LAW REFORM COMMISSION

REORGANISATION OF LOWER COURTS

WORKING PAPER NO.15

AUGUST 1980

TABLE OF CONTENTS

A. INTRODUCTION.

On 3rd March 1977, the then Minister for Justice, N. Ebia Olewale forwarded a reference to the Commission to review the Local and District Courts with a view to amalgamating them into a single Magistrates Court.

Among the matters specifically referred to in the reference are: A request to review and consider changes to both the civil and criminal procedures which presently are archaic and cumbersome and do not reflect the necessity for simple procedures to effect rapid disposal of matters before the court, request to consider and make proposals in relation to the jurisdiction of magistrates, in particular the role magistrates play in the mediation of disputes and the awarding of compensation in both civil and criminal cases, attention is to be given to the range of penalties available and to consider other dispute settlement techniques whether customary or otherwise, that could be used to settle matters before the court. A further request was made for the Commission to consider any changes that are required to the constitutions and structures of the courts and the administrative structures and the form of documents used by the courts.

Finally, the present powers of the courts needs to be reviewed in the light of the impact of the Constitution and the enactment of the Summary Offences Act 1977 and legislation relating to Search, Arrest and Bail.

This Working Paper puts forward for comment, proposals for change to the present legislation governing both the Local and District Courts. The proposals in the Working Paper are not intended to contain the Commission's final recommendations, but are intended to promote discussion so that a final report may incorporate a wide range of responses from all parts of the community.

B. AMALGAMATION OF DISTRICT AND LOCAL COURTS.

There is a growing awareness that the distinction between District and Local Courts is relatively meaningless. It is felt that the two courts be streamlined and blended into one magistrates court with the present system of jurisdictional divisions based on the present gradings of magistrates.

The present grading of magistrates with varying jurisdictional divisions are as follows:-

Magistrate Grade I	Local
Magistrate Grade II	Court
Magistrate Grade III	District
Magistrate Grade IV	Court

A Local Court magistrate has jurisdiction in criminal matters over all offences against any law in force in Papua New Guinea which may be triable summarily and over all contraventions of rules made by local government councils having authority in the area for which the local court is established (Local Courts Act (Section 13(1)(a)). The local court in criminal cases may only impose a fine not exceeding K100.00 or order imprisonment not exceeding six months (section 19) and may also imprison an offender who fails to pay a fine.

In civil matters, subject to certain exceptions, a local court has jurisdiction over "all actions in law or in equity" (section 12 (1)(b)). It also has jurisdiction over "all matters arising out of and regulated by native custom" other than matters which are within the jurisdiction of the land courts. It may order the defendant to pay up to K200.00 in compensation to an injured party and may also make any order "as the justice of the case requires" (section 16). A complainant bringing an action in the local court cannot divide his cause of action and bring a series of complaints. He can elect to abandon the amount in excess of K200.00 or commence an action in the District Court (section 164). For instance, if a complainant claims K600.00 he cannot bring three separate actions each for K200.00. He must either abandon his claim in the excess of K400.00 or take action in the District Court.

Limitation is placed on the civil jurisdiction of the local court by section 14 of the Act which refers to the nature of the case and the geographical area of the court. It has no jurisdiction over cases on the validity of non-customary marriages or proceedings for divorce or judicial separation. Although it has jurisdiction over marriages by native custom, it should be noted that it is limited by section 17 of the Act in that it has no power to grant a divorce but has power to issue a certificate that a divorce has taken place according to native custom.

In cases where more than one court has jurisdiction on a question, or proceedings have been started in more than one court or another court would be better for the case, sections 41 and 42 provide for transfer of cases from one court to another.

It was intended that local courts would deal mostly with customary disputes between Papua New Guineans. To accord with the customary practice of compromise, section 31 of the Act provides that a local court may mediate in civil proceedings.

By virtue of section 43(1), a person aggrieved by a decision of a local court may appeal directly to the National Court. However, the government may not appeal against a complaint brought by them which has been dismissed. (Section 43(2). Provision is also made for the Secretary of Justice to appeal against a decision of a local court or on behalf of a party or to intervene in an appeal to the National Court if it is a matter of public importance, (section 44).

The District Courts Act 1964 establishes the district courts and provides for their jurisdiction and powers. They are staffed by two grades of magistrates (magistrates grades III and IV). In order of seniority, magistrates grade IV are stipendary magistrates who must be lawyers with at least five years practical experience. There are also resident magistrates and reserve magistrates and they can be grade III or IV depending on experience. (See sections 6 to 12 of the Act).

Section 28 of the Act provides that district courts have criminal jurisdiction over all offences which are punishable on summary conviction and over all non-indictable offences. Offences punishable by summary conviction are also termed simple offences in the Act. District courts may conduct committal proceedings in cases where a person is charged with an indictable offence (sections 100-110).

The civil jurisdiction of the district court, in general terms, is the power to hear "all personal actions in law or equity where the amount of the claim does not exceed one thousand kina. This figure is raised to two thousand kina when a stipendary magistrate sits (section 19(2)). The court has no jurisdiction over actions about land, however it may make temporary orders about who should have possession of land. Additionally, it has no jurisdiction over disputes under wills and settlements, infringements of trade marks, false imprisonment or malicious prosecution, seduction or breach of promise to marry (section 29(4)).

The rules about area of jurisdiction of district courts are similar to those of the local courts except that there is no power to go beyond the area of the court as is the case with local courts (20 miles). Appeal from a district court lies as of right to a single judge of the national court (sections 225 and 226).

It is proposed that the local and the district courts be blended into a single magistrates court based on the four grades of magistrates exercising their respective jurisdictions.

C. JURISDICTION.

1. CIVIL JURISDICTION.

(a) Extension of monetary limits of civil jurisdiction of magistrates.

At present there are four grades of magistrates in the Local and District Courts and each of them has monetary limits in the exercise of their civil jurisdictions.

Magistrates grade I (Local Court) can award up to K200.00, grade II (with District Court reserve powers) up to K1000.00, magistrates grade III (District Court Resident) up to K1,000.00 and magistrates grade IV (District Court stipendary) up to K2,000.00. These limits were set in 1964 when the courts were established and all matters over K2,000.00 must go to the National Court.

It is evident that a gap exists in the civil jurisdiction of our lower courts and that as more and more nationals are becoming involved in commerce, a review of the civil jurisdiction of the lower courts is needed. These nationals will be involved in civil disputes over K2,000.00 in value. At present most nationals have to face the elaborate procedures and higher costs of National Court or do without a forum. Consequently, a proposal is made for the extension of the monetary limits of the civil jurisdiction of the various grades of magistrates. The proposal would require one single amendment to section 29 of the District Courts Act and section 16 of the Local Courts Act.

In a submission to the Minister for Justice dated 8th August 1979, the Magisterial Services Commission made the following proposals in respect of the apportionment of amounts to apply to the four grades of magistrates:-

	Present	Proposed
Magistrates Grade I	K200.00	K500.00
Magistrates Grade II	K1,000.00	K2,000.00
Magistrates Grade III	K1,000.00	K4,000.00
Magistrates Grade IV	K2,000.00	K8,000.00

The Law Reform Commission on the other hand feels that a much higher monetary limit should be placed. Consequently, the following amounts are proposed for the four grades of magistrates:-

	Present	Proposed
Magistrates Grade I	K200.00	K1,000.00
Magistrates Grade II	K1,000.00	K3,000.00

Magistrates Grade III	K1,000.00	K5,000.00
Magistrates Grade IV	K2,000.00	K10,000.00

These amounts refer to what can actually be awarded, irrespective of the amount claimed by the plaintiff.

(b) Other Jurisdictional Matters. (civil)

The Magisterial Services Commission further included in its submission proposals in relation to affiliation proceedings and general custody matters.

In relation to affiliation proceedings the Magisterial Services Commission recommended that jurisdiction should be taken away from the Children's Courts and given to the proposed Magistrates Court. A special division in the proposed Magistrates Court could be set up to cater for this. Proceedings should be held in a court room and that only interested parties should be allowed to be present.

In relation to custody matters, it is proposed that interim custody orders, particularly pending a divorce, should be within the jurisdiction of all magistrates. Magistrates would need to be trained in the principles to be followed. They should also be allowed to grant rights of access.

At present magistrates powers relating to the custody of children are limited to cases under the Deserted Wives and Children's Act. So if the wife deserts and takes the children the husband must apply to the National Court for custody under the Infants Act.

It is felt also that General Law and Customary Divorces should be dealt with in the Magistrates Court. Because of difficulties arising from accessibility to lawyers and to the National Court, cost, and custom, Grade 4 magistrates should be allowed to grant divorces, and to make awards of custody of children following divorces. With the proposed increase in the monetary jurisdiction of Magistrates Grade 4, property settlements after divorce could be well within their jurisdiction.

The above proposals have not received careful consideration at the time of the writing of this working paper. However, it should be noted that careful consideration of them would be necessary in the light of the Commission's work on Family Law and Family Law Courts.

2. CRIMINAL JURISDICTION.

(a) Indictable Offences Triable Summarily.

The Law Reform Commission has proposed that some of the less serious indictable

offences found in the Criminal Code Act become triable summarily by senior magistrates, magistrates Grade IV. Details of the proposals are contained in Report No.8 of 1978. A District Courts (Indictable Offences) Bill 1977 has been drawn up incorporating the proposals in the Report.

At present all indictable offences must be tried by a judge of the National Court except those few that call for summary conviction (see sections 432 to 444 of the code). The process is expensive as well as time consuming from the time of arrest till the case is finally disposed of. A study conducted by the Commission (unpublished study of committals in Port Moresby in 1975) shows that a person arrested for a less serious indictable offence will usually wait between four and eight months before his case is finished with.

In order to minimise this expense and overcome delays, it was proposed that the senior magistrates' criminal jurisdiction be increased so that they can deal summarily with many more indictable offences than at present. It was also proposed that the senior magistrates be entitled to give a maximum sentence of four years to offenders.

By way of summary, the offences suggested to become triable summarily by Magistrates Grade IV are divided into the following categories -

1. Offences relating to letters, telegrams, etc.
2. Indecent dealing and assault on women and girls.
3. Pornography and gambling offences.
4. Assaults up to and including assaults occasioning bodily harm.
5. Stealing money or other things.
6. Breaking and entering offences.
7. Lesser forms of arson.
8. Health and quarantine offences.
9. Miscellaneous offences such as unlawful assembly, and unlawfully using a motor vehicle, and dangerous driving causing death.
10. Attempts to commit any of these offences.
11. Conspiring to commit the offences.
12. Accessories in respect of the offences.

As proposed there would altogether be seventy seven indictable offences that would be, triable summarily (i.e. no committals) by senior magistrates. The senior magistrates may apply the general provisions of the Criminal Code as to matters of law, punishment, justification, attempts and other matters which are coincidental to the hearing of a criminal trial. The District Courts would be empowered to refer difficult matters of law to the National Court for its decision when they are dealing with any one of these "brought down" offences.

If this proposal is brought into effect, it would significantly reduce the work load of the National Court in its criminal jurisdiction by between 30% to 40%. Moreover, it will alleviate the more serious problem of about 70% of people charged with less serious indictable offences being held in custody from the time of their arrest until their case is finalised.

A major amendment to the District Courts Act needed considering in light of these indictable offences "brought down" to be triable summarily is the six month limit imposed by section 44 of the Act.

If these indictable offences are to be dealt with by the senior magistrates, consideration is to be given in the removal of six months time limit now applicable. This could be done in relation to indictable offences triable summarily and not for other summary offences. Otherwise, the result could be that the judges will still spend time hearing relatively minor offences.

There are two views on the proposal on the time limit. The Rabaul committee of magistrates have proposed a twelve months time limit and the Port Moresby committee has proposed a twenty-four months limit. Perhaps the twelve months limit is more reasonable as it ensures that the police promptly investigate the case and may be able to gather evidence and witnesses before they disappear, and that back-logging with old or stale cases can be avoided.

(b) Simplifying Committal Proceedings.

It seems that committal hearing has become a farce in this country and a major reform in this regard has been investigated by the Law Reform Commission and the Magisterial Services Commission. The present procedures are based on the ideal that an accused person should not be required to stand trial on an indictable offence unless the prosecution can establish that it has sufficient evidence to obtain a conviction.

Unfortunately the present procedures produce delays. Frequently there is a confusion in the minds of the persons involved about the exact nature of the preliminary hearing and the reasons for it being held. It is time consuming, inconvenient for witnesses, confusing to the accused and causes delays in getting cases ready for trial in the National Court.

As a part of the overall review of the criminal justice system and in order to simplify criminal procedures and to speed up hearings of criminal trials, the Law Reform Commission and the Magisterial Services Commission have investigated the holding of preliminary or committal hearings when indictable offences are tried.

From the responses obtained following the publication of Joint Working Paper No.2 and Working Paper No.13 it is apparent that change is needed. However, there is a divergence of opinion as to whether committal proceedings should be streamlined or should be abolished altogether.

In the Working Papers it was proposed that committal proceedings could be conducted by a "hand-up-briefs" system. As an alternative proposition it was suggested in Working Paper No.13 that committal proceedings should be completely abolished and that proceedings in the National Court should be commenced by an indictment presented by the Public Prosecutor in the National Court.

Comments have been divided fairly evenly between the two proposals and although the Commission is of the opinion that ultimately, the holding of committal hearing should be abolished, it recognises that such a dramatic change could create difficulties having regard to the resources of the courts, the police, the Public Prosecutor, the Public Solicitor and all persons involved in the administration of justice.

The Commission is however concerned at the present stage that where a defendant is charged with crimes of a very serious nature such as murder, manslaughter and crimes for which the death penalty is prescribed, he should not be deprived of any possibility of raising matters in defence, and that the prosecution should be required to establish its case and the defendant given an opportunity to test the evidence of the prosecution if he desires.

As a short term measure the Commission has recommended that a system of "hand-up-briefs" be adopted for most indictable offences, that full committal proceedings be continued in the meantime for the offences of murder, manslaughter and offences that carry death sentence. In the longer term, the Commission recommends that preliminary hearings of indictable offences be completely abolished. Details of the Commission's findings are published in the Law Reform Commission Report No.10 of 1980.

In the Commission's Report No.8 of 1978 - Indictable Offences Triable Summarily, the recommendation is that seventy-seven less serious offences be tried summarily. To quite a considerable degree, this will have the effect of reducing the number of committal proceedings to be held.

The proposals for a "hand-up-brief" system are outlined in detail in the Commission's Report No.8 of 1978. It entails that except in the case of most serious offences such as murder, manslaughter and offences carrying death penalties, the committal hearing can be simplified by having the evidence at the committal proceeding, the statements of the prosecution witnesses would be tendered to the court and the accused person. This would form the basis of the prosecution case and upon this, the magistrate would have to decide whether there was enough evidence to place the person upon trial.

D. MEDIATION AND COMPENSATION POWERS AND POWERS OF SENTENCING AND DISPOSAL.

1. MEDIATION AND COMPENSATION POWERS.

At present neither of the Local or District Courts Acts provides for mediation in criminal matters although section 31 of the Local Courts Act specifically provides for mediation in civil cases. Thus, by and large the "hear and determine" or formal arbitration role of the magistrates take precedence over the mediatory and advisory role. As a result many Papua New Guineans who are brought before the courts have a preconceived notion that they would no doubt be punished by the magistrates as they believe that the whole court system is against them.

The "hear and determine" system of administering justice is highly inappropriate to the circumstances of this country and it is proposed that all grades of magistrates be empowered to play an increasing role in the mediation of cases and awarding of compensation in both civil and criminal cases.

Many Papua New Guinea societies do not recognise the clear distinction between criminal and civil matters that has developed in the English common law. This distinction in the common law took a long time to develop. In the Anglo-Saxon period criminal matters were treated as private disputes to be dealt with by private retribution or negotiation and compensation between the affected persons or groups. It was only a century after the Norman invasion that the King started to take over control of law and order and introduced the concept of the "King's peace" that this distinction between civil and criminal began to emerge, and the role of private retribution began to decline.

Papua New Guineans do not see the distinction between civil and criminal matters as important. If a member of a clan is killed by a member of another, the matter can be settled by payback or by compensation. Other less serious "offences" may be dealt with similarly.. What is seen as important is not the restoration of the "king's peace", but the restoration of peace and harmonious relations between the disputing parties or clans.

Within the clan or village, incidents such as assaults, stealing and unlawful damage to property which would be classified as criminal in the common law, are often settled by negotiation and compensation. Assaults, thefts etc. can be and are often manifestations of long standing disputes between individuals or groups and in negotiating out compensation in the village, the wider aspects of the disputes are taken into account because the goal is the restoration of harmony, not punishment for breach of an outsider's imposed peace.

A great number of offences that are dealt with in the Local and District Courts are in fact disputes of this Kind. They can best be settled, not by imprisonment and fine, but by getting the parties together and by helping them to work out their differences.

It is proposed that all grades of magistrates be empowered under the proposed Magistrates Court Act, in situations where the offence looks more like a manifestation of a private dispute than a breach of public order, (such as street or traffic offence or assaulting a policeman) to first attempt to mediate the dispute and if successful to dismiss the charge. This must be done in both civil and criminal cases.

Compensation.

In the exercise of its criminal jurisdiction, a Local Court may, in addition to a fine or imprisonment, order compensation up to K200.00 be paid (see Section 19 of the Local Courts Act). Section 172 of the District Courts Act obliquely suggests that District Courts may have power to award compensation in criminal cases.

As mentioned above, compensation is a widely accepted means of settling disputes in Papua New Guinea. It is proposed that in the new Magistrates' Court all grades of magistrates be empowered to -

1. mediate disputes and offences (as above) and award compensation as part of the mediation process and that such orders be enforceable as court orders;

2. convict and award compensation either as the only penalty or in addition to the other penalties such as -

   (a) deferment of sentence
   (b) bond (conditional discharge)
   (c) fine
   (d) imprisonment

In awarding compensation care should be taken to see that compensation is not just made as an extra burden on the offender. Its effect should be weighed with the effect of the other penalties imposed on him. Further recommendation is that compensation provision with any criminal conviction should be retained (see section 19 of the Local Courts Act) but should be increased from K200.00 for magistrates grade I to K500.00 and an additional K500.00 for each of the three grades of magistrates

2. DISPOSAL OF CRIMINAL MATTERS.

At present both the District and Local Courts have limited powers to dispose of criminal matters before them. Some of their disposal powers are clear whilst others aren't so clear.

It is apparent that consideration should be given for increasing the forms of sentence available in the lower courts and clarify the situation where there is uncertainty as to disposal.

Present Sentencing and Disposal Powers.

Local Court:

1. Acquittal.
2. Conviction. The forms of sentence after conviction are -

   (a) fine - maximum of K100.00 payable in a lump sum, by installments or in kind - (section 19(2)).

   (b) Imprisonment up to six months (section 19(1)(a)).

   (c) Imprisonment in default of payment of fine according to the formula set out in section 19(4).

   (d) Fine in lieu of imprisonment even though the penalty provision does not provide for a fine (section 10A(2)).

   (e) Bond, upon entering into own recognizance with or without sureties to keep the peace and be of good behaviour bond for one year - section 19(g) of the Criminal Code Act.

   (f) Postponed sentence and bond upon own recognizance with or without sureties to keep the peace and be of good behaviour and to appear for sentence when called upon to do so within a set period. No maximum period for bond or period when a sentence may be imposed - section 19(h) of the Criminal Code Act.

It should be noted that although both forms of sentences (e) and (f) (above) are used quite a lot by magistrates, there is a doubt as to their application to offences outside of the Code. This doubt is raised because chapter IV of the Code in which section 19 is found does not have a provision as is found at the end of chapter V, section 36 of the Code. Section 36 applies chapter V to any offences against any law of Papua New Guinea including those in the Code.

(g) In addition to a fine or imprisonment the court may make any other reasonable order that the justice of the case dictates - section 19(1). This covers -

(i) compensation to a maximum of K200.00 (section 19(1)).

(ii) restitution probably.

3. Other forms of Disposal.

(a) The Local Court can dismiss the case because it is trivial - section 20.

(b) Discontinuance by prosecution.

(c) Adjourn sine die. This practice is used sometimes when a police witness is on leave, a civilian witness cannot be found and when the defendant does not appear when summoned and a bench warrant is issued for his apprehension.

(d) Striking out for want of prosecution. This practice appears to allow prosecution to be recommenced.

District Court.

1. Acquittal.

2. Conviction. The forms of sentence after conviction are as follows -

(a) fine up to a maximum fine payable for the offence as set out in the provision providing the penalty for the offence. The time to pay and payment by installments are provided for by section 171 of the Act.

(b) Imprisonment - maximum 12 months.

(c) Imprisonment in default of payment of a fine - sections 173 to 176.

(d) Fine in lieu of imprisonment - section 206(2).

(e) Bond under Section 19(g) of the Criminal Code Act.

(f) Postponed sentence and bond under section 19(h) of the Criminal Code.

3. Other forms of Disposal.

(a) Dismissal because trivial.

(b) Discontinuance by prosecution. It is unclear what the

consequences of a prosecution's withdrawl or discontinuance of a case. On one reading of Section 168 this would entitle the defendant to a dismissal and upon application, to a certificate of dismissal. A certificate of dismissal acts as a bar to a further charge (section 168(2)). It should be noted that section 168 makes no distinction between a dismissal on the merits or any other form of dismissal.

(c) Adjourn sine die - similar to Local Courts.

(d) Striking out for want of prosecution Section 168 again raises doubts about the effect of such a striking out.

(e) Conditional discharge prior to conviction subject to a bond to be of good behaviour for up to three (3) years and to appear for conviction and sentence within that period - Section 138(1)(b).

It is unclear whether District Courts have the power to order compensation or restitution. The wording of section 138(2) suggests a power to order restitution by the defendant, but it can equally be well explained as granting a power to the court to order restitution of court exhibits and goods held by the police to their rightful owners. Section 172 suggests a power to order compensation.

4. Disposal by Striking Out/Withdrawl/Adjournment/Dismissal.

Even though the procedures set out in the Local Courts Act are few and simple, they leave open the question of what the court should do at different stages of the hearing where either the prosecution cannot or does not wish to proceed or where the defendant is not present. The procedures of the District Court are set out in the District Court Act and are partly a matter of practice.

Section 95 of the District Courts Act gives a general power to adjourn the unfinished business of the court whilst section 96 gives the court a complete discretion to adjourn to a set date or sine die.

Section 130 provides that if the defendant attends the court in answer to a summons for a simple offence but the informant or his counsel does not appear, then the court shall dismiss the summons unless it considers it proper to adjourn it. If the court dismisses a charge at that or any subsequent stage, it appears from section 168 that the defendant would be entitled to a certificate of dismissal which would bar further proceedings for that offence. Section 168 is not limited to a dismissal

on the merits.

On the other hand if it is the defendant who does not appear in answer to a summons, the court may, upon being satisfied that the defendant had been served with the summons, issue a bench warrant and adjourn the case until the defendant is arrested - sections 131 and 132. Section 131(a) allows the court to hear the charge ex-parte, but this power is now limited by section 37(5) of the Constitution to charges which do not have a penalty of imprisonment.

There is evidently a need to develop a clear legislative guideline on the effect of striking out, withdrawl, adjournment and dismissal. It should take into account the fact that different considerations apply at different stages of the trial. It should also reflect the spirit of section 37(3) of the Constitution which provides that -

> "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."

Thirdly it should take into account the fact that when a court is hearing and determining criminal charges it is acting in a judicial capacity. It is presiding over a contest between the prosecution and defence. It should not enter the contest itself or presume to conduct the prosecution if the prosecutor wishes to withdraw. (see R v. Melbourne Justices, ex parte Herald and Weekly Times Ltd. (1935) V.L.R. 377).

It is proposed that the courts powers to strike out, adjourn or dismiss be confined as follows in the proposed Magistrates Court Act -

1. If the defendant appears, but the prosecutor does not appear or cannot proceed, then the court should either strike out the case or grant one adjournment not exceeding 14 Days. If the prosecution does not appear or cannot proceed on the adjournment, then the case should be struck out.

   The striking out at this stage or up until the evidence is begun should <u>not</u> be a bar to a further charge for the same offence. However, the limitation period for bringing the charge should be treated as running until a fresh information is laid (i.e. six months)

2. If the defendant does not appear at any stage, then the court should issue a warrant for his arrest and adjourn the case until he is arrested. If the penalty for the offence does not include imprisonment, then the court should have the discretion to hear the case ex parte but only if it considers this just and proper in the circumstances.

3. If the defendant is present either after an adjournment or otherwise and the court has began to take evidence at the trial but the prosecution either does not appear or cannot proceed or does not want to proceed, then the court should dismiss the case, unless it is satisfied that it is in the interests of justice to grant one adjournment not exceeding 14 days. If the prosecution does not appear or cannot or does not wish to appear after the single adjournment, then the case should be dismissed.

   Dismissal at this stage should act as a complete bar to a fresh charge for the offence. The defendant should be entitled to a certificate of dismissal on application but even without it the dismissal, once proven, should act as a complete bar.

4. The court either on its own motion or upon application by the defendant should have the power to dismiss a case after the prosecution has given all its evidence if the court considers that the evidence is so weak that no jury acting reasonably on the evidence could convict. Such a dismissal should act as a complete bar to a fresh charge for the offence.

It is proposed that some provisions for imposing a traditional type of punishment be made in the proposed Magistrates Court Act. These could include public apology in a village, a feast etc.

Weekend imprisonment should be available and that community work orders should be available. Section 19B of the Local Court Act and section 205A of the District Courts Act provide for an order of community work to be made by both courts on a convicted person. These provisions should be retained in the new Magistrates Court Act.

In relation to sentencing and allied powers the following rules are proposed -

1. Prior to conviction, but no earlier than the close of the prosecution's case, the court should have the power to dismiss a charge as trivial. This power would be in addition to the power to dismiss on the ground of no case to answer.

2. Prior to conviction, but after deciding that a case has been proven beyond reasonable doubt, the court should be empowered to -

   (i) dismiss the case as trivial;

   (ii) discharge without conditions (unconditional discharge);

   (iii) order restitution if a case is of such a nature as theft and there is no difficulties about title to the goods;

   (iv) release the defendant on bond (conditional discharge):-

   - to be of good behaviour,
   - to observe certain conditions (these could be spelt out but could include restitution) and
   - to appear for sentence when called upon,
   - bond period not to exceed two (2) years.

3. After conviction -

   (a) power to discharge without conditions or other penalty.

   (b) postpone sentence up to six (6) months, with power in appropriate cases to order restitution.

   (c) bond (conditional discharge) -

      (i) to be of good behaviour,

      (ii) to observe certain conditions, including restitution in appropriate cases, and

      (iii) to appear for conviction when called upon,

      (iv) bond not to exceed two (2) years.

   (d) Fine.

   (e) Imprisonment.

   (f) Restitution either by itself or as an additional order with -

      (i) postponement of sentence;

(ii) bond;

(iii) fine.

4. The court should have the discretion to postpone the commencement of a sentence of imprisonment if the offender could satisfy the court that there was good reason for the posteponement.

5. The conditions placed on a bond (conditional discharge) should be such that they -

(i) do not cause undue interference with a person's domestic life;

(ii) will not interfere with a person's legitimate means of earning a living or making himself available for work;

(iii) will not interfere with the person's right to political participation and freedom of action or movement;

(iv) will not cause financial hardship;

(v) are not unreasonable in all the circumstances of the particular case.

6. As already mentioned, compensation should be allowed to play a greater role in the punishment aspect of the criminal justice system and that compensation could be used as either the sole punishment or in addition to:-

(i) deferment of sentence;

(ii) bond (conditional discharge);

(iii) Imprisonment.

It is proposed that care should be taken when using compensation in sentencing. That the compensation and other punishment be balanced so that the compensation element does not place too great a burden on the offender. Further, a provision should be made for the calling of expert witnesses, where necessary, to help the court in the assessment of compensation.

Bonds: At present there is no comprehensive section in the Local Courts Act that allows the court to order a good behaviour bond. Section 138 of the District Courts Act allows one kind of bond to be imposed, i.e. to be of good behaviour and to appear for conviction and sentence when called upon at any time not exceeding three years, as is specified in the order. Section 206(1) is marginally relevant - it enables sureties to be dispensed with. Sections 19(g) and (h) and 613 of the Criminal Code Act are often used by magistrates but as mentioned already, there is

a doubt whether they apply to offences outside the Code itself.

It is proposed that whenever a law imposes a gaol term or a fine the court may instead impose a bond. The bond could be of two types: a gaol term suspended during the term of the bond, or a sum of money which the defendant loses if he breaches the bond. The third type of bond which requires the offender to come for sentence or conviction and sentence if the defendant breaks the bond in section 138 of the District Court is undersirable. It is felt that the best time to decide on a sentence is at the trial and not six or twelve months later when the magistrate has forgotten about the case or has been transferred elsewhere and the sentence is imposed by another magistrate.

When a magistrate imposes a bond of cash type, he should also impose a default period of imprisonment e.g. good behaviour bond of K50.00 for six months to be signed within two (2) days and if you failed to enter into it then five (5) weeks imprisonment with hard labour.

It happens that magistrates often forget to impose a default period with the result that if the defendant fails to sign it, he gets away without punishment. Probably section 177 of the District Courts Act enables a default period of imprisonment to be imposed if the defendant fails to sign a bond.

RESTRICTION ON MOVEMENT ON CERTAIN OFFENDERS AS ONE METHOD FOR THE DISPOSAL OF CRIMINAL MATTERS

It is becoming apparent especially in the major urban centres of the country that there are persistent offenders who spend their time walking in and out of gaols or getting into trouble with the law. Very often these are people who face economic hardships or are unemployed in towns. They resort to illegal means such as breaking and entering and stealing etc to sustain themselves. Presently such incidents are growing at an alarming rate.

Courts can play a major role in attempting to contain or minimise such incidents from growing out of proportion. It is proposed that when courts are dealing with such persistent offenders they must, after convicting them, be empowered to make orders restricting their movement into or out of specified areas of the country during such period as is specified in the order. The restriction orders could be made in addition to or in lieu of any other punishment which may be imposed by the court.

The provisions of the Criminal Law (Restriction of Movement) Act 1962 presently empowers the National Court to make such orders only against those persons

who are convicted on indictment. It is proposed that the provisions of the Act be extended and incorporated into the new Magistrates Court Act so that in appropriate cases magistrates could make restriction orders on persons summarily convicted.

It is also felt that with the proposed increase in the criminal jurisdiction of magistrates, the power to make restriction orders should be made available. More importantly, these orders should be made with great care so that they do not place too great a burden on the offender's economic and social well being. The economic and social welfare of the offender should in fact receive paramount consideration in making the order. Ideally, such orders would be made against persons who are living in urban centres without lawful and reasonable means of support, who are unemployed and who are persistently getting into conflict with the law. An order made against such person for his return to his home or home district and restricting him therein for a specified period would in fact be economically and socially beneficial for him.

MORE EFFECTIVE WAY OF ENFORCING CIVIL JUDGEMENTS.

It is recommended that more effective methods of enforcing civil judgments be made available. Compensation and restitution elements should be given a prominent role to play in civil proceedings. It is felt that where a Warrant of Execution proves ineffective, cumbersome and a time consuming process, as often been so, imprisonment as a punishment should be imposed until the court is obeyed. Before the punishment is imposed, there must first of all be an attempt to execute the Warrant of Execution.

The fact that the defendant is imprisoned does not discharge the original order or debt. It should also be spelt out in the proposed Magistrates Court Act as to who can initiate enforcement proceedings and magistrates should be given the right to enforce the decisions.

In civil default summonses it is felt that Magistrates Grades 1, 2 and 3 should have the same jurisdiction as a Grade 4 magistrate. No great skill is required in entering a default judgment where the summons has been served and the defendant does not appear or send a notice of intention to defend. Similarly, with consent judgments. If the defendant admits that he owes the debt then any magistrates should be able to enter judgment.

It is proposed that all magistrates be allowed to give default judgements for claims up to their respective monetary limits on civil jurisdiction.

The right for the complainant to obtain judgment on the failure of the defendant to make an appearance should be retained. If no appearance is made by the defendant, the complainant needs only to prove the reasonableness of the amount he is claiming.

It is also proposed that provisions of the repealed Creditors Remedies Acts 1905 and 1921 (Papua) should be incorporated into the new Magistrates Court Act to prevent debtors leaving Papua New Guinea.

Under the provisions of those Acts, the court has power to order the arrest of a defendant who is about to leave the jurisdiction of the court with intent to defeat the plaintiff's action. Upon his arrest he is to remain in custody until the determination of the action unless he gives security to the satisfaction of the court that he will satisfy any judgment that may be given against him. If the debt is still unsatisfied, the court is further empowered to make an order that the judgment debtor be apprehended and be kept imprisoned for a term not exceeding 6 months. The judgment debtor is entitled to be discharged immediately upon payment of the judgment debt, but imprisonment under the Act does not operate as a satisfaction of the debt.

E. POWERS IN RELATION TO WITNESSES.

As at present the powers of the District and Local Courts in relation to calling and obtaining evidence from witnesses is inappropriate to the conditions of Papua New Guinea. In particular these powers need reconsidering in the light of the Constitution and the Summary Offences Act 1977.

Under the Local Courts Act, the court is empowered to issue oral or written summons to witnesses - section 25. It is doubtful whether the general power in section 30 enables a Local Court to issue a warrant to arrest a witness.

A magistrate of District Court is empowered to issue a summons to a witness to give evidence. He is also empowered to issue a warrant to arrest a witness if it is proven that the witness had been served with a summons but refuses to attend and that conduct money had been given. (sections 73 to 76).

When a District Court commits a person for trial in the National Court, it may bind over the witness to appear at the trial and give evidence (section 118). If a witness refuses to enter a recognizance under section 120, the court may commit him to a corrective institution, or a police lock-up. The court also has power under section 121 to keep a witness in safe custody though it is unclear whether this power is limited to detaining witnesses for their own protection. It is probably limited to committal proceedings.

Section 79 of the Act provides -

> "Where, by evidence on oath, a Magistrate is satisfied that -
>
> (a) a person is able to give material evidence or to produce relevant or material documents relating to a complaint pending before a court; and
>
> (b) that person is likely to be absent from the country when the case comes on for hearing;
>
> the Magistrate may, on application of a party, order that the evidence of that person be taken or the documents be produced before him at any time before the hearing in the same manner as that in which the evidence would be taken or the documents produced at the hearing, and after reasonable notice of the intended examination or production is given to the other party".

However, this is applied to civil cases and not criminal cases. Part VII of the District Courts Act dealing with evidence by affidavit empowers the District Court to take the evidence of witnesses on affidavit provided the proper notice is given and subject to a right to cross - examine the witness.

Under the relevant parts of section 42 of the Constitution a person may not be arrested or detained unless he has failed to comply with a court order made to secure the fulfilment of an obligation imposed on him by law or for the purpose of bringing him before a court in execution of an order of a court - section 42(1)(c) and (d). The person arrested or detained must be dealt with in accordance with the provisions of section 42(2) and (3) of the Constitution.

Section 23 of the Arrest Act 1977 states that the provisions of that Act are in addition to and not in derogation of a provision of any other Act or subordinate enactment which confers a power of arrest. This means that the provisions of the District Court Act remain intact.

The constitutional validity of section 121 (detention of witnesses) of the District Courts Act is doubtful. What emerges from the reading of sections 37 (protection of the law) and 42 (liberty of the person) of the Constitution is that on a strict legalist approach, the rights of accused persons are far better protected than those of witnesses.

It is proposed that two matters should be covered in the proposed Magistrates Court Act -

(a) that the law should accomodate voluntary witnesses who are willing to give evidence, but who, for good reasons, must either leave the country or travel to parts of the country away from the court requiring evidence.

(b) that the law should also be able to deal effectively with those witnesses who are trying to avoid giving evidence. Magistrates should also be empowered to issue summonses (sub poenas) either orally or in writing to witnesses and order their arrest for non attendance upon a summons. The evidence by affidavit provisions should also remain.

In order to accomodate both the co-operative and the recalitrant witness who has a genuine reason for leaving the court area, it is proposed that the scope of section 79 be widened to specifically include criminal as well as civil cases. Section 79 provides that a magistrate may order persons about to leave the country to give evidence or produce materials and be examined before the date of trial.

The problem of the witnesses wanting to leave the court area to avoid giving evidence during the trial is more difficult. It is proposed that there should be a provision in the proposed Magistrates Court Act empowering the police to arrest such people where the policeman has grounds to believe that the witness -

(i) intends to leave the court area, or

(ii) is in the process of leaving the court area.

There should be power to obtain an arrest warrant on this basis because to arrest without a warrant would be unconstitutional without resort to section 38 (General qualifications on qualified rights) of the Constitution. In order to justify the qualifications of constitutional rights, it is proposed that the power to arrest without warrant should be available only when the case is a serious one and the evidence of the witness is material. (The Tanedo case would clearly have satisfied these criteria).

If a witness is to be held in custody he will have to be segregated from other prisoners - see section 37(17) and (18) of the Constitution. After his arrest he will have to be dealt with in accordance with the provisions of section 42(2) and (3) of the Constitution. He should be entitled to release either with or without conditions similar to a defendant who is entitled to a bail. If he is not released on bail, it is proposed that his case be reviewed by a court every seven (7) days. He should also be entitled to a review of his case by way of habeas corpus.

A recalcitrant witness in a case committed for trial in the National Court could be detained but should be dealt with in the manner proposed above. As to section 121 of the District Courts Act (relating to detention of witnesses for safe custody), it is proposed that a witness should not be detained unless he either consents or a court orders his detention as suggested above.

F. PROCEDURES AND FORMS.

Following are some recommendation made by the Magisterial Service and other members of the community in the country who have had experience in the procedure and other related matters of the court.

1. Should Substituted Service be allowed where personal service cannot be effected.

The Magisterial Service recommended that substituted service should only be allowed in the following cases:

(a) that substituted service should only be allowed in civil matters.

(b) that section 33 of the District Courts Act 1963 should be retained.

(c) where a matter of group responsibility, service to be effective if made on local leader. That is, in Papua New Guinea people recognise their local leader and he knows them well. If any of them run away, or try to avoid service of summons, the local leader however would be there with the summons.

(d) that complaints brought before the court should be either oral or in writing. A lot of people in this country have complaints that they would want to bring to the attention of the court but because it is too strict on the procedure people feel scared and tend to solve the problems themselves. This leads to tribal fighting and other similar problems.

(e) Provisions be made in the proposed Magistrates Courts Act and amendments be made to the Legal Practitioners Act 1961 to allow representation in courts by persons other than only legal practitioners and persons authorised by the Secretary for Justice. We might have, for that matter, councillors, welfare officers and close relatives to appear for a person in the court.

Courts should not be used only by legal practitioners to fight legal battles, as what seems to be the present situation. The courts were set up for the prime purpose of solving and settling disputes, and thus anybody should be allowed to take part in the legal and judicial arena.

(f) Proceedings of the court should be opened to the public at all times and places.

(g) Custody, adoption of children should be open, the child should be present in court so he knows from the tender age that he has been adopted. The fact that he has been adopted should not be concealed from him, otherwise later revelation would have effect on him.

(h) Evidence by affidavit should be allowed where defendant is unable to attend whether through ailment or commitment of work. Especially for doctors. However this is provided for in the Evidence Act already.

(i) The rule of common law of a person being innocent until proved guilty should not be applied strictly. In certain offences - vagrancy, break and enter etc. or where the offences are prevelant the onus of proof should shift. In cases of evasion of taxes the onus of proof should shift to the defendant to prove that he has not intentionally evaded paying taxes. With the establishment of Provincial Governments and in some provinces Community Governments, one of the main sources of revenue is head tax and land tax. So tax must be paid.

(j) In cases of sorcery, a sorcerer or sorceress should be presumed guilty, unless he disproves it, especially if he/she is a reputed sorcerer or sorceress. Hearsay evidence should be admitted at all times. The present Sorcery Act is quite ineffective because of the common law onus of proof, which rests on the prosecutor.

We are all aware of the fact that many unlawful killings and murders are a result of sorcery because sorcery is done in complete secrecy and is difficult to prove. One method of proving it would be by drawing inferences based on facts that the suspected sorcerer or sorceress has had argument with the victim or the relatives of the victims. However even this is difficult to prove so let the onus of proof be

on the suspected sorcerer or sorceress to prove that he or she did not make sorcery on the victim. That means section 37(4)(a) of the National Constitution will have to be relaxed a bit in its application. If this can not be done, then create a provision which would go in parallel with this provision of the Constitution. This could help prevent the provision being invalid as happened with section 11 of the Inter-Group Fighting Act 1977.

Appeals - and Bail Pinding Appeal Procedure.

Appeal courts should be required to give details of appeal decisions to the magistrates concerned and to the Chief Magistrate. Magistrates need to be told where they went wrong. Section 239 of District Courts Act, needs to be expanded to allow judges to give reasons of their decisions. At the present judges only obliged to say whether appeal is dismissed or upheld.

The period allowed for appealing to the National Court should be extended to 90 days. At present the appellant has to give notice of his intention to appeal within one month after the day of the conviction, by lodging with the clerk of the court that convicted him (S.226(2)) of District Courts.

Then under section 232(1) the appellant should within forty (40) days after the appeal enter the appeal for hearing on a date to be fixed by the Registrar of the National Court.

SHOULD THERE BE ANY CHANGES TO THE DEFAULT SUMMONS PROCEDURE.

The Magisterial Services, recommended that there was a need for a much more simplified default summons form.

They want the following or similar words to appear prominently on the summons:

> "You don't have to come to the court about this matter. But if you wish to defend this case, call in at the court at ... (address) or send a letter to the court denying the complaint, but make sure you do this before.....(specify date). If you don't appear at the time of the court case, or fail to send a letter denying the commission of the offence, judgment will be given against you."

COURT PROCEDURE GENERALLY - CRIMINAL MATTERS.

Statement of facts Before Taking Plea.

The magistrates, after reading out the charges to the defendants must also try

and explain to the defendants the nature of the offence the defendant committed and for that reason he has been brought before the court. That would also help the defendant to co-operate with the court and give every detail of what happened.

It is therefore recommended that the prosecutor who prosecutes a case should always be asked to give a short statement of facts before the plea is taken and that these facts, together with the more formal charge, should be put to the defendant before he is asked to plea.

Plea Guilty or Not Guilty.

Section 134 of the District Courts Act, is unsatisfactory. In that it does not say clearly how a charge should be put to a defendant.

The actual words to be spoken by a magistrate should be included in the legislation.

Allocutus.

Magistrates are required by common law to give allocutus. This is, after a defendant has been convicted, failure to give the defendant or counsel for the defendant an opportunity to address the court on the question of sentence is a denial of natural justice and renders any sentence pronounced a nullity (Moses Alkaba and Others V. Tami (1971-72 PNGLR 155).

It is therefore recommended that the above principle should be inserted in the proposed Magistrates Courts Act to make it clear for the magistrates to apply.

The Election of the Defendant.

The election of a defendant at the end of the police case is an important part of a criminal case. For example, in a Rabaul case a private practitioner argued, without quoting authority, that the defendant should give evidence last. The magistrate thought this was wrong but could not quickly find an authority on the point. The authority is however found hidden away in Carter (4th ed. at p.490) that:

> "An accused person should be called to give evidence before any of his witnesses are called."

This authority comes from the case of R v. Smith (Joan) (1968) 2. All E.R. 11 where the accused made an application for leave to appeal for a charge for driving a motor vehicle when unfit to drive through drink or drug. One of the grounds for the application was that the deputy Chairman at Inner London Quarter Sessions erred in law, in that he insisted the accused to give evidence first before any witnesses

and refusing to allow defending counsel to call the witnesses in any sequences he wanted. The application was refused on the basis that at any trial of a criminal charge the accused, if he was to give evidence, should be called before any of his witnesses, and thus should give his evidence before he has heard the testimony of his witnesses.

Another point raised in this case was that as a general rule and practice in criminal cases witnesses as to the facts on each side should remain out of court until they are required to give their evidence.

These principles should be spelt out in the proposed Magistrates Courts Act, so as to avoid error in law and miscarriage of justice.

It is also recommended:

(a) that choices available to the defendant be set out clearly and in full in the new Act (e.g. right to remain silent and give evidence on oath);

(b) that the actual words magistrates should use should be set down in the new Act;

Enforcement of Compensation Orders Made in Criminal Case (Ref: section 177 District Court).

There have been cases, where for example the decision was fine K40 in default 4 weeks plus compensation of K20 to the victim. The fine would be paid but not compensation. The warrant of execution proves negative. The compensation order can only be enforced by warrant of execution, garnishee and other civil procedures.

It is recommended that the amount required for compensation should be paid to the court with the fine so that the compensation could be paid to the injured party.

COURT FORMS:

A group of serving experienced Magistrates be appointed to work full-time drafting suitable forms which will achieve the following aims -

(1) To streamline and simplity legal and clerical procedure;

(2) To make the law and its process more understandable.

Worksheet:

The worksheets which Local Courts are supposed to be using for criminal and civil cases are set out in the Local Courts Regulations. Both worksheets (criminal and civil) are very confusing, so much so that magistrates have designed their own worksheets which are in use.

The District Courts has no such worksheets. These worksheets would enable cases to be written up in the registrar from the worksheets very easily. Also a lot of the forms in the District Court Regulations seemed to be superfluous. Take the example of Form 35 of District Court Regulations (see p.32 of this paper) which is presently used by the District Court Magistrates for "Warrant of Deliverance". Compare this one with the proposed form (p.31), one could see that a lot of unnecessary words are being omitted. The proposed one is very comprehensive and would speed up the work for magistrates and Officers in Charge of the Corrective Institutions.

Warrant of Commitment:

There should only be one Warrant of Commitment form - a table to be printed at the top right hand side of the form could indicate what type of warrant it is.

A proposed form should look like this -

WARRANT OF COMMITMENT

( ) Upon Conviction
( ) Upon Remand
( ) Where Fine Unpaid
( ) Where Bail Unpaid

(The Magistrate puts a tick in the appropriate box).

From experience, the Magistrates have found that there is no proper form to be used for an Order for Release of a Prisoner. These sort of forms will be useful especially:-

(a) where an appeal has been lodged and bail granted by the District Court and the bail is paid;

(b) when a defendant goes to goal for not paying a fine and a wantok comes to the court to pay the fine - or the part then owing. This is provided in the form provided by the Magistrates in Rabaul (see page 33). The wantok

takes this signed form to the Corrective Institutions where the prisoner is, and have him released.

Form 35 District Court Regulations entitled "Warrant of Deliverance" is bit confusing and superfluous with too many unnecessary archic words.

Section 116 TERRITORY OF PAPUA NEW GUINEA Form 35

District Courts Ordinance 1963-1965

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A PRISONER ALREADY COMMITTED.

To the officer in-charge of the Corrective Institution at ..... in the Territory of Papua New Guinea,

Whereas A,B. late of ....., in the said Territory, has before the undersigned Magistrates of a District Court, enter into his/her own recognisance and found sufficient sureties for his/her appearance before the Supreme Court to answer a charge that (etc., as in the commitment) for which he/she was committed to your corrective institution: These are therefore to commend you that if the said A.B. is now in your custody for the said cause and for no other, you forwith suffer him/her to go at large.

Dated at ..... the ..... day of ..... 1980.

Magistrate.

PAPUA NEW GUINEA

ORDER FOR RELEASE OF A PRISONER

To the O.I.C. Police Station, Rabaul and to all other Officers of the Police Force and to the O.I.C. KEREVAT CORRECTIVE INSTITUTION.

WHEREAS OF

if held in custody under a Warrant of Commitment dated the day of ..... 1977, issued by this Court for an offence of ..... for a term of .....

AND WHEREAS

AND WHEREAS

THIS IS TO ORDER AND AUTHORISE you to release the said prisoner forthwith unless he is being lawfully held in custody under another warrant.

DATED this day of 1980.

BY ORDER OF THE COURT

MAGISTRATE

The blanks should be large enough for hand-writing. It is proposed that the blanks in most forms should be completed by hand using carbon. This is quicker and more efficient than typing. e.g. A magistrate can complete and sign a warrant in two minutes and hand it to the prosecutor from the bench. If he gives it to a typist to type it might get to the police the next day or if delayed some few days later.

The recognizance forms (form 26 etc.) are extremely complicated to fill out and explain. The wording "I promise to.., on the condition that if I fail....." is better. A cash sum is far more meaningful than having a recognizance against goods and chattels. Also sureties could be deleted. In practice it works like this. A wantok pays the cash bail or the cash for the good behaviour bond. The receipt is made out in the name of the wantok on behalf of the defendant. Finance Department insists on that. The defendant signs the recognizance or bond. If he keeps the bond or recognizance the wantok presents the Trust Fund Suspends receipt and recovers his money. There is no need to call the wantok a surety or to get him to sign anything.

Address of defendant - the normal address used in place of origin e.g. Mt. Hagen, Wewak, Tasmania, which is alright for some purposes. But for warrants of arrest the residential or work address is important to help the police find the defendant. Perhaps two addresses are ideal: Place of birth, Work/residential address.

Summonses - could be printed in pidgin and motu. Present summons forms contain too much verbiage.

31. APPEALS BY MAGISTRATES GRADE 4.

Recommended:

That Magistrates Grade 4 be allowed to hear appeals from decisions of Grade 1 and Grade 2 magistrates.

32. FEES.

Fees should be increased. Perhaps K2 for a complaint up to K1000, K10 over K1000. Also the number of different fees is very great and bewildering. There should be fewer categories - preferably whole kina to save clerical work.

33. COSTS.

Section 267 of the District Courts Act should be rewritten to incorporate common law discretions. The present section 267 does not set out appropriate guidelines for magistrates. And Courts should be given a discretion to impose costs where there has been an abuse of process.