L A W R E F O R M C O M M I S S I O N

OF

P A P U A N E W G U I N E A.

COMMITTAL PROCEEDINGS.

WORKING PAPER NO.13

JANUARY 1979.

P R E F A C E

In July 1977, the Acting Chief Magistrate and the Law Reform Commission produced a joint working paper entitled Committal Proceedings (JWP No.2 1977).

In that paper, it was suggested that a new system of committal proceedings (preliminary examinations) be introduced for people charged with indictable offences. The proposal was that instead of calling witnesses personally and having them give evidence orally, the Magistrate conducting the proceedings would read the evidence of witnesses in the form of statements and then decide whether the accused person should be brought to trial.

Considerable concern was expressed that this proposal could still delay a speedy trial and doubt was expressed whether the preliminary hearing was fulfilling its proper role.

The Law Reform Commission has decided that this Working Paper should be issued so that it can receive further comment on the original proposal and as an alternative, a new proposal that committal proceedings should be done away with altogether.

Comments, suggestions and criticism of the two proposals outlined in this Working Paper are invited and they should be directed to -

The Secretary,
Law Reform Commission,
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They should be submitted before 15th March, 1979.

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CHAPTER 1. THE PRESENT PROCEDURE.

Under the Criminal Code there must be a committal proceeding (preliminary hearing) before an indictment can be brought against a defendant. At present, the prosecutor must assemble his witnesses who give evidence before the Magistrate. Having heard the evidence, the Magistrate must then decide, on the evidence before him (if the evidence was neither challengednor contradicted), would a judge of the National Court convict the person charged. If he decides that the judge would not convict, he must discharge the accused person. If he decides that there is sufficient evidence to support a conviction, he must then ask the accused if he has anything to say and if he wishes to call evidence. In the light of the accused's statement and any evidence given, the Magistrate must again decide whether or not a judge of the National Court would convict. If not, the person is discharged. But if he considers there is sufficient evidence for a conviction the accused person is committed for trial to the National Court.

The present procedures are aimed at the ideal that the accused person should not be required to stand trial on an indictable offence unless the prosecution can establish a case sufficient to obtain a conviction. Unfortunately these procedures produce delays. Frequently there is confusion in the minds of the persons involved about the exact nature of the preliminary hearing and the reason for it's being held.

The holding of committal proceedings in a District Court is very time consuming. If the proposals in Report No.8 Indictable Offences Triable Summarily are adopted and passed into law, those courts will be further involved in hearing summarily many indictable offences which are at present heard in the National Court.

Witnesses and other persons involved in the preliminary hearing are forced to attend, in many cases at considerable personal cost in time and expense, only to have the whole process apparently repeated in the National Court at a later time. This certainly poses particular difficulties for expert witnesses such as doctors and others whose time is valuable.

The accused person suffers seriously by the delays. In 1975 a person charged with an indictable offence could wait from two to four months for the committal proceedings to take place and another two to four months until the end of the trial in the National Court. An improvement was noted in 1976 when the average time from charging to committal was 46 days but the average time between committal and National Court trial was 84 days.

When one considers that 70% of persons accused are in custody from the time of arrest until the case is finally disposed of, it is apparent that a person charged with an indictable offence is seriously penalised by the delays, whether he is eventually convicted or discharged.

The most recent figures available from the Public Solicitor show a continuing improvement. Of 147 cases for which figures are available and which were brought before the National Court in the period 1st of September 1977 to 31st August 1978, the time between the first court appearance and committal proceedings averaged 39.3 days while the period between committal and trial or sentence averaged 65.7 days. Notwithstanding the improvement in the trend there are many examples of excessive delays, the worst being 321 days between the first court appearance and the trial, in the National Court, another of 317 days, 4 in excess of 200 days and 55 cases in excess of 100 days. It is appreciated that there may be valid reasons for delays in some cases new but the reasons for the delays are not available.

Although the figures show some improvement we believe that there is still considerable room for improvement. When analysed on a provincial basis it becomes apparent that there is a considerable variation from province to province and in most cases, the accused person can expect to spend a considerable time waiting firstly for the committal proceedings and then for the trial. In the majority of cases he will be in custody while waiting.

The breakdown of cases by Province is as follows -

Province	No of Cases	(a)	(b)	(c)
N.C.D	24	57.4	44.8	102.2
West Sepik	2	24.0	55.0	79.0
East Sepik	13	23.0	58.1	81.2
Western Highlands	29	40.2	67.2	107.4
Simbu	14	44.4	55.6	100.7
Eastern Highlands	13	29.6	67.2	96.8
Southern Highlands	8	18.3	53.6	71.9
Madang	8	33.5	47.9	81.4
Morobe	12	29.3	101.0	131.08
Northern	-	-	-	-
Milne Bay	1	131.	186.	317.
Central	-	-	-	-
Gulf	4	36.5	54.3	90.8
Western	5	49.4	37.8	87.2
West New Britain	-	-	-	-
East New Britain	2	19.0	205.0	224.0
New Ireland	5	58.8	62.0	111.8
North Solomons	7	38.9	108.9	139.7

(a) time in days between charging and committal proceedings.
(b) time in days between committal and National Court appearance.
(c) total time from charge to National Court hearing.

The problems of delays have occasioned comments from time to time.

The 1978 Annual Report by the Judges contain the following statement -

> "DELAYS IN COURT HEARINGS ON CRIMINAL MATTERS. WE consider delays in criminal matters are being quite well contained in Papua New Guinea compared with other countries. When a person has not been brought to trial within 4 months of committal, a report is forwarded by the trial Judge, commented upon by the Chief Justice, and sent to the Minister for Justice (Section 37 (14)). Many of the worst delays have resulted from the failure of the committing Magistrate to have the depositions typed and forwarded following the committal for trial. It is hoped that the difficulties in this regard have been dealth with by the administrative and disciplinary action by the Chief Magistrate. A lot of the others are due to delays occasioned by psychiatric examination being confined to one medical practitioner who has multiple commitments. We respectfully suggest that the appointment of an additional psychiatrist in a centre other than Port Moresby to allow psychiatric examination of people awaiting trial (when such is requested by the defence) be considered." [3]

While agreeing with the judges as to some of the causes for the delays, there are also matters of manpower, availability of magistrates to conduct preliminary hearings, delays by the police in preparing for preliminary hearings and having witnesses available and not the least are the delays inherent in the circuit system of the National Court.

It is said that preliminary examinations are intended to achieve a number of results. First they are intended to ensure that no one shall stand trial for an indictable offence unless a prima facie case is established against him. Secondly, they inform defendants of the case against them. Thirdly, in some jurisdictions, it is said that they are used by counsel to test the witnesses and to prepare for the full scale trial by asking all sort of questions.

However, considering the delays, hardship and impositions on time and resources involved, and the manner in which preliminary hearings are presently conducted, it is doubtful whether the ideals are properly achieved. If they are achieved, do the disadvantages inherent in the present system justify the retention of the present time consuming procedures?

While it is clearly impossible to have immediate trials in criminal matters, the administrative problems including the arrangement of court sittings, availability of judges, magistrates, prosecution and defence personnel all take time. Too short a period would not be in the interests of the accused. But to the defendant the time factor is extremely important. A.E. Bottoms and J.D. McLean in their book. "Defendants in the Criminal Process" in commenting on the position in Britain say at p.43.

> "To many defendants, a pressing question is, 'How soon will it all be over?' To a few, delays in dealing with a case, with the attendant need for several appearances lead to loss of earnings which creates hardship. Others, uninterested in and dissociating themselves from the whole court process, simply wish to be rid of the whole irritating irrelevance of the case. To a larger number, however-including some with considerable criminal experience-the court appearance, the attendant publicity, and most of all the uncertainty as to the outcome are matters creating a (sometimes very marked) state of anxiety, which can only be alleviated by the termination of the case."
>
> and on p.44
>
> "A more general point is as to 'justified delay'. From the point of view of the defendant, unless he himself is anxious to secure an adjournment, all waiting time is bad. We have followed the Streatfeild Committee which recognised that the preparation of the case, the logistics of mounting a trial, or a court hearing of any sort, all require time. This waiting time is of benefit to the defendant, though he may not be disposed to see it in this light, as contributing to the proper administration of justice. Our criticisms are directed not at this type of delay, but at the very considerable period of time over and above a generous allowance of time for preparation, which some defendants have to endure." [4]

Although these comments relate to Britain it seems that they are just as appropriate in Papua New Guinea.

The legal tradition of requiring the prosecution to show that it has a sufficient case has been eroded to a great extent, both in this country and overseas. The creation of a great number of summary offences in all jurisdictions indicates that the procedures involved in preliminary hearings may not be in the best interests of the speedy administration of justice, or of the defendant himself. In this country, the Commissions Report No.8"Indictable Offences Triable Summarily" recommends that a number of indictable offences be tried summarily. This will further reduce the number of cases involving committal proceedings.

An indication of the efficiency of the committal proceedings as a screening device may be obtained from the "Annual Reports By The Judges". The three latest annual reports show the following figures:- [5]

	Charges	Convictions	Discharges	Nolle Prosequi
1-7-75 to 31-7-76	907	737	140	30
1-8-76 to 31-7-77	1025	854	83	88
1-8-77 to 31-7-78	1000	817	76	107

Although the percentage of discharges and nolle proseques as compared with charges does not show a great variation being 18.74% in the first year mentioned, 16.68% in the second year and 18.30% in the third, we believe that the figures do highlight two matters: -

(a) almost one person in five to be charged with an indictable offence is either acquitted, or a nolle proseque is entered before he comes to trial before the National Court; and

(b) The number of nolle proseques entered in respect of charges for indictable offences has risen dramatically over the three years while the number of discharges has decreased. In the period ended 31st July 1976 "nolles" formed 17.6% of the total number of cases where a conviction was not entered. In the year ending July 1977, 51.5% and last year 58.5%.

We believe that these figures indicate an unacceptably high proportion of charges where a conviction is not obtained even though the charge has been subject to a preliminary hearing. Also, the dramatic rise in nolle proseques over the last three years, although offset by a corresponding drop in discharges, is we suggest indicative that many persons are being committed where there is obviously insufficient evidence to support an conviction. With nolle proseques being entered in more than 10% of the indictable offences coming before the National Court, there in little doubt that committal proceedings are not fulfilling their purpose in a significant number of cases.

That a defendant should be informed of the case against him is without doubt. But this can be achieved in either of the two alternatives proposed without the necessity of a full preliminary hearing as at present. The Commission is not particulary concerned that the preliminary hearing may be a rehearsal for trial. This does not occur in this country but instead is a method of assembling evidence for preparation for the trial, although if both the defendant and prosecution are represented by counsel, the matter can be hard fought at the committal stage.

CHAPTER 2. THE FIRST PROPOSAL-HAND UP BRIEF.

The First Proposal.

The first proposal follows closely the proposal first outlined in Joint Working Paper No.2. It would allow a simpler procedure than the present preliminary hearing.

Preliminary hearings of indictable offences would be held before a magistrate who would read the written statements of witnesses rather than have them attend at court and give their evidence in person. This provision would save the time and expense of all parties involved in committal proceedings.

The evidence of a witness would have been typed in the form of a statutory declaration which would be formally declared as being true by the witness. The declarations which would basically form the evidence on which the prosecution relied would be assembled by the police prosecutor and presented to the magistrate in open court. The magistrate would read the declarations and decide if there was sufficient evidence to justify putting the defendant on trial in the National Court.

Although the committal proceedings would be retained the form would be altered. Witnesses would no longer have to be present in court at the preliminary hearing.

One matter which should be considered is the grading of magistrates who conduct preliminary hearings. In the Commissionsview only the more senior and experienced Magistrate's should conduct such hearings.

The amendments which would be required to implement the proposal for hand up briefs are contained in this Chapter. Although other minor amendments of a consequential nature would also be neccessary these are not included in this paper for the sake of clarity. They would of course be included in a final report.

The proposal for "hand-up" briefs will require substantial amendment to Part VI of the District Courts Act 1963. Division 1 would be repealed and also Sections118, 119, and Division 5 of Part VI. As the proposal would only affect the procedure for conducting preliminary hearings, no substantial amendment of the criminal code is required. In the National Court, the present provisions as to the conduct of trials of indictable offences would continue.

The legislative amendments required for the system of hand up briefs are as follows-

(a) Repeal of the provisions of Divisions 1,3 and 5 of Part VI of the District Courts Act 1963.

(b) The substitution of the following sections which would form new Divisions I, 3 and 5 of the Act.

"Division 1. - General"

100. - DISOBEDIENCE TO SUMMONS

Where a person charged with an indictable offence against whom a summons has been issued does not appear before a court at the time and place specified in the summons, and it is made to appear to the court upon oath that the summons was duly served upon him a reasonable time before the time appointed for appearing to it, the court, upon oath being made before it substantiating the matter of the information to its satisfaction, may issue its warrant for the arrest of the defendant to bring him before a court to answer to the information and to be further dealt with according to law.

101. - PERSON CHARGED WITH AN INDICTABLE OFFENCE

Where a person appears or is brought before a court charged with an indictable offence, the court before it proceeds to deal with or hear the matter shall -

(a) read the charge to the defendant;
(b) explain the nature of the charge to the defendant in a language understood by the defendant;
(c) inform the defendant -

(i) if the charge is in respect of an indictable offence specified in Schedule 3, that he will be tried by the court in which he appears, or

(ii) if the charge is in respect of an indictable offence which is not specified in Schedule 5 a preliminary investigation will be held by the Court to determine whether there is sufficient evidence to put him on trial in the National Court.

(d) The defendant shall be advised that he is entitled if he so wishes to be represented by a lawyer or, he may be provided with legal aid if he qualifies for it.

"102. - DISPOSITION OF INDICTABLE OFFENCES

(1) Where a defendant is charged with an indictable offence specified in Schedule 5 or which may be dealt with summarily, the Court shall deal with the charge as if it were a charge for a simple offence.

(2) Where the indictable offence is not against any of the provisions of the Criminal Code specified in Schedule 5, the charge shall be dealt with under the succeeding provisions of this Part.

"103. - PRELIMINARY PROCEDURE

(1) Where a person is charged with an indictable offence which is not triable summarily the prosecutor shall, within a reasonable time before the date fixed for the hearings of the matter, give to the defendant or his legal representative -

(a) a copy of the information; and
(b) a list of persons who have made written statements which the prosecutor proposes to tender at the hearing; and
(c) a copy of each of the statements referred to in paragraph (b); and
(d) a list of the documents and things (if any) referred to in those statements which the prosecutor intends to tender to the court at the hearing; and
(e) a copy of each document referred to in the list; and
(f) where a thing, not being a document, cannot adequately be described in that list, a photograph of that thing.

(2) The documents referred to in Subsection (1) may be given to the defendant in any manner in which a summons issued in respect of an information and may be proved in the same manner as the service of a summons.

"104. - ADMISSION OF WRITTEN STATEMENTS, ETC., IN EVIDENCE

(1) Subject to this section, the District Court at an examination conducted under this Part may admit a written statement a copy of which has been given to the defendant or his legal representative under Section 102, as evidence of the matters stated.

(2) A written statement shall not be admitted in evidence by the court unless before he signed it, the person who made it read the statement or had it read to him in language understood by him.

(3) Where a person makes an oral statement that is taken down in his presence and signed by him it shall, where the person gives his statement in Melanesian Pidgin or Hiri Motu taken down in that language and, if he is unable to read, it shall be read over to him.

(4) Where any objection is made to any part of a written statement tendered in evidence the court shall note the objection raised.

"105. - COURT TO CONSIDER WHETHER PRIMA FACIE CASE MADE

(1) The court conducting an examination under this section shall, as soon as possible after the prosecutor has offered all his evidence, consider whether the evidence is such that, if uncontradicted at the trial for an offence, a Judge could convict the defendant.

(2) If the court is of opinion that the evidence is not sufficient to put the defendant upon his trial upon indictment, it shall forthwith order the defendant, if in custody to be discharged as to the information then under inquiry.

(3) If the court is of opinion that the evidence is sufficient to put the defendant upon his trial for an indictable offence, it shall proceed with the examination in accordance with this Division.

"106. - ACCUSED TO BE ASKED WHETHER HE DESIRES TO GIVE EVIDENCE

(1) Where a court proceeds with the examination of a defendant in accordance with this Division, the court shall read the charge to the defendant and explain its nature in ordinary language and shall say to him these words or words to the same effect -

> 'I have heard the talk of the police and their witnesses and I have decided that your case should be heard by the National Court. Now it is your turn to say something if you want to. But you don't have to say anything at all in this court if you don't want to. You can save talk for the National Court. If you do say something your words will be written down and may be read out later when your case is heard by the National Court.'

(2) Anything which the defendant says in answer to a statement made in accordance with Subsection (1) shall be taken down in writing and read to him, and shall be signed by the Magistrates constituting the court and by the defendant if he so desires, and shall be kept with the statements admitted in evidence and transmitted with them to the Public Prosecutor.

"107. - DISCHARGE OR COMMITTAL OF DEFENDANT

(1) When an examination under this Division is completed, the court shall consider whether the evidence is such that, if uncontradicted at the trail for the offence, a Judge could acquit the defendant.

(2) If, in the opinion of the court, the evidence is such that, if uncontradicted at the trial for the offence, a Judge could acquit the defendant it shall immediately order the defendant, if in custody, to be discharged as to the information then under inquiry.

(3) If, in the opinion of the court, the evidence is such that, if uncontradicted at the trial for the offence, a Judge could convict the defendant the court shall by warrant commit the defendant to a corrective institution, police lock-up or other place of security or other such safe custody, to be there safely kept until the sittings of the National Court before which he is to be tried, or until he is delivered by due course of law.

"108. - STATEMENT SHALL BE PUT IN EVIDENCE AT TRIAL

On the trial of a defendant for an offence in which he has been committed for trial or for any other offence arising out of the same transaction or set of circumstances as that offence, a statement made by him under section 106 shall be tendered by the prosecution and shall be admitted in evidence without further proof thereof notwithstanding that it is exculpatory or self-serving.

109. - SAVING

Nothing in this Act contained prevents the prosecutor from giving in evidence an admission or confession or other statement of the defendant, which by law would be admissible as evidence against that person.

110. - DEPOSITIONS OF DEAD WITNESSES ETC.

Where a person has been committed for trial for an offence, the deposition of a person taken before the examining court and purporting to be signed by the Magistrates constituting the court before which it was taken may, with the consent of the National Court, be read without further proof as evidence on the trial of that first-mentioned person, whether for that offence or for any other offence arising out of the same transaction or set of circumstances as that offence upon proof -

(a) that the witness is -
(i) dead or insane;
(ii) so ill as not to be able to travel;
(iii) kept out of the way by means of the procurement of the accused or on his behalf; or
(iv) a person registered under the Medical Services Act 1965; and

(b) either by a certificate purporting to be signed by the court by one of the Magistrates before which or whom the deposition purports to have been taken, or by the oath of a credible witness, that the deposition was taken in the presence of the accused and that accused or his counsel or solicitor or other person authorized by law to appear for him and full opportunity of cross-examining the witness.

DIVISION 3 - BOND OF WITNESSES TO APPEAR ON TRIAL

118. - BONDS OF WITNESSES, ETC.

(1) Where the statement of a witness has been admitted into evidence under Division 1 and the examining court or Judge is of the opinion that it contains evidence in any way material to a case or tending to prove the guilt or innocence of an accused person, the court or Judge, as the case may by, may at any time bind the witness by bond whether orally or in writing to appear at the court at which the defendant is to be tried, then and there to give evidence at the trial of the defendant.

(2) A bond under Subsection (1) shall particularly specify the profession, trade or calling of each who enters into it, together with his full name or names, and the place of his residence.

119. - EXECUTION OF BONDS.

"(1) A bond under Section 111 shall be duly acknowledged by every person who enters into it, and shall be signed by the Magistrates or Judge before whom it is acknowledged and a notice of the bond signed by the Magistrates or Judge, as the case may be, shall at the same time be given to every person so bound.

"(2) The bond of all or any two or more persons who are bound in the same sum or pensalty may be included in one form of document, and the bond is as valid and effectual in respect of every such person as if it has been entered into by a separate form or document.

DIVISION 5 - MISCELLANEOUS.

125. - TRANSMISSION OF STATEMENTS, ETC., TO PUBLIC PROSECUTOR

When a defendant is committed for trial the examining court after the completion of the preliminary examination or review shall -

(a) immediately send a Notice of Committal to the Registrar of the National Court; and

(b) as soon as practicable transmit to the Public Prosecutor copies of the statements and other documents admitted in evidence by the court.

126. - HOW DEALT WITH AFTER TRANSMISSION

(1) After the transmission of the statements and documents under section 113 and before the day of the trial, the Public prosecutor is subject to the same duties and liabilities with respect to the documents upon a certiorari directed to him or upon a rule directed to him instead of that write as the court would have had and been subject to upon certiorari to it if the documents has not been so transmitted.

(2) The Public Prosecutor shall, as soon as practicable after receiving the documents referred to in Subsection (1) forward a copy of each of those documents to the Public Solicitor.

(3) The Public Prosecutor, or the lawyer prosecuting a case in the National Court shall, where at the trial an accused has pleaded guilty to the offence with which he is charged, deliver to the proper officer of the court the documents admitted in evidence at the preliminary examination or any of them to cause them to be so belivered, if the presiding Judge so directs.

127. - EXHIBITS.

(1) Where a person charged with an indictable offence is directed by a court to be tried, the court shall retain custody of all exhibits tendered during the preliminary examination under this Part, and -

(a) if the person charged is indicted or his committal for trial is to be reviewed by a Judge - they shall be delivered to the proper officer of the National Court in accordance with the Rules of the Court; and

(b) if -

(i) the Public Prosecutor declines to present an indictment; OR

(ii) a nolle proseque is entered; OR

(iii) another person charged is otherwise discharged,

They may be returned to the person who tendered them or to another person entitled to possession of them.

(2) Where exhibits are in the custody of the court under subsection (1), the person charged, his legal representative and the prosecutor are each entitled to inspect them either by himself or person authorized by him for the purpose.

CHAPTER 3 THE SECOND PROPOSAL-ABOLITION OF COMMITTAL PROCEEDINGS.

The second alternative is also put forward for consideration. It represents a major departure from the present procedures for dealing with indictable offences.

Basically the proposal would eliminate preliminary hearings completely. A person would be brought before a District Court, and charged with the indictable offence but no plea would be taken. He would be remanded either on bail or in custody to appear in the National Court and the papers in the case would be forwarded to the Public Prosecutor.

The proceedings in the National Court would be commenced by the Public Prosecutor preparing and filing in that Court an indictment.

The defendant would be served with a copy of the indictment, informed of the date of the trial as would the Public Prosecutor, the defendant's legal counsel and the police.

A reasonable time before the trial, the Public Prosecutor would be required to provide the accused person or his legal representative with copies of all statements taken by the police, lists of witnesses to be called and details of articles and documents to be produced in evidence.

The proposal is based on the system of dealing with indictable offence in Sri Lanka.[6] Although considerable consequential amendments would be required to Part VI of the district Courts Act, the main legislative amendment would be to the Criminal Code.

This alternative is proposed for the following reasons:

(a) With more than 60 indictable offences to be dealt with summarily by senior magistrates, the work of the District Courts will increase considerably.

(b) The preliminary hearings conducted in the District Courts very seldom fulfil the proper purpose of determining whether the prosecution case is sufficient to place a defendant on trial.

(c) The present procedures are very time consuming and in many cases result in a considerable delay before the National Court trial can be held. Although there may be some delays due to the arrangement of National Court Sessions and pressure of work in the courts, the overall time from the initial charge to completion of trial should be considerably reduced.

(d) At present, the prosecutor has to prepare his case virtually from the beginning, often after a considerable lapse of time since the preliminary hearing had been conducted. By bringing the case promptly before the National Court, the prosecutor will be better able to advise the police of his evidentiary requirements and to prepare the indictment while the matter is still fresh in the memory of witnesses.

Any concern that is felt that the accused person will not be fully informed of the charge against him is, we suggest adequately taken care of in the proposal by requiring that

(a) he is brought before the District Court and there charged with the particular crime or crimes. It will be necessary to explain the nature of the charge to him and furthermore, he will be served with a copy of the indictment; and

(b) the prosecution will be required to provide him with copies of statements, lists of witnesses and details of other evidence to be used in the case.

However, the prosecution will not have to establish to the court that there is sufficient evidence in its case for the accused to stand trial. Although this appears to be a real loss, we suggest that it is more illusory than real. The growing number of offences tried summarily afford no pre-trial examination. It is doubtful that the preliminary hearings at present as conducted, are really effective in screening out those cases whichshould not go to the National Court. Any advantages to be gained from a preliminary hearing are nullified to a great extent by the increase in time taken from the arrest to the final disposal of the case.

Although the National Court would be burdened with the additional task of hearing those cases which in the past were rejected on the committal proceedings, the recommendations in Report No.8 if adopted, will mean that the criminal trial work in the National Court will be reduced, perhaps not by the 30-40% originally estimated in Joint Working Paper II, but none the less substantially reduced.

Also, it should be considered that, if Report No.8 is adopted and the legislation suggested enacted, the District Courts will be faced with a greater load of criminal business, and the elimination of committal proceedings in these Courts would ease the burden of work.

As with the proposal outlined in Chapter 2, for the purposes of simplicity only the basic amending legislation will be included in this Paper. It is obvious that considerable consequential amendment would be needed to the District Courts Act repealing the present committal procedures, At this stage however, the Commission is mainly interested in the reactions to the two alternative proposals. There are certain administrative arrangements which would have to be made to try to ensure the smooth functioning of the system.

The circuit system of hearings of the National Court will require that the person being charged is first brought before a District Court otherwise if the indictment was to be initially brought against the defendant in the National Court, there could be a considerable delay until the Court was next sitting in that place and could hold the trial.

Under the proposal for the abolition of preliminary hearings, Sections 537 and 538 of the Criminal Code which relate to procedures for indictment would be repealed and the following provisions substituted.

537. - PROCEDURE FOR INDICTMENT

Every trial before the National Court shall be on an indictment brought in the name of the State by the Public Prosecutor.

538. - INDICTMENT TO BE FORWARDED TO NATIONAL COURT.

(1) The indictment shall be forwarded by the Public Prosecutor to the National Court to be filed in that Court.

(2) The fact that the indictment has been so forwarded and filed shall be the equivalent to a statement that all conditions required by law to constitute the offence charged and to give the court jurisdiction have been fulfilled in the particular case.

538A. - DUTY OF JUDGE UPON RECEIPT OF INDICTMENT

A judge of the National Court upon receipt of the indictment shall -

(a) determine a time and place for the holding of the trial of the defendant; and

(b) cause a copy of the indictment together with an order requiring the defendant to appear or be brought before the National Court at the time and place stated in the order to be served upon -

(i) The defendant or his legal representative; and

(ii) The Superintendent of police in the province in which the trial is to be held.

538B. - WITNESSES EVIDENCE AND STATEMENTS.

(1) The Public Prosecutor shall within a reasonable time before the date fixed for the trial give to the defendant or his legal representative:

(a) a list of witnesses the prosecution intends to call at the trial;

(b) a list of documents and things intended to be produced at the trial;

(c) a copy of the statements, if any, made by the accused and the person against whom or in respect of whom the offence is alleged to have been committed; and

(d) a copy of each statement made by any person who is intended to be called as a witness.

(2) The documents referred to in Subsection (1) shall not form part of the indictment.

(3) Nothing is Subsection (1) shall be construed as preventing the prosecution, after reasonable notice to the accused, from calling any further witness or producing any document or thing not listed with the indictment.

The Basic amendments required to the District Courts Act 1963 would be as follows:

AMENDMENT TO DISTRICT COURTS ACT 1963

Part VI of the District Courts Act is amended by repealing Sections 101 to 110 inclusive and substituting the following sections -

101. - Where a person is brought before the court charged with an indictable offence which is not triable summarily the court shall -

(a) read the charge to the defendant in a language that he understands either directly or through an interpeter;

(b) advise the defendant that he will be remanded to the National Court for trial and either -

(i) admitted to bail; or

(ii) committed to a corrective insitution, police lockup, or other place of security;

102. - DEFENDANT TO BE REMANDED FOR TRIAL.

Without taking a plea of quilty or not guilty the court shall remand the defendant on bail or in custody to appear in the National Court under the provisions of Division 2.

103. - INFORMATION TO BE FORWARDED TO PUBLIC PROSECUTOR

Where the defendant has been released on bail or remanded in custody to appear in the National Court, the magistrate shall forward to the Public Prosecutor the following information:-

(a) a copy of the information forming the basis of the charge;

(b) the court and date on which the charge was preferred;

(c) details of bail (if any) to which the defenant was admitted including the names and addresses of any sureties.

FOOTNOTES.

1. Law Reform Commission and The Chief Magistrate Joint Working Paper No.2 July 1977.
2. Records of Public Solicitor.
3. 1978 Annual Report by the Judges,Papua New Guinea Government Printer.
4. Defendants in the Criminal Process. AF Bottoms and JDMc. Clean. Publ. Routledge & Kegan Paul. London.
5. 1976, 1977 and 1978 Annual Report by The Judges,Papua New Guinea Government Printer.
6. Administration of Justice Law. No.44 of 1973. Sri Lanka.