

COURTS REGULATION1980Explanatory Note

The purpose of this Regulation is to establish the courts provided for in the Constitution and also magistrates courts.

Part 1 of the Regulation covers Village and Island Courts. This is a radical piece of legislation in that it deliberately leaves custom courts as they are and does not limit their custom jurisdiction. The reason is that the Government feels that if there is any attempt to formalise village courts and custom the courts and the custom they administer will cease to be matters of custom but something else. On the other hand Section 1 (2) provides that where custom conflicts with written law the latter prevails. This is international practice. The very fact that the Legislature passes a written law must show intention that the written law will prevail over any law already in being. The one reservation will be that if the written law specifically states that custom will prevail over it, it will do so.

Section 2 provides for Village and Island Courts to be prescribed by Order. This is necessary so that we can ensure that only the real custom courts may exercise the powers set out in this law.

Section 3 provides for a special type of customary court in urban areas, called a Town Court. These courts will probably consist of panels of chiefs and leaders drawn from all the custom communities in such areas. When a case is taken to a Town Court the relevant Chiefs and Leaders will hear the case. Some cases in urban areas will involve persons from more than one custom. In such cases the President has power under Section 15 (c) to establish a Special Court possibly with members from all the customs involved.

Under Section 4 the decisions of village and island courts will have the force of law.

Under Section 5 the courts must follow custom and no lawyers must appear before them.

Because custom courts have had problems in getting persons to appear before them under Section 6 a Court may ask a police officer to enforce attendance. Again under Section 7 the Court can through a magistrate get a police officer to enforce its orders. There is no appeal from custom courts and so Sections 9 and 10 provide a procedure where a magistrate settles complaints with custom courts. The magistrate will go to islands or villages rather than the other way round.

When there is a land dispute between two custom groups it will be heard by a special court set up under Section 15 (c). There will be appeals in respect of land matters from such a court to a Land Appeals Tribunal set up under Section 11 by the President.

Part 2 of the law provides for magistrates courts. No reference is made to them in the Constitution. It is necessary however to have a court between the village court and the Supreme Court.

The village and island courts and magistrates courts between them will hear most of the cases.

The Minister of Justice will prescribe the number of magistrates courts and the area of their jurisdiction (Section 16 (2)).

Magistrates Courts may hear criminal cases up to those with a maximum term of imprisonment of 2 years. They may in some circumstances hear cases with a maximum penalty of 5 years imprisonment but may not impose a greater penalty than 2 years imprisonment (Section 19 (2)). They may also hear more serious cases if the Supreme Court so decides (Section 19 (3)).

Section 20 provides for two grades of magistrates, Senior Magistrates and Magistrates. Although it is felt desirable it is not essential that they be legally qualified.

Section 23 provides for special clerks to be appointed for each magistrates court.

Under Section 26 a magistrate may refer special questions of law to the Supreme Court for its decision.

Under Section 27 all magistrates courts are presided over by a magistrate sitting alone.

Part 3 of the law provides for the Supreme Court. Under Section 29 the Supreme Court shall consist of a judge sitting with 2 assessors except in cases where he considers it unsuitable or for cases referred to it in accordance with the Constitution when the court will consist of the Chief Justice and 2 other judges sitting without assessors.

Under Section 31 the Supreme Court may hear appeals from magistrates courts and under Section 33 it may review the convictions of persons even when there has been no appeal.

Part 4 provides for the Court of Appeal. Under Section 40 no judge may sit in the Appeal Court if a case heard by him is being considered.

Finally Section 44 in Part 5 gives the courts inherent powers to deal with matters where it has not been given specific powers and to use inherent powers to properly apply written law and custom.

JULY 1980

W.H. LINI
CHIEF MINISTER AND
MINISTER OF JUSTICE

DRAFTSMANS NOTE

The Resident Commissioners Joint Regulation bringing this Resolution into force as a law will provide that it shall be cited as the Courts Regulation 1980 and shall come into operation on the Day of Independence.

COURTS REGULATION 1980

ARRANGEMENT OF SECTIONS

PART 1 - THE VILLAGE AND ISLAND COURTS

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2. Customary courts to be prescribed and pending proceedings to continue.
3. Town courts.
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5. Constitution and procedure of Customary Courts.
6. Enforcement of attendance.
7. Powers of court to make orders against person before it.
8. Disobedience to be reported to magistrate.
9. Complaint to magistrate about proceedings.
10. Investigation by and powers of magistrate.
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PART 2 - THE MAGISTRATES' COURTS

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17. Territorial jurisdiction of Magistrates' Courts.
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19. Jurisdiction of Magistrates' Courts.
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30. Jurisdiction of Judges and Supreme Court throughout the Republic.
31. Appeals from Magistrates' Courts.
32. Appointment of Supreme Court judges to Court of Appeal.
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35. Acting judges.
36. Judge may sit after appointment terminated.
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RESOLUTION NO OF 1980

To provide for the Courts of the Republic.

The Representative Assembly at its sitting on the 1980 hereby resolves and decides in accordance with Article 23 of the Schedule to the Exchange of Notes of the 15th September 1977 to adopt the following measures :-

PART 1 - THE VILLAGE AND ISLAND COURTS

1. (1) Subject to any directions of the Minister given by Order on the recommendation of the Judicial Committee, the village and island courts of the Republic shall have jurisdiction to apply customary law and such other civil or criminal law as may be prescribed in the district within which such customary law applies.
- (2) In the case of conflict between the customary law and such other law the provisions of such other law shall prevail.
2. This Part shall apply to the prescribed customary courts. Any proceedings of any such courts pending at the commencement of this Regulation shall be continued as if they had been commenced under this Regulation.
3. The Provisions of this Part shall apply equally to customary courts established within any urban area and these shall be known as Town Courts.
4. The rules of custom and the findings of the customary courts shall have the force of law in the Republic.
5. (1) Subject to section 15, the constitution and procedure of the customary courts shall be in accordance with custom.
- (2) No lawyer shall be permitted to take part in any proceedings in a customary court.
- (3) No agent shall take part in any proceedings of a customary court except as allowed by the customary law administered by that court.
6. Every customary court shall have power to request a police officer to enforce the attendance before it of any person whose presence is necessary to determine the proceedings and the police officer shall comply with any such request as soon as possible.

Jurisdiction
of Customary
Courts.

Customary
courts to be
prescribed
and pending
proceedings
to continue.

Town
courts.

Rules and
findings to
have force
of law.

Constitution
and procedure
of customary
courts.

Enforcement
of attendance.

Powers of court to make orders against person before it.

7. (1) Every customary court shall have power after hearing any proceedings to order any person before it -
- (a) to pay compensation to another person;
 - (b) to make restitution to another person;
 - (c) to pay a fine to be retained in a fund for community purposes; or
 - (d) to perform community work.

- (2) If a person does not obey an order made against him in accordance with subsection (1) the court shall in its discretion decide the length of a reasonable term of imprisonment not exceeding the prescribed maximum which that person shall suffer for his disobedience and he shall be informed of this consequence.

Disobedience to be reported to magistrate.

8. A customary court shall inform a Magistrate of any disobedience of an order made under section 7 (1) who shall satisfy himself that there is no reasonable excuse for the default. He shall then issue a written warrant to a police officer who shall execute the sentence of imprisonment imposed by the court.

Complaint to magistrate about proceedings.

9. Subject to section 11, any interested person who is dissatisfied with any proceedings or decision of a customary court may within a reasonable time after them make a complaint to a Magistrate.

Investigation by and powers of magistrate.

10. Whether or not any person has made a complaint about them, a Magistrate may make an informal investigation of any proceedings of a customary court as he thinks fit. He may make such recommendations, or if the case is sufficiently serious may give binding directions, to the court as he may think necessary to secure a just determination of the proceedings.

Appeals in land disputes.

11. (1) A person dissatisfied with the decision of a court established in accordance with section 15 (c) regarding a dispute concerning ownership of land may appeal to a Land Appeals Tribunal established generally to hear such disputes or established for that particular appeal by the President acting on the advice of the Minister responsible for land matters.
- (2) A tribunal established in accordance with subsection (1) shall decide such appeal as far as is practicable in accordance with custom and the dictates of justice.
- (3) The decision of a Land Appeals Tribunal shall be final and shall not be questioned in any court.

Record.

12. The chief or leader responsible for the conduct of a customary court shall cause to be kept a written record of each case in accordance with the prescribed form.

Compensation
of chief or
leader.

13. The chief or leader responsible for the conduct of a customary court shall not receive any money payments from any person for his judicial services but may be compensated in any other manner in accordance with custom.

No jurisdiction
in certain cases.

14. No customary court shall have jurisdiction over any dispute to which more than one system of customary law applies.

Power of
President
to make orders.

15. The President acting on the advice of the Judicial Committee may by Order not inconsistent with this Part -
- (a) prescribe customary courts and Town Courts;
 - (b) provide for the constitution of Town Courts and the physical limits of their jurisdiction;
 - (c) establish special courts either to hear cases generally or to hear specific cases where more than one system of custom applies and to which otherwise the provisions of this Part shall apply;
 - (d) prescribe any other matter required to be prescribed by this Part;
 - (e) make rules of a procedural or administrative nature to implement the operation of this Part or any other order made hereunder.

PART 2 - THE MAGISTRATES' COURTS

Establishment
of Magistrates'
Courts.

16. (1) There are hereby constituted throughout the Republic Magistrates' Courts, subordinate to the Supreme Court and to be presided over by persons appointed under the provisions of this Part to be magistrates and such courts may exercise such jurisdiction as is provided by this Regulation or by any other law.
- (2) There shall be such number of Magistrates' Courts in the Republic and every such Magistrate's Court shall have such territorial jurisdiction as the Minister shall by Order prescribe.
- (3) Any power, authority, function or discretion vested in a Magistrate's Court by this Regulation or by any other law shall be possessed and may be exercised by any magistrate having jurisdiction.
- (4) Every Magistrate's Court shall try criminal causes without a preliminary judicial enquiry.

Territorial
jurisdiction
of Magistrates'
Courts.

17. (1) Subject to the provisions of this Part or of any other law, every Magistrate's Court shall exercise jurisdiction within the limits of the district within which it is constituted.
- (2) The jurisdiction of each Magistrate's Court shall extend over any territorial waters adjacent to the district in which it is constituted as well as over inland waters whether within or adjacent to such district.

- (3) When any proceedings are commenced before a Magistrate's Court by reason of anything which has been done or of any consequence which has ensued, such proceedings may be tried by a Magistrate's Court within the limits of whose jurisdiction such thing has been done or such consequence has ensued.
- (4) Whenever a Magistrate's Court assumes jurisdiction over any proceedings pursuant to this section, the jurisdiction of every other Magistrate's Court over such proceedings shall be thereby extinguished.

Contempt of Magistrates' Courts.

- 18. Every Magistrate's Court shall have power to punish summarily for contempt of court by imprisonment for a term not exceeding six months or a fine not exceeding 15,000FNH.

Jurisdiction of Magistrates' Courts.

- 19. (1) Subject to the provisions of this Part and of any other law every Magistrate's Court shall have jurisdiction to try summarily -
 - (a) any criminal proceedings for an offence for which the maximum punishment prescribed by law does not exceed imprisonment for a term of two years; or
 - (b) any civil proceedings in respect of which jurisdiction is by any written law expressly conferred upon a Magistrate's Court.
- (2) Notwithstanding the provisions of subsection (1), a Magistrate's Court may when presided over by a Senior Magistrate and at the discretion of the prosecutor, or if there is no prosecutor at the discretion of the Court, try summarily any criminal proceedings for an offence for which the maximum punishment prescribed by law does not exceed imprisonment for a term exceeding five years but shall not be empowered in the case of a conviction to impose any punishment in excess of the punishment prescribed in subsection (1) (a).
- (3) Notwithstanding the provisions of subsection (1) or of any other law, the Supreme Court, may, in respect of a particular class of proceedings or a particular case, by order under its seal invest a Magistrate's Court with jurisdiction to try any proceedings which would otherwise be beyond its jurisdiction.
- (4) Where in any criminal proceedings consecutive sentences are imposed by a Magistrate's Court in respect of two or more distinct offences arising out of the same facts, it shall not be necessary for such Magistrate's Court to send the offender for trial before the Supreme Court by reason only that the aggregate punishment for the several offences in respect of which such sentences are imposed is in excess of the punishment which it is competent to impose on conviction for a single offence.
Provided that the aggregate punishment imposed in the form of consecutive sentences shall not exceed twice the amount of the punishment which such Magistrate's Court is competent

to impose in respect of one offence in the exercise of its jurisdiction.

Appointment of
Magistrates.

20. (1) Any person with suitable training or experience may be appointed to be a Senior Magistrate to hold a Magistrate's Court and to exercise all of the jurisdiction of a Magistrate's Court and such person when so appointed shall have and may exercise all the powers and jurisdiction conferred upon Magistrates' Courts by this Part or by any other law.
- (2) Any fit and proper person may be appointed to be a Magistrate to hold a Magistrate's Court and to exercise jurisdiction in criminal causes and matters over any offence for which the maximum punishment prescribed by law for such offence does not exceed imprisonment for a term of three months and in civil proceedings in such cases or classes of case as the Minister shall by Order prescribe and such persons when so appointed shall have and may exercise the powers and jurisdiction conferred upon Magistrates' Courts by this Part or by any other law to the extent authorised by the limits of jurisdiction aforesaid.
- (3) A Magistrate appointed under subsection (2) may be appointed in an honorary capacity; he shall be entitled to such attendance, travelling, subsistence and other allowance as shall be prescribed by the Minister by Order.
- (4) Except where the context otherwise requires the word "magistrate" wherever used shall include a "Senior Magistrate".

Territorial
jurisdiction of
Magistrates.

21. Subject to the terms of his warrant, every Magistrate may exercise jurisdiction throughout the Republic but may be assigned by the Chief Justice to any particular district or districts and may be transferred from one district to another. A Senior Magistrate may, without special notification or appointment, exercise jurisdiction in any district or districts.

Disqual-
ification
of
Magistrates.

22. (1) If a Magistrate has any personal interest or bias in any proceedings, he shall disqualify himself from hearing the same and shall direct that the proceedings be heard by a Senior Magistrate in his place.
- (2) If a Magistrate shall refuse an application that he disqualify himself made under subsection (1), the accused shall have an immediate right of appeal against such refusal and if the accused wishes so to appeal, the proceedings shall be adjourned until the appeal has been heard and determined.

Clerks of
Court.

23. (1) The Judicial Service Commission may appoint a Clerk of Court to be attached to each Magistrate's Court. Such Clerk of Court shall, subject to the general supervision and control of any Senior Magistrate, be under the immediate direction and control of the Magistrate for the time being exercising

the jurisdiction of the Magistrate's Court to which he is attached;

Provided that if no such Clerk of Court is appointed or in the event of the absence or incapacity of the Clerk the Magistrate may appoint any person to perform the duties of the Clerk of the Court or may himself perform such duties.

(2) The duties of every Clerk of Court shall be prescribed by Rules of Court.

Other officers of Magistrates' Courts.

24.

The Judicial Service Commission shall appoint such persons as may be necessary to be administrative officers of the Magistrates' Courts, who shall perform such functions and duties and shall have such powers and immunities as shall be prescribed by this Regulation or by Rules of Court.

Concurrent jurisdiction of Supreme Court.

25.

No jurisdiction conferred upon any magistrate shall in any way restrict or affect the jurisdiction of any judge of the Supreme Court, who shall have in all criminal and civil proceedings an original jurisdiction concurrent with the jurisdiction of a Senior Magistrate.

Reservation of questions of law.

26.

(1) A magistrate may at his discretion reserve for the consideration of the Supreme Court on a case to be stated by him any question of law which may arise on the trial of any criminal or civil proceedings. The magistrate shall not deliver his judgment on the proceedings before him until he has received the opinion of the Supreme Court and the Supreme Court shall have power to determine every such question with or without hearing agreement.

agreement

(2) Notwithstanding the provisions of section 29 the Supreme Court shall be constituted for the purposes of subsection (1) by a single judge sitting alone.

Constitution of Magistrates' Courts.

27.

Every Magistrate's Court shall be presided over by a magistrate sitting alone.

PART 3 - THE SUPREME COURT

Administration of Supreme Court.

28.

There shall be such districts and registries for the administration of the Supreme Court as the Minister shall by Order prescribe.

Constitution of Supreme Court.

29.

(1) Subject to subsections (2) and (3) and save as otherwise provided by any other law every proceeding in the Supreme Court shall be heard and disposed of before a judge of the Supreme Court sitting with two assessors who shall have an advisory function; the judge shall in every case record the opinions of the assessors but the decision shall be vested exclusively in the judge.

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- (2) If a judge in any civil proceedings if of the opinion that the case before him is of such a nature that it is unsuitable that assessors should sit with him he may dispense with them.
- (3) In the exercise of its jurisdiction under Articles 6,16:4, 37:3, 51 and 52 of the Constitution, the Supreme Court shall be constituted by the Chief Justice and two other judges of the Court sitting together without assessors.

Jurisdiction of
Judges and Supreme
Court throughout
Republic.

- 30. (1) Notwithstanding the limits of any district of the Supreme Court, the jurisdiction of every judge of the Supreme Court shall extend throughout the whole of the Republic.
- (2) Subject to any Rules of Court, any process of the Supreme Court shall run, and any judgment shall have full force and effect and may be executed and enforced, in any part of the Republic.

Appeals from
Magistrates'
Courts.

- 31. (1) The Supreme Court shall have jurisdiction to hear and determine such appeals from the judgments of any Magistrates Court on any question of law or fact or question of mixed law and fact as provided by this Regulation or any other law and for that purpose to exercise such powers and authorities as may be prescribed by or under any law for the time being in force in the Republic; and subject to the provisions of any such law for all purposes of and incident to the hearing and determination of any appeal within its jurisdiction, the Supreme Court shall have the powers, authority and jurisdiction vested in the Court from which the appeal is brought.
- (2) On every such appeal the procedure and the findings, whether of fact or law, of the court appealed from shall be subject to review by the appellate court which shall be entitled to substitute its own judgement or opinion hereon save that the appellate court shall not interfere with the exercise by the court appealed from of a discretion conferred by any written law unless the same was manifestly wrong.
- (3) The Supreme Court may in its discretion deal with the appeal on the notes of evidence recorded in the case without hearing any such evidence again.

Appointment of
Supreme Court
Judges to
Court of
Appeal.

- 32. Every judge of the Supreme Court shall be eligible to act as a judge of the Court of Appeal in accordance with and subject to the provisions of this Regulation but shall not be entitled to any additional remuneration for so acting.

Revisional jurisdiction of Supreme Court in criminal cases.

33. (1) Subject to this section, the Supreme Court shall have power at any time upon the petition of the Public Prosecutor or any interested person, or of its own motion, to review the conviction of any person by a Magistrate's Court, whether or not there has been an appeal against such conviction.
- (2) If upon reviewing the proceedings, the Supreme Court is of opinion, by reason of new evidence or otherwise, that a miscarriage of justice has, or may have, occurred, the Court may -
- (a) set aside the conviction, in which case the person convicted, if imprisoned, shall be forthwith set at liberty, or, if fined, shall be refunded the amount of the fine paid and all accessory penalties and other orders shall be annulled;
 - (b) set aside the conviction and order a new trial before the court which heard and determined the proceedings in question;
 - (c) make such other order as justice may require and give all necessary and consequential directions.

Discipline of judiciary.

34. The Chief Justice shall have a general power of discipline over the judicial officers and other officers of the Supreme Court and the Magistrates' Courts, but this shall not include the power to suspend any such judicial officer or officer from the exercise of his functions.

Acting judges.

35. (1) If the office of a judge of the Supreme Court is vacant or if a person holding the office of a judge is for any reason unable to perform the functions of his office, a person qualified for appointment as a judge of the Supreme Court may be appointed to act as a judge by the President after consultation with the Judicial Service Commission.
- (2) Any person appointed under the provisions of subsection (1) to act as a judge shall, unless he earlier resigns his acting office or is removed therefrom under Article 45 (3) of the Constitution, continue so to act until the end of the period for which he was appointed or, if he was not appointed for a specified period, until his appointment is revoked by the authority which appointed him.

Judge may sit after appointment terminated.

36. A judge whose appointment has terminated otherwise than by reason of his removal from office may sit as a judge for the purpose of giving judgment or otherwise in relation to any proceedings commenced before him while his appointment was subsisting.

Officers of courts.

37. (1) There shall be such registrars and other officers of the Supreme Court as the Judicial Service Commission, subject to any law in force, may appoint, and every such registrar or other officer shall discharge such duties as may be prescribed by law or by Rules of Court or as a judge of the Court may direct:

Provided that a judge may, subject to any directions given by the Minister, appoint a person temporarily to discharge, in relation to any cause or matter, the duties of a registrar or other officer of the Court, and such person shall discharge such duties accordingly.

- (2) Any appointment made under the provisions of subsection (1) may, at any time, be revoked by the Judicial Service Commission.

Contempt of Court.

38. The Supreme Court shall have power to punish summarily for contempt of court, by imprisonment for a term not exceeding one year, or, at the discretion of the Court, a fine.

PART 4 - THE COURT OF APPEAL

Officers.

39. (1) There shall be a registrar and such other officers as shall be necessary to administer the Court of Appeal:

Provided that any officer of the Supreme Court may be appointed to fulfil similar duties in the Court of Appeal.

- (2) There shall be one registry of the Court of Appeal which shall be situated in Vila.

Disqualification of judges in certain cases.

40. (1) Subject to subsection (2) the Chief Justice shall be responsible for arranging the composition of the Court of Appeal for the hearing of proceedings before that court.
(2) No judge of the Supreme Court whose judgment is under consideration in any proceeding before the Court of Appeal shall be qualified to sit as a member of the Court of Appeal in that proceeding.

Appellate jurisdiction.

41. (1) Subject to any other law, an appeal shall lie in accordance with the prescribed procedure from a judgment of the Supreme Court in the exercise of its original jurisdiction, in any proceedings, to the Court of Appeal on any question of law or fact or mixed law and fact, and, subject to the provisions of any such law for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction under this section, the Court of Appeal shall have the power, authority and jurisdiction vested in the Supreme Court.

- (2) On every such appeal the procedure and the findings, whether of fact or law, of the court appealed from shall be subject to review by the appellate court which shall be entitled to substitute its own judgment or opinion thereon save that the appellate court shall not interfere with the exercise by the court appealed from of a discretion conferred by any written law unless the same was manifestly wrong.
- (3) The Court of Appeal may in its discretion deal with the appeal on the notes of evidence recorded in the case without hearing any such evidence again.
- (4) In the exercise of the appellate jurisdiction of the Court of Appeal under this section, any judgment of the Court shall have full force and effect and may be executed and enforced in like manner as if it were an original judgment of the Supreme Court.

PART 5 - SUPPLEMENTARY PROVISIONS

42.

The Magistrates' Court, the Supreme Court and the Court of Appeal each shall have and shall use as occasion requires an official seal of the Court approved by the Minister.

43.

No judge or magistrate or other person acting judicially in relation to the administration of justice shall be liable to be sued in any court for any act done or ordered to be done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction provided that he, at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any court or other person appointed to execute the lawful warrants or orders of any judge, magistrate or other person acting judicially, shall be liable to be sued in any court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same.

44.

- (1) Subject to the Constitution, any written law and the limits of its jurisdiction a court shall have such inherent powers as shall be necessary for it to carry out its functions.
- (2) For the purpose of facilitating the application of any written law or custom any provision may be construed or used with such alterations and adaptations as may be necessary and every court shall have inherent and incidental powers as may be reasonably required in order properly to apply such written law or custom.

Rules of Court.

45.

The Judicial Committee may make Rules of Court regulating the practice and procedure of the village and island courts, the Magistrates' Court, the Supreme Court, and the Court of Appeal, prescribing the fees to be paid in respect of any proceedings and generally for making provision for the proper and effectual exercise of the criminal and civil jurisdiction of such Courts, including the procedure for the making and hearing of appeals to the Supreme Court and to the Court of Appeal:

Provided that Rules prescribing or affecting the amount of any fees or the recovery thereof shall not come into operation unless approved, either before or after being made, by the Minister.

THE COURTS REGULATION

The English text should be corrected as follows :-

Add to Section 1

- (3) The Judicial Commission means a Committee consisting of the Chief Justice as Chairman, the Attorney General and a legal practitioner appointed by the Minister responsible for Justice.

Section 11 (1). Fourth line change " disputes to appeals."