a Village Court, the Chairman of the Village Court shall preside and, in the absence of the Chairman, the Deputy Chairman shall preside.

(3) Where—

(a) the Chairman and the Deputy Chairman are absent; or

(b) there is no Chairman or Deputy Chairman,

the Village Magistrates constituting the Village Court shall appoint one of their number to preside.

(4) A decision of a Village Court shall be by majority vote.

**8. ONE VILLAGE MAGISTRATE TO CONSTITUTE VILLAGE COURT.**

Notwithstanding Sections 7 and 17(3) where custom provides for a system of chiefs or chieftainship, the Minister may, in respect of a specified Village Court, by notice in the National Gazette, declare that a Village Magistrate sitting alone shall constitute that Village Court.

**9. PLACE OF SITTINGS.**

A Village Court may sit at any place in the area for which it is established and may adjourn from time to time and from place to place.

***Division 3.***

***Inspection of Village Courts.***

**10. MINISTER MAY CAUSE INSPECTION.**

Where—

(a) an Act of a Provincial Legislature provides for the establishment and administration of Village Courts within a province; and

(b) the Minister wishes to determine whether a Village Court so established is acting within the jurisdiction and powers conferred by this Act,

the Minister may cause an inspection to be made of the Village Court.

**11. SECRETARY MAY DIRECT INSPECTIONS.**

The Secretary may, in respect of a specified Village Court, direct the Provincial Village Courts Officer to ensure that the Village Court and its records are inspected at such intervals as the Secretary may determine and that a report of each such inspection is submitted promptly in accordance with any directions the Secretary may make concerning such reports.

**12. PROVINCIAL VILLAGE COURTS OFFICER MAY DIRECT INSPECTIONS.**

The Provincial Village Courts Officer may, in respect of a specified Village Court, direct a Village Court Inspector—

- (a) to inspect the Village Court and its records; and
- (b) to inquire into the functioning of the Village Court; and
- (c) to point out to the Village Court Officials any defects in practice or procedure; and
- (d) to encourage the adoption of practices and procedures recommended under Section 77(2); and
- (e) to submit reports of inspections within a specified period.

***Division 4.***

***Fines.***

**13. DISPOSAL OF FINES.**

All—

- (a) fees chargeable in respect of matters before a Village Court; and
- (b) fines, penalties and forfeitures ordered by a Village Court,

are payable to the Provincial Government.

**14. OBLIGATION OF PROVINCIAL GOVERNMENT.**

The Provincial Government shall, insofar as it is practicable, allocate as a minimum for the maintenance and improvement of Village Courts an amount equivalent to the total amount received under Section 13.

**PART IV. – VILLAGE COURT OFFICIALS.**

***Division 1.***

***Provincial Supervising Magistrates and Village Magistrates.***

**15. PROVINCIAL SUPERVISING MAGISTRATES.**

(1) As soon as practicable after a Village Court has been established in a province, the Minister—

- (a) shall appoint a District Court Magistrate to be the Provincial Supervising Magistrate; and
- (b) may appoint such other Magistrates as in his opinion it is desirable so to do, to be Deputy Provincial Supervising Magistrates.

(2) A Provincial Supervising Magistrate and a Deputy Provincial Supervising Magistrate have such powers, functions, duties and responsibilities as are provided by this Act.

(3) A Provincial Supervising Magistrate may direct a Deputy Provincial Supervising Magistrate to exercise or perform any power or function of the Provincial Supervising Magistrate.

**16. RECOMMENDATIONS AS TO APPOINTMENT OF VILLAGE MAGISTRATES.**

As soon as practicable after the establishment of a Village Court, and afterwards as necessary, the Secretary shall, after consultation with—

- (a) any Local-level Government in whose area the area, or part of the area, of the Village Court is situated or, where there is no Local-level Government, the Provincial Government; and
- (b) such other bodies or persons, or groups of persons as—
  - (i) he thinks it desirable to consult; or
  - (ii) he is directed by the Minister to consult,

submit to the Minister the names of persons to be appointed Village Magistrates for the Village Court.

**17. APPOINTMENT OF VILLAGE MAGISTRATES.**

(1) Subject to Subsections (2) and (3), within three months after the date of the establishment of a Village Court, and afterwards as necessary, the Minister shall appoint those persons whose names are submitted to him in accordance with Section 16 to be Village Magistrates for the Village Court.

(2) Persons appointed Village Magistrates under Subsection (1) shall, as far as practicable, be representative of the traditional population groupings of the area in which the Village Court is established.



(3) Not less than three Village Magistrates shall be appointed for each Village Court except a Village Court in respect of which the Minister has made a declaration under Section 8.

(4) A person may be appointed a Village Magistrate for more than one Village Court.

**18. CHAIRMAN AND DEPUTY CHAIRMAN.**

(1) The Minister may appoint a Village Magistrate appointed for a Village Court to be the Chairman, and another such Magistrate to be the Deputy Chairman, of the Village Court.

(2) The Chairman and Deputy Chairman of a Village Court shall exercise general supervision over the work of the Village Court and shall have such other powers, functions, duties and responsibilities as are prescribed.

**19. CONDITIONS OF SERVICE.**

The terms and conditions of service of a Village Magistrate are as prescribed.

**20. REVOCATION OF APPOINTMENT OF VILLAGE MAGISTRATES.**

The Minister may, on the recommendation of the Secretary or a Local-level Government, revoke the appointment of a Village Magistrate—

- (a) for failure to attend to duty; or
- (b) for incapacity; or
- (c) for misconduct; or
- (d) if he resigns; or
- (e) if he dies.

**21. SUSPENSION OF VILLAGE MAGISTRATES.**

The Minister may suspend a Village Magistrate with or without pay for misconduct or failure to attend to duty.

***Division 2.***

***Village Court Clerks and Deputy Village Court Clerks.***

**22. APPOINTMENT OF VILLAGE COURT CLERKS, ETC.**

(1) The Secretary shall appoint for each Village Court a Village Court Clerk and such Deputy Village Court Clerks as he thinks necessary.

(2) The terms and conditions of Village Court Clerks and Deputy Village Court Clerks are as prescribed.

**23. FUNCTIONS AND DUTIES OF VILLAGE COURT CLERKS, ETC.**

Village Court Clerks and Deputy Village Court Clerks—

- (a) shall keep the prescribed records; and
- (b) have such other duties and responsibilities as are prescribed.

**24. REVOCATION OF APPOINTMENT OF VILLAGE COURT CLERK, ETC.**

The Secretary may revoke the appointment of a Village Court Clerk or a Deputy Village Court Clerk—

- (a) for failure to attend to duty; or
- (b) for incapacity; or
- (c) for misconduct; or
- (d) if he resign; or
- (e) if he dies.

**25. SUSPENSION OF VILLAGE COURT CLERK, ETC.**

The Provincial Supervising Magistrate may suspend a Village Court Clerk or a Deputy Village Court Clerk with or without pay for misconduct or failure to attend to duty.

***Division 3.***

***Village Peace Officers.***

**26. APPOINTMENT OF VILLAGE PEACE OFFICERS.**

(1) The Secretary may appoint persons to be Village Peace Officers for a Village Court.

(2) A person may be appointed a Village Peace Officer for more than one Village Court.

(3) The terms and other conditions of service of Village Peace Officers are as prescribed.

**27. AREA OF JURISDICTION OF VILLAGE PEACE OFFICERS.**

The powers of a Village Peace Officer may be exercised only in the area of a Village Court for which he is appointed.

**28. GENERAL FUNCTIONS AND DUTIES OF VILLAGE PEACE OFFICERS.**

(1) A Village Peace Officer is an officer of the Village Court and his main functions are to assist the Village Court and to enforce the decisions and orders of the Village Court.

(2) In particular, a Village Peace Officer—

- (a) shall report to the Village Court or to a Village Magistrate any case in which he knows or suspects that a dispute has arisen or may arise or an offence has been committed or may be committed, that is apparently within the jurisdiction of the Village Court; and
- (b) shall, as directed by the Village Court—
  - (i) serve orders, either oral or in writing, to persons to appear before the Village Court; and
  - (ii) supervise the performance of any work ordered by the Village Court; and
  - (iii) where an order for imprisonment is issued but not endorsed, convey to a Magistrate, for endorsement of the order under Section 68, any person whose imprisonment is ordered by the Village Court; and
  - (iv) where, under Section 67, a person is ordered to be held in custody pending the endorsement of the order for imprisonment, convey and deliver the person and the order for custody and the order for imprisonment to the officer-in-charge of the nearest Correctional Institution, Police Station, police post, police lock-up or rural lock-up, as the case may be; and
  - (v) when an order for imprisonment is endorsed under Section 68(3), convey to a Correctional Institution, rural lock-up or police lock-up any person whose imprisonment is ordered by the Village Court; and
  - (vi) where, under Section 76, a warrant of execution is issued, execute that warrant.

**29. FUNCTIONS IN RELATION TO KEEPING THE PEACE.**

(1) Where—

- (a) a fight or violence to the person or property or other breach of the peace occurs; or
- (b) a Village Peace Officer has reason to believe that a fight or violence to the person or property or other breach of the peace may occur,

the Village Peace Officer may order any person—

- (c) to keep the peace; or

(d) to refrain from doing anything that may cause a breach of the peace.

(2) Prosecution for an offence against this section may be brought in a Village Court.

**30. POWERS OF ARREST.**

(1) Where—

(a) a Village Peace Officer suspects that a person—

(i) is about to commit an offence; or

(ii) is committing an offence; or

(iii) has committed an offence; and

(b) the offence appears to the Village Peace Officer to be within the jurisdiction of the Village Court,

the Village Peace Officer may arrest the person.

(2) A Village Peace Officer shall arrest a person when directed to do so by a Village Magistrate.

(3) Where a Village Peace Officer arrests a person under Subsection (1) or (2), he shall take the person before the Village Court as soon as practicable and in any event within 24 hours of making the arrest.

**31. APPLICATION OF SECTION 207 OF THE CONSTITUTION TO VILLAGE PEACE OFFICER ASSISTING POLICE.**

A Village Peace Officer appointed under this Act or under an Act of a Provincial Legislature may act under the direction of a member of the Police Force, for the purpose of assisting in the performance of the functions or duties of that member or of the Force.

**32. REVOCATION OF APPOINTMENT OF VILLAGE PEACE OFFICER.**

The Secretary may revoke the appointment of a Village Peace Officer—

(a) for failure to attend to duty; or

(b) for incapacity; or

(c) for misconduct; or

(d) if he resigns; or

(e) if he dies.

**33. SUSPENSION OF VILLAGE PEACE OFFICER.**

The Provincial Supervising Magistrate may suspend a Village Peace Officer with or without pay for misconduct or failure to attend to duty.

*Division 4.*

*Village Court Officials appointed under Provincial Laws.*

**34. VILLAGE MAGISTRATE, ETC., APPOINTED UNDER ACT OF PROVINCIAL LEGISLATURE.**

A-

- (a) Village Magistrate; or
- (b) Village Court Clerk; or
- (c) Deputy Village Court Clerk; or
- (d) Village Peace Officer,

appointed under an Act of a Provincial Legislature has, and may exercise, all the powers, functions, duties and responsibilities of a Village Magistrate, Village Court Clerk, Deputy Village Court Clerk or Village Peace Officer respectively, appointed under this Act.

**PART V. – JURISDICTION.**

***Division 1.***

***Interpretation.***

**35. INTERPRETATION.**

In this Part, unless the contrary meaning appears—

“**Village Court**” includes a Village Court established under an Act of a provincial legislature.

***Division 2.***

***General Jurisdiction.***

**36. GENERAL JURISDICTION.**

Subject to this Act, a Village Court has jurisdiction in the area for which it is established—

- (a) in relation to any dispute where—
  - (i) the dispute arose within its area; or
  - (ii) the subject matter of the dispute is within its area; or
  - (iii) all of the parties to the dispute are normally resident within its area; or
  - (iv) some of the parties to the dispute are normally resident within its area and the others consent to the jurisdiction; and
- (b) in criminal matters as specified in Division 3; and
- (c) in civil matters as specified in Division 4.

**37. CONCURRENT JURISDICTION OF VILLAGE MAGISTRATES.**

The jurisdiction of a Village Court may be exercised by a number of Village Magistrates notwithstanding that the jurisdiction is being exercised at the same time by other Village Magistrates.

**38. DISTRICT COURTS MAY EXERCISE JURISDICTION OF VILLAGE COURT.**

(1) A District Court may exercise the jurisdiction of a Village Court and in so doing shall not apply technical rules of evidence, but shall admit and consider such evidence as is available.

(2) A party to proceedings under Subsection (1) is entitled to be represented by any person other than a lawyer.

**39. LIMITS OF GENERAL JURISDICTION.**

A Village Court has no jurisdiction in relation to a matter involving an act done—

- (a) by authority of an Act of the Parliament; or
- (b) by authority of an Act of a Provincial Legislature.

**40. ANCILLARY JURISDICTION.**

In addition to any other orders that it may make under this Act, a Village Court has jurisdiction to make orders—

- (a) that are necessary or convenient for the purposes of the exercise of its powers, jurisdiction and authority under this Act; and
- (b) that are ancillary to its general orders.

***Division 3.***

***General Criminal Jurisdiction.***

**41. EXTENT OF JURISDICTION.**

A Village Court has criminal jurisdiction—

- (a) in respect of offences that are prescribed offences for the purposes of this section; and
- (b) in respect of contravention of, or failure to comply with—
  - (i) a Local-level Government law; or
  - (ii) a law made by or under an Act of a Provincial Legislature,  
if the rule or law, as the case may be, provides that an offence against it may be dealt with by a Village Court;  
and
- (c) in accordance with Division 5 and Sections 29, 40 and 104.

**42. PENALTIES.**

(1) Subject to Subsections (2), in the exercise of the jurisdiction referred to in Section 41, a Village Court may—

- (a) in respect of Section 41(a) order an offender to pay, in cash or in goods, a fine not exceeding K200.00; or
- (b) in respect of Section 41(b) order an offender to pay, in cash or in goods, a fine not exceeding—
  - (i) K200.00; or
  - (ii) the amount fixed in the rule or in the law,  
whichever is the lesser.

(2) A Village Court may, instead of imposing a penalty under Subsection (1), order an offender to perform, for community purposes, specified work or work of a specified kind, for a period or periods not exceeding—

- (a) eight hours in any one day; and
- (b) six days in any one week; and
- (c) a total period of six months,

in such manner, at such times and subject to such conditions as to supervision or otherwise as are specified in the order.

***Division 4.***

***Civil Jurisdiction.***

**43. DISPUTES IN RESPECT OF LAND.**

A Village Court that has jurisdiction over an area in which there is situated any land that is the subject of a dispute as to—

- (a) its ownership by custom; or
- (b) the right by custom to its use,

may, on the application of a party to the dispute, make an order—

- (c) authorizing the use or occupation of the land by one of the parties to the dispute for such purposes and subject to such conditions as are set out in the order; and
- (d) where appropriate, prohibiting the use or occupation of the land referred to in Paragraph (c) except in accordance with an order referred to in that paragraph; and
- (e) restraining the other party to the dispute from interfering with the authorized use or occupation,

or for any other purpose, pending a decision by the Local Land Court or the Provincial Land Court.

**44. ORDER TO PERFORM WORK.**

A Village Court may order a party to a dispute to perform specified work, or work of a specified kind, for the benefit of an injured or aggrieved party, for a period or periods not exceeding—

- (a) eight hours in any one day; and
- (b) six days in any one week; and
- (c) a total period of 12 weeks,

in such manner, at such times and subject to such conditions as to supervision or otherwise as are specified in the order.



**45. ORDERS FOR COMPENSATION, DAMAGES AND DEBT.**

Subject to Section 46 and to Part VI, a Village Court may make an order for—

- (a) the payment of compensation or damages; or
- (b) the repayment of a debt,

to an amount not exceeding, in cash or in value, the sum of K1,000.00.

**46. BRIDE PRICE ETC.**

In matters relating to—

- (a) bride price; or
- (b) the custody of children; or
- (c) death,

a Village Court may award such amount in compensation or damages as to the Village Court seems just.

**47. CUSTODY OF CHILDREN.**

A Village Court may make an order as to the custody or guardianship of a child if the child is—

- (a) born of parents married under customary law; or
- (b) illegitimate.

**48. LIMITS OF CIVIL JURISDICTION.**

(1) A Village Court has no jurisdiction under this Division in relation to—

- (a) subject to Section 43, a matter involving the ownership of land; or
- (b) a dispute involving the driving of a motor vehicle.

(2) Nothing contained in Subsection (1)(b) shall be construed as preventing a Village Court from dealing with a motor vehicle offence where such an offence is a prescribed offence under Section 41(a).

***Division 5.***

***Preventive Jurisdiction.***

**49. INTERPRETATION.**

In this Division, unless the contrary meaning appears—  
“dispute” includes a threatened dispute.

**50. EXERCISE OF PREVENTIVE JURISDICTION.**

The preventive jurisdiction may be exercised by—

- (a) a Village Magistrate or a number of Village Magistrates notwithstanding that the jurisdiction is being exercised at the same time by another Village Magistrate or other Village Magistrates; or
- (b) a Village Court.

#### 51. PREVENTIVE ORDERS.

(1) Where it appears to a Village Magistrate or a Village Court that a dispute may cause a breach of the peace, the Village Magistrate or the Village Court may—

- (a) order the parties to appear before the Village Court with a view to having the dispute dealt with under this Act; and
- (b) for the meantime, order the parties or any other person not to—
  - (i) enter into a further dispute or counsel another person to enter into a dispute; or
  - (ii) fight, prepare to fight or counsel another person to fight; or
  - (iii) spread rumours or fears about the existence or imminence of a dispute; or
  - (iv) make offensive weapons or carry offensive weapons in certain places; or
  - (v) do any other act or thing, whether or not specified in the order, that might aggravate the dispute or cause a breach of the peace.

(2) Where an order is made under Subsection (1)(b), the Court shall cause the order to be issued in writing and served on each party to the dispute or on any other person.

(3) A person who—

- (a) fails, without reasonable excuse (proof of which is on him), to obey an order under Subsection (1)(a); or
- (b) fails to obey an order under Subsection (1)(b),

is guilty of an offence.

Penalty: Subject to Subsection (4), a fine not exceeding K1,000.00, or imprisonment for a term not exceeding six months, or both.

(4) A Provincial Executive may, in respect of a specified Village Court, recommend to the Minister that the maximum penalties under Subsection (3) be reduced to—

- (a) a specified fine; or
- (b) a specified term of imprisonment.

(5) The Minister shall act in accordance with a recommendation under Subsection (4).

(6) A charge for an offence under this section may be brought before a Village Court or a District Court.

***Division 6.***

***Mediatory Jurisdiction.***

**52. PRIMARY FUNCTION OF VILLAGE COURTS.**

The primary function of a Village Court is to ensure peace and harmony in the area for which it is established by mediating in, and endeavouring to obtain just and amicable settlements of disputes.

**53. EXERCISE OF MEDIATORY JURISDICTION.**

(1) The mediatory jurisdiction of a Village Court may be exercised by a single Village Magistrate.

(2) In all matters before it relating to a dispute, a Village Court—

- (a) shall, before exercising its jurisdiction under Division 3 or 4, attempt to reach a settlement by mediation; and
- (b) may, if it thinks that by doing so a just and amicable settlement may be reached, adjourn any proceedings in which it is exercising jurisdiction under those Divisions.

**54. SETTLEMENTS.**

Where a dispute is settled in accordance with this Division, the terms of the settlement shall be—

- (a) recorded in the prescribed form; and
- (b) treated and enforced as an order of the Village Court as between the parties to the settlement and persons claiming through them.

***Division 7.***

***Joint Jurisdiction of Courts.***

**55. INTERPRETATION.**

In this Division, unless the contrary meaning appears—

“**dispute**” includes a threatened dispute;

“**Village Magistrate**” includes a Visiting Village Magistrate;

“**Visiting Village Magistrate**” means a Village Magistrate appointed to a Village Court other than a Village Court referred to in Section 56(1).

**56. JOINT SITTINGS.**

(1) Where—

- (a) a dispute or the subject matter of a dispute extends to the area of more than one Village Court; or
- (b) parties to a dispute are normally resident in the area of more than one Village Court; or
- (c) it appears to the Village Magistrates or the Peace and Good Order Committee that a dispute may cause a breach of the peace,

the Village Courts may—

- (d) by agreement between the Chairmen; or
- (e) if there are no Chairmen, by agreement between the Village Magistrates; or
- (f) at the direction of the Provincial Supervising Magistrate; or
- (g) at the request of the Peace and Good Order Committee,

hold a joint sitting for the purpose of dealing with the dispute.

(2) A joint sitting shall consist of—

- (a) not less than two Village Magistrates from each Village Court referred to in Subsection (1); and
- (b) a Visiting Village Magistrate.

(3) A Visiting Village Magistrate shall be such Village Magistrate as—

- (a) the Chairmen, or, if there are no Chairmen, the Village Magistrates, referred to in Subsection (1), by agreement determine; or
- (b) the Provincial Supervising Magistrate, where there is no agreement under Paragraph (a), directs to sit.

(4) The Village Magistrates constituting a joint sitting shall appoint one of their number to preside.

(5) The Village Magistrates constituting a joint sitting may sit outside the area of the Village Court to which they are respectively appointed.

(6) A joint sitting under Subsection (5) has jurisdiction to deal with a dispute under this Division.

(7) Subject to this section, this Act applies to and in relation to a joint sitting as though—

- (a) it was a sitting of a single Village Court established for the combined areas of the Village Courts concerned; and
- (b) the Village Magistrates were Village Magistrates for the combined Village Court.

**Division 8.**

**Law to be applied.**

**57. APPLICATION OF CUSTOM.**

(1) Subject to Subsections (2) and (3), in all matters before it a Village Court shall apply any relevant custom as determined in accordance with Sections 2, 3 and 7 of the *Customs (Recognition) Act* 1963.

(2) Custom shall be applied in accordance with Subsection (1) whether or not it is inconsistent with any Act.

(3) The power conferred on a Local-level Government by the *Organic Law on Provincial Governments and Local-level Governments* or an Act of a Provincial Legislature to make laws, extends to making laws declaring what is to be taken as the custom relating to any matter, and such a declaration is binding on Village Courts.

**58. GENERAL LAW.**

(1) In exercising its jurisdiction under this Division, a Village Court is not bound by any Law (other than the *Constitution* and this Act) that is not expressly applied to it, but shall, subject to Subsection (2) and Section 57, decide all matters before it in accordance with substantial justice.

(2) A person charged with an offence before a Village Court is presumed innocent until proved guilty.

**59. EVIDENCE, ETC.**

(1) Subject to Subsection (2), in any proceedings before it a Village Court shall not apply technical rules of evidence but shall admit and consider such information as is available.

(2) The powers and procedures of a Village Court shall be exercised in accordance with the principles of natural justice.

**Division 9.**

**Enforcement.**

**60. INTERPRETATION.**

In this Division, unless a contrary meaning appears, “**officer-in-charge**” means the officer-in-charge of the Correctional Institution, police lock-up or other place in which a person is detained for failure to obey an order of a Village Court for the payment of a fine.

**61. NON-PAYMENT OF FINE.**

(1) A person who fails, without reasonable excuse (proof of which is on him), to obey an order of a Village Court for the payment of a fine is guilty of an offence.

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding one week—

- (a) for each K10.00 or part of K10.00 unpaid; or
- (b) where a fine is ordered otherwise than in money, for each K10.00 or part of K10.00 of the value of the fine not rendered.

(2) A term of imprisonment under Subsection (1) shall not exceed six months.

**62. OBSTRUCTION, ETC.**

(1) A person who—

- (a) wilfully interrupts, interferes with or disturbs the proceedings of a Village Court; or
- (b) wilfully obstructs a Village Court Official or other person acting under this Act,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding one month.

(2) A Village Court may, instead of imposing a penalty under Subsection (1), order an offender to perform, for community purposes, specified work or work of a specified kind, for a period or periods not exceeding—

- (a) eight hours in any one day; and
- (b) six days in any one week; and
- (c) a total period of six months,

in such manner, at such times and subject to such conditions as to supervision or otherwise as are specified in the order.

**63. DISCHARGE ON PAYMENT IN FULL.**

(1) Where a person is detained under an order of imprisonment for non-payment of a fine—

- (a) he may pay or cause to be paid to the officer in-charge the sum specified in the order of imprisonment; and
- (b) the officer-in-charge shall—
  - (i) accept the sum; and
  - (ii) discharge the person,

unless the person is in custody on some other matter.

(2) The officer-in-charge shall immediately pay the sum received under Subsection (1) to the Village Court.

**64. REDUCTION OF FINE.**

Where—

- (a) a person is detained under an order of imprisonment for non payment of a fine; and
- (b) the fine is subsequently paid,

the amount of the fine shall be deemed to be reduced, as nearly as possible, in proportion to the amount of imprisonment served.

**65. REDUCTION OF IMPRISONMENT ON PART PAYMENT OF FINE.**

(1) Where—

- (a) a person is detained under an order of imprisonment for non-payment of a fine; and
- (b) a part of the fine is subsequently paid,

the term of imprisonment shall be deemed to be reduced, as nearly as possible, in proportion to the amount of the fine paid.

(2) Payment under this section may be made to—

- (a) the Village Court; or
- (b) the officer-in-charge.

(3) The Village Court shall give a receipt to the person making the payment.

(4) On production of a receipt under Subsection (3), or on receipt of a sum paid under this section, the officer-in-charge shall endorse on the order of imprisonment—

- (a) a memorandum of the payment; and
- (b) the reduction of the term effected by the payment,

and the order for imprisonment shall be deemed to be amended accordingly.

**66. ACCOUNTS TO BE KEPT.**

A Village Court Clerk and an officer-in-charge shall keep a true and exact account of all money received under Section 63 or 65, showing—

- (a) the person from whom, and the time when, the money is received; and
- (b) the person to whom, and the time when, the money is paid; and
- (c) the person in respect of whom the money is received or paid.

**67. ORDER FOR IMPRISONMENT.**

(1) An order of a Village Court for imprisonment under this Act shall be in the prescribed form and, pending the endorsement of the order under Section 68, the convicted person—

- (a) shall be held in such custody; or

(b) shall be released on such terms,

as the Village Court orders in the prescribed form.

(2) Where, under Subsection (1), a person is ordered to be held in custody, the Village Peace Officer shall convey and deliver the person and the order for imprisonment and the order for custody to the officer-in-charge of the nearest Correctional Institution, Police Station, police post, police lock-up or rural lock-up, as the case may be.

(3) The officer-in-charge shall—

(a) detain the person conveyed and delivered under Subsection (2); and

(b) cause the person and the order for imprisonment to be brought before a Magistrate as soon as practicable.

#### **68. ENDORSEMENT OF ORDER FOR IMPRISONMENT.**

(1) Subject to Section 71, an order for imprisonment under this Act is of no force or effect unless it is endorsed by a Magistrate.

(2) The Village Court that made the order shall immediately cause it to be presented to a Magistrate for endorsement under Subsection (1).

(3) Subject to Section 69, the Magistrate to whom the order for imprisonment is presented under Subsection (2) shall, unless he has reason to believe that the Village Court—

(a) acted without jurisdiction; or

(b) acted in excess of its powers,

endorse the order.

(4) If the Magistrate believes that the Village Court may have—

(a) acted without jurisdiction; or

(b) acted in excess of its powers,

he shall exercise the power of review provided by Division 11.

#### **69. WHERE CONVICTED PERSON IS UNDER 17 YEARS.**

<sup>2</sup>(1)<sup>3</sup> <sup>4</sup>Subject to Subsections (2) and (3), where—

(a) an order is presented to a Magistrate for endorsement under Section 68(2); and

(b) the Magistrate is satisfied that the person is under the age of 17 years,

the Magistrate shall not endorse the order but shall refer the order and the person to a Children's Court to be dealt with by that court.

<sup>2</sup> Section 69: headnote amended by the *Juvenile Courts Act* 1991 (No. 40 of 1991), s66(2).

<sup>3</sup> Section 69(1) amended by the *Juvenile Courts Act* 1991 (Act No. 40 of 1991), s66(2).

<sup>4</sup> Section 69(1) amended by the *Juvenile Courts Act* 1991 (Act No. 40 of 1991), s66(2).



(2)<sup>5</sup> <sup>6</sup>Where, in respect of an order for imprisonment under Subsection (1), there is no Children's Court in a particular area, the Magistrate shall exercise the power conferred on Children's Courts under Section 70 and that section shall be read and construed accordingly.

#### **70. CHILDREN'S COURT TO DEAL WITH OFFENDER.**

<sup>7</sup>Where a person is referred to a Children's Court under Section 69(1), the Children's Court shall—

- (a) endorse the order for imprisonment; or
- (b) make such other order under the *Child Welfare Act 1961* as it considers appropriate,

and the *Child Welfare Act 1961* shall apply to and in relation to that person.

#### **71. EFFECT OF ENDORSED ORDER FOR IMPRISONMENT.**

(1) Subject to Subsection (2), the *Correctional Service Act 1995* and all other laws apply to and in relation to a sentence of imprisonment—

- (a) imposed by an order of a Village Court under this Act; and
- (b) endorsed by a Magistrate under Section 68,

in the same way that they apply to and in relation to a sentence of imprisonment imposed under any other law.

(2) Subject to Subsection (3), a sentence of imprisonment imposed under this Act takes effect from the day on which the convicted person is taken into custody under the order.

(3) Any period during which the convicted person was released under Section 67 shall not be taken into account in calculating the period of the sentence.

(4) It is the duty of a Magistrate—

- (a) endorsing an order for imprisonment under Section 68; or
- (b) confirming, under Division 11, the decision that the order be made,

to ensure that the necessary warrant of commitment under Section 134 of the *Correctional Service Regulation 1995* is issued and for that purpose he may sign the warrant on behalf of the Village Court.

#### **72. NON-PERFORMANCE OF WORK.**

(1) A person who fails, without reasonable excuse (proof of which is on him), to obey an order of a Village Court for the performance of work is guilty of an offence.

<sup>5</sup> Section 69(2) amended by the *Juvenile Courts Act 1991* (Act No. 40 of 1991), s66(2).

<sup>6</sup> Section 69(2) amended by the *Juvenile Courts Act 1991* (Act No. 40 of 1991), s66(2).

<sup>7</sup> Section 70 amended by the *Juvenile Courts Act 1991* (Act No. 40 of 1991), s66(2).

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding two days for each eight hours of work not performed.

(2) Imprisonment under this section shall not exceed six months.

**73. FAILURE TO OBEY CERTAIN ORDERS.**

(1) A person who fails, without reasonable excuse (proof of which is on him), to obey an order of—

- (a) a Village Peace Officer under Section 29 (Functions In Relation To Keeping The Peace); or
- (b) a Village Court under—
  - (i) Section 40 (Ancillary Jurisdiction); or
  - (ii) Section 43 (Disputes In Respect of Land); or
  - (iii) Section 47 (Custody Of Children); or
  - (iv) Section 81 (Summoning Parties and Witnesses),

is guilty of an offence.

Penalty: Subject to Subsections (2), a fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

(2) A Village Court may, instead of imposing a penalty under Subsection (1), order an offender to perform, for community purposes, specified work or work of a specified kind, for a period or periods not exceeding—

- (a) eight hours in any one day; and
- (b) six days in any one week; and
- (c) a total period of six months,

in such manner, at such times and subject to such conditions as to supervision or otherwise, as are specified in the order.

**74. ORDER TO PAY COMPENSATION ETC.**

(1) Where—

- (a) under Section 45 a Village Court orders a person—
  - (i) to pay compensation; or
  - (ii) to pay damages; or
  - (iii) to repay a debt; and

(b) the person fails, without reasonable excuse (proof of which is on him), to obey the order,

the Village Court may—

- (c) subject to Subsection (2), order the person to serve a term of imprisonment not exceeding one week—
  - (i) for each K10.00 or part of K10.00 unpaid; or
  - (ii) where the sum is ordered to be paid otherwise than in money—for each K10.00 or part of K10.00 of the value of the sum not rendered; and
- (d) subject to Subsection (3) and Section 75, make an order for execution against the goods and chattels of the person liable to make the payment of the amount due.

(2) A term of imprisonment imposed under Subsection (1)(c) shall not exceed six months.

(3) An order for execution shall be in the prescribed form.

(4) Imprisonment imposed under this section does not operate as a satisfaction or discharge of the amount due on an order and, notwithstanding such imprisonment, a Village Court may make an order for execution against the goods and chattels of the person so imprisoned.

**75. ENDORSEMENT OF ORDER OF EXECUTION.**

(1) Subject to Section 76, an order for execution under this Act is of no force or effect unless the order is endorsed by a District Court Magistrate.

(2) The Village Court that made the order for execution shall immediately cause the order to be presented to a District Court Magistrate for endorsement under Subsection (1).

(3) The District Court Magistrate to whom the order is presented for endorsement under this section shall endorse the order without delay, unless he has reason to believe that the Village Court—

- (a) acted without jurisdiction; or
- (b) acted in excess of its powers.

(4) If the District Court Magistrate believes that the Village Court may have—

- (a) acted without jurisdiction; or
- (b) acted in excess of its powers,

he shall exercise the power of review provided by Division 11.

**76. EFFECT OF ENDORSED ORDER FOR EXECUTION.**

(1) Subject to Subsection (3), where an order for execution is endorsed by a District Court Magistrate under Section 75, the *District Courts Act 1963*, with the necessary modifications, applies in all respects as though the order for execution were an order of the District Court.

(2) The District Court Magistrate shall ensure that the necessary warrant of execution is issued.

(3) A warrant of execution issued under this section shall be executed by or under the direction of—

- (a) a police officer; or
- (b) a Village Peace Officer; or
- (c) an officer named in the warrant,

and the provisions of the *District Courts Act 1963* shall be read and construed accordingly.

***Division 10.***

***Procedure.***

**77. PROCEDURES GENERALLY.**

(1) Subject to this Division the procedures of a Village Court are as determined by the Court.

(2) The Minister may publish recommended practices and procedures for all or any Village Court.

**78. UNIFORMITY OF CIVIL AND CRIMINAL PROCEDURES.**

Subject to Section 77, there is no procedural distinction between the civil and the criminal jurisdiction of a Village Court under this Division and in any proceedings before it a Village Court may make such order under Division 3 or 4 or both, as it thinks fit.

**79. PRESENCE OF PARTIES.**

(1) Subject to Subsections (2) and (3), a Village Court shall not proceed in the absence of a party.

(2) Where a party is represented before a Village Court in accordance with Section 80, he is deemed to be present before the Village Court.

(3) Where a Village Court is satisfied that—

- (a) a party who is normally resident in the area of the Village Court is deliberately absenting himself from the area of the Village Court; and
- (b) Division 7 is inapplicable or its application is impracticable,

the Village Court may proceed in the absence of the party, but, in that case, the Village Court has no power to make an order, other than an order against him under Part V.3.

**80. REPRESENTATION.**

A party to any proceedings under Division 3, 4 or 9 is entitled to be represented by any person other than a lawyer.

**81. SUMMONING PARTIES AND WITNESSES.**

(1) In any proceedings under Division 3, 4 or 9, a Village Court may order any person who is, or in its opinion may be, a party to appear before it at a time and place specified in the order.

(2) In any proceedings under Division 3, 4 or 9, a Village Court may order any person—

- (a) who, in its opinion, may be able to give any relevant information; or
- (b) in whose possession or control there is any document or thing that may, in the opinion of the Village Court, be relevant to the proceedings,

to appear before it at a time and place specified in the order and to answer questions or produce the document or thing to the Court.

(3) An order under Subsection (1) or (2) shall be in the prescribed form.

(4) In addition to any action that may be taken under this Act where a person fails to comply with an order of a Village Court under Subsection (1) or (2), the Village Court may direct a Village Peace Officer appointed for its area—

- (a) to arrest the person and bring him before the Village Court; or
- (b) to seize and produce to the Village Court any document, or thing, the subject of the order.

**82. EXCLUSION OF LOCAL-LEVEL GOVERNMENT COUNCILLORS, ETC.**

(1) Where any proceedings are brought by, or by authority or direction of, a Local-level Government, a Village Magistrate who is—

- (a) a Councillor; or
- (b) an associate member of a Ward Committee; or
- (c) an officer or employee of the Local-level Government,

is not eligible to sit as a member of the Village Court in the proceedings.

(2) A Village Magistrate who has a substantial interest in the subject matter of any proceedings before a Village Court is not eligible to sit as a member of the Village Court in the proceedings.

**83. CHARGES.**

A charge of an offence may be brought before a Village Court by—

- (a) a Village Peace Officer; or

- (b) a member of the Police Force; or
- (c) in the case of an offence against a Local-level Government law, an officer authorized by the Local-level Government for the purpose; or
- (d) in the case of an offence against a Law made by or under an Act of a Provincial Legislature, a person authorized for the purpose by or under the Law,

in his official capacity, or

- (e) by any other person.

#### **84. RECORDS.**

(1) As far as practicable, a Village Court shall keep, or cause to be kept, a record of its proceedings in the prescribed form.

(2) Each record of proceedings shall be certified as correct by—

- (a) a Village Magistrate; or
- (b) a Village Court Clerk; or
- (c) a Deputy Village Court Clerk,

and when so certified is *prima facie* evidence of the matters set out in it.

#### ***Division 11.***

#### ***Appeals etc.***

#### **85. INTERPRETATION OF DIVISION 11.**

In this Division, unless the contrary intention appears, “**decision**” means a final decision of a Village Court under Division 3, 4 or 6.

#### **86. APPEALS.**

(1) Subject to Subsection (2), a person aggrieved by a decision of a Village Court may, within three months after the day on which the decision is pronounced, appeal, orally or in writing, to a Magistrate.

(2) Subject to Subsection (3), a Magistrate may, in the special circumstances of a particular case, allow such extension of time for appealing, as to the Magistrate seems fit.

(3) No appeal against a decision shall be made after the expiration of 12 months from the day on which a decision is pronounced.

#### **87. REVIEW.**

A Magistrate may review a decision of a Village Court at any time within a period of 12 months from the day of the decision.

**88. STAY OF EXECUTION.**

Where—

- (a) an appeal is made under Section 86; or
- (b) a Magistrate is exercising the power of review, under Section 87,

the Magistrate may, pending the outcome of the appeal or review, as the case may be, order a stay of execution.

**89. HEARING OF APPEALS AND CONDUCT OF REVIEWS.**

(1) Subject to Section 90, a Magistrate hearing an appeal against, or making a review of, a decision of a Village Court shall appoint two or more Village Magistrates of that Village Court to sit with him.

(2) A Village Magistrate who made the decision that is appealed against or that is under review is eligible for appointment under Subsection (1).

(3) The Village Magistrates shall advise the Magistrate hearing the appeal or making the review—

- (a) on custom; and
- (b) on other relevant matters within their knowledge,

but shall not otherwise take part in the proceedings and shall not take part in the decision.

(4) The Magistrate hearing the appeal or making the review shall—

- (a) consider the records (if any) relevant to the decision; and
- (b) receive such evidence (if any) and make such enquiries (if any) as he thinks necessary.

(5) Division 8 applies to and in relation to an appeal or review under this Division as if the Magistrate hearing the appeal or making the review constituted a Village Court.

(6) A party to any proceedings appealed against or under review may—

- (a) appear personally; or
- (b) be represented by any person other than a lawyer.

**90. SINGLE MAGISTRATE MAY HEAR APPEAL OR CONDUCT REVIEW.**

(1) Where—

- (a) under Section 89 a Magistrate appoints two or more Village Magistrates to sit with him on an appeal or on a review; and
- (b) the Village Magistrates, or any one or more Village Magistrates fail to sit,

the Magistrate may, notwithstanding the provisions of that section, hear and determine the appeal or the review, as the case may be.

(2) A decision of a Magistrate under Subsection (1) shall not be challenged in any court of law by reason only of the fact that the provisions of Section 89, other than Subsections (4), (5) and (6), were not complied with.

**91. SUMMONING OF WITNESSES ETC.**

(1) A Magistrate may, for the purpose of hearing an appeal against, or making a review of, a decision of a Village Court, orally or in writing, summon—

- (a) parties to the proceedings; or
- (b) witnesses.

(2) A person who fails, without reasonable excuse (proof of which is on him), to obey a summons issued under Subsection (1) is guilty of an offence.

Penalty: Subject to Subsection (3), a fine not exceeding K200.00 or imprisonment for a term not exceeding three months.

(3) A Magistrate may, instead of imposing a penalty under Subsection (2), order an offender to perform, for community purposes, specified work or work of a specified kind, for a period or periods not exceeding—

- (a) eight hours in any one day; and
- (b) six days in any one week; and
- (c) a total period of three months,

in such manner, at such times and subject to such conditions as to supervision or otherwise as are specified in the order.

**92. DECISION ON APPEAL OR REVIEW.**

(1) A Magistrate hearing an appeal against, or making a review of, a decision of a Village Court may—

- (a) confirm the decision; or
- (b) quash the decision; or
- (c) order that the matter be dealt with again by the Village Court and, if he thinks fit, give with the order a direction as to how any defect in the earlier proceedings may be overcome.

(2) The decision shall be confirmed unless the Magistrate is satisfied that—

- (a) the Village Court acted in contravention of any Constitutional Law, Act or subordinate enactment applying to it; or
- (b) the Court was not properly constituted; or
- (c) except as provided for by this Act, a party was not present; or



- (d) a party was not given a reasonable opportunity to present his case personally or by a representative; or
- (e) the Court exceeded its jurisdiction or its powers; or
- (f) the Village Magistrates constituting the Court included a Village Magistrate who had a substantial interest in the subject matter of the proceedings such as to disqualify him from adjudicating on the matter,

and there has been a substantial miscarriage of justice.

(3) The decision shall be confirmed where by reason of—

- (a) the lapse of time; or
- (b) the failure of the aggrieved party to appeal earlier,

it would, in the opinion of the Magistrate, be unjust to reopen the matter.

**93. RECORD OF DECISION.**

The Magistrate hearing an appeal or making a review shall—

- (a) make a record of—
  - (i) his decision on the appeal or review; and
  - (ii) his reasons; and
- (b) forward a copy of the record to the Provincial Supervising Magistrate.

**94. FURTHER REVIEW BY PROVINCIAL SUPERVISING MAGISTRATE.**

(1) On receipt of a record under Section 93 the Provincial Supervising Magistrate may, unless he was the Magistrate who heard the appeal or made the review, review the decision.

(2) For the purpose of a review under Subsection (1), the Provincial Supervising Magistrate has all the powers and jurisdiction of a Magistrate conducting a review under the preceding provisions of this Division but is not bound by those provisions (other than Section 89(4) and (5) and Section 92), and those provisions with the necessary modifications, apply accordingly.

**95. CUSTODY ETC., DURING APPEAL OR REVIEW.**

While a decision in respect of an order for imprisonment made under this Act by a Village Court is under appeal or review, the convicted person shall be—

- (a) held in such custody; or
- (b) released on such conditions,

as the Magistrate hearing the appeal or making the review orders.

**PART VI. – RELATIONSHIP BETWEEN VILLAGE COURTS AND OTHER COURTS.**

**96. MATTERS DEALT WITH OR BEING DEALT WITH IN OTHER COURTS.**

(1) A person shall not be punished by a Village Court for an act for which he has already been punished by another Village Court or other court.

(2) Where a person has been tried for, and acquitted or convicted of, an offence by a Village Court or other court, he shall not be tried again for the same offence, or for an offence that is substantially the same offence, by a Village Court.

(3) When a matter has been dealt with by a Village Court, a plea of *autrefois acquit*, *autrefois convict* or *res judicata* is available in a court of summary jurisdiction in the same way as if the matter had been dealt with by another court of summary jurisdiction.

(4) Nothing in the preceding provisions of this section prevents proceedings for relief (whether by way of compensation or otherwise) being taken in a Village Court or other court after a decision has been given in a Village Court or other court, where proceedings for such relief were not disposed of in the first proceedings.

(5) Subject to Subsection (7) and to Section 97, where proceedings have been commenced in a Village Court in relation to a matter, proceedings may be taken in another Village Court or another court in relation to the matter, but shall not be concluded until the first mentioned proceedings have been completed.

(6) Subject to Section 97, where proceedings have been commenced in a court other than a Village Court, in relation to a matter, no proceedings shall be taken in a Village Court until the first mentioned proceedings have been completed and—

- (a) the time limited for appeal (if any) has expired and no appeal has been instituted; or
- (b) the proceedings on any appeal, and on any further appeal, have been dealt with.

(7) Nothing in the preceding provisions of this section prevents proceedings being taken for an indictable offence that has already been the subject of a decision by, or in respect of which proceedings are pending in, a Village Court, and in that case—

- (a) the decision of the Village Court does not give rise to the defence of *autrefois acquit* or *autrefois convict*; and
- (b) if an order is made against a person in the Village Court and the person is convicted of an offence in the proceedings for the indictable offence, the court that so convicts him shall take into account, in passing sentence, anything done or suffered under the order.

(8) In a case referred to in Subsection (7)(b), the court that convicts the person may make such order as it thinks reasonable for adjusting rights and liabilities under the order of the Village Court.

**97. REFERENCE OF MATTERS BETWEEN VILLAGE COURTS AND OTHER COURTS.**

(1) Where—

(a) proceedings have been commenced in a Village Court; and

(b) it appears to the Village Court that—

(i) the proceedings; or

(ii) any part or aspect of the proceedings,

could more appropriately be dealt with by some other court (including another Village Court) having jurisdiction in the matter,

the Village Court may make an order referring the matter to that other court.

(2) Where—

(a) proceedings have been commenced in a court other than a Village Court; and

(b) it appears to the court that—

(i) the proceedings; or

(ii) any part or aspect of the proceedings,

could more appropriately be dealt with by a Village Court having jurisdiction in the matter,

the court may make an order referring the matter to that Village Court.

**PART VII. – GROUP RESPONSIBILITY.****98. RECOGNITION OF GROUPS.**

For the purposes of proceedings before it, a Village Court may–

- (a) recognize a number of persons having a common interest as a group; and
- (b) determine in what manner the group may appear or be represented before it.

**99. ORDERS IN RESPECT OF GROUPS.**

(1) Where a group is recognised under Section 98–

- (a) the representative of the group shall, for the procedural purposes of this Act, be treated as if he were a party; and
- (b) an order may be made for, against, or affecting, the group as if it were a natural person.

(2) Subsection (1) does not make a recognized group liable to conviction for an offence.

**100. EFFECT OF ORDERS IN RESPECT OF GROUPS.**

(1) Except where–

- (a) in accordance with custom, only certain members of a recognized group are personally or fully liable (in which case the Village Court shall so state in its order); or
- (b) the Village Court for any other reason, otherwise orders,

an order made by a Village Court in respect of a recognized group has effect as though it were an order made against each member of the group as an individual party to the proceedings.

(2) Sections 44, 45 and 46 apply, in accordance with Subsection (1), to an order affecting a group, and subject to those sections as so applying the Village Court may, by the same or another order, apportion rights and liabilities under the order among members of the group in such manner as it thinks fit.

**PART VIII. – OFFENCES AT GENERAL LAW.**

**101. PROSECUTION OF OFFENCES AGAINST PART VIII.**

A prosecution for an offence against this Part shall not be brought in a Village Court.

**102. APPLICATION OF CRIMINAL CODE ETC.**

For the purposes of the *Criminal Code 1974* and of any other law relating to offences by, against, or in connection with—

- (a) persons holding judicial office, a Village Magistrate is a person holding such office; and
- (b) persons employed in the Public Service, a Village Court Clerk or a Deputy Village Court Clerk is deemed to be a person so employed; and
- (c) Members of the Police Force, a Village Peace Officer is deemed to be such a member,

within the meaning of the *Criminal Code 1974* or other Law.

**103. UNAUTHORIZED PERSONS WEARING INSIGNIA ETC.**

(1) A person who, not being a Village Court Official, without lawful excuse (proof of which is on him)—

- (a) is in possession of, or wears—
  - (i) badges of office, or—
  - (ii) other insignia of office; or
  - (iii) a colourable imitation of such badges or insignia,  
issued under Section 106; or

(b) assumes the description or the designation of a Village Court Official; or

(c) falsely holds himself out to be a Village Court Official,

is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding three months.

**104. SUPPLYING ETC., UNAUTHORIZED INSIGNIA.**

A person who unlawfully—

- (a) sells or supplies to another person; or
- (b) employs or induces another person, not being a Village Court Official, to wear,

badges or other insignia of office issued under Section 106, or a colourable imitation of any such badges or insignia, is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

**105. PROMULGATION.**

The Minister may determine in what manner—

- (a) the establishment and jurisdiction of Village Courts; and
- (b) the appointment of Village Court Officials,

shall be promulgated.

**106. BADGES AND INSIGNIA OF OFFICE.**

The Minister may cause to be issued to Village Court Officials badges and other insignia of office.

**107. PERSONS IN CUSTODY.**

(1) A person in custody under this Act shall—

- (a) be supplied with; or
- (b) be given reasonable opportunity to supply himself with,

reasonable food and shelter.

(2) For the purposes of Subsection (1), a person who is performing work under an order under Section 42, 44, 73(2) or 91(3) is deemed to be a person in custody.

**108. APPLICATION OF SECTION 146 OF THE *POLICE ACT*.**

Subject to Section 68(4), Section 146 of the *Police Act 1998* (which requires members of the Police Force to execute certain processes and serve certain summonses and warrants) does not apply to or in relation to process of a Village Court.

**109. INDEMNITY.**

(1) A Village Court Official, or other person acting under or for the purposes of this Act, is not liable for any act done or any omission made, in good faith, for the purposes of this Act whether or not the act or omission was within his lawful power or jurisdiction.

(2) The burden of proof of a lack of good faith is on the person who relies on the lack.

**110. OFFENCES WITH RESPECT TO VILLAGE COURT RECORDS.**

(1) A person who—

- (a) without the authority of a Village Court, alters the records of the Village Court; or
- (b) wilfully records incorrectly a decision of the Village Court; or
- (c) wilfully damages records of a Village Court,

is guilty of an offence.

Penalty: Subject to Subsection (2), a fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

(2) Prosecution for an offence against this section may only be brought in a District Court.

### **111. VILLAGE COURT OFFICIAL TO BE WORKER, ETC.**

A Village Court Official is a worker within the meaning of “worker” in the *Workers’ Compensation Act 1978*.

### **112. ADDITIONAL POWERS OF HEAD OF STATE.**

(1) Where there is no provision, or no sufficient provision, in this Act in respect of any matter or thing that is necessary or desirable to give effect to this Act, the Head of state, acting on advice, may, by instrument, determine in what manner or form the lack of provision or the insufficient provision shall be supplied.

(2) Sections 75, 76 and 91 of the *Interpretation Act 1975* apply to a determination under Subsection (1) as if it were a regulation.

### **113. REGULATIONS.**

(1) The Head of state, acting on advice, may make Regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular may make Regulations prescribing—

- (a) offences for the purposes of Section 41(a); and
- (b) the procedure for, and on, the reference of a matter to a Village Court or other court under Section 97; and
- (c) penalties of fines not exceeding K200.00 or imprisonment for terms not exceeding three months for offences against the regulations (other than offences referred to in Paragraph (a)).

(2) A prosecution for an offence to which Subsection (1)(c) applies shall not be brought before a Village Court.

(3) Regulations may be made under this section to apply to, and in respect of, the whole of the country and all Village Courts or a part of the country, or some Village Courts.

**PART IX. – REPEAL, SAVING AND TRANSITIONAL.**

**114. INTERPRETATION.**

In this part “**repealed Acts**” means the Acts specified in Schedule 1.

**115. REPEAL AND SAVING.**

(1) The Acts specified in Schedule 1 are repealed.

(2) Regulations made under the repealed Acts shall, so far as they are not inconsistent with this Act, remain in force until they have been revoked by Regulations made under this Act and shall be deemed for all purposes to have been made under this Act.

**116. VILLAGE COURTS ESTABLISHED UNDER THE REPEALED ACT.**

Village Courts established under the repealed Acts are deemed to have been established under this Act.

**117. APPOINTMENTS UNDER REPEALED ACT.**

Village Court Officials appointed under the repealed Acts are deemed to have been appointed under this Act and, until appointments are made under this Act, the terms and conditions of employment in force immediately before the commencement of this Act shall have effect.

**118. ACTIONS ETC., NOT TO ABATE.**

Where, immediately before the commencement of this Act, any action or proceeding was pending or existing under the repealed Acts, the action or proceeding, as the case may be, does not, on the commencement of this Act, abate or discontinue but it may be prosecuted, continued or enforced under the repealed Acts as if this Act had not come into operation.



**SCHEDULE 1 – REPEALED ACTS.**

Sec. 115.

*Village Courts Act* (Chapter 44)

*Village Courts (Amendment) Act* 1986 (No. 2 of 1986).

Office of Legislative Counsel, PNG