

THE CRIMINAL PROCEDURE ORDINANCE OF 1889⁽¹⁾ (PAPUA, ADOPTED) IN ITS APPLICATION TO THE TERRITORY OF NEW GUINEA.

An Ordinance Relating to Criminal Law Procedure.

BE it enacted by the Administrator of British New Guinea, with the advice and consent of the Legislative Council thereof, as follows:—

1. The Ordinary Sessions for the despatch of the Criminal business of the Central Court⁽²⁾ of British New Guinea shall be held at such times as the Chief Magistrate shall with the approval of the Administrator from time to time determine. The Chief Magistrate whenever he shall deem it expedient to do so may hold a Special Sessions in addition to the Ordinary Sessions. The Chief Magistrate may adjourn any Sessions to any future day as often as he thinks fit to do so.

Times when Sessions of Central Court may be held.

2. All Sessions unless when otherwise ordered by the Chief Magistrate with the approval of the Administrator shall be held at Port Moresby but the Chief Magistrate may by order under Seal direct that any Sessions shall be held at some other place within the Possession.

Places at which Sessions may be held.

3. Except in cases of informations known to the law of England as *ex officio* informations and informations by the Master of the Crown Office no Criminal case shall be brought under the cognizance of the Central Court⁽²⁾ unless the same shall have been previously investigated by a Magistrate and the accused shall have been committed for trial at such Court.

Indictable offences to be in first instance investigated by Magistrate.

(1) *The Criminal Procedure Ordinance of 1889* of the Territory of Papua in its application to the Territory of New Guinea comprises the original *Criminal Procedure Ordinance of 1889* of the Territory of Papua, as amended by the other Ordinance of the Territory of Papua referred to in Part I of the following Table and as amended by the Ordinances of the Territory of New Guinea referred to in Parts II and III of the following Table:—

TABLE.
PART I.—ORDINANCES OF THE TERRITORY OF PAPUA.

Short title, number and year.	Ordinance by which adopted.	Date on which adoption took effect.
<i>The Criminal Procedure Ordinance of 1889</i> (No. 2 of 1889)	<i>Laws Repeal and Adopting Ordinance 1921</i> (No. 1 of 1921)	9.5.1921 (<i>Cwth. Gaz.</i> of 6.5.1921)
<i>Justices Ordinance</i> 1912 (No. 28 of 1912)	<i>Laws Repeal and Adopting Ordinance 1921</i> (No. 1 of 1921)	9.5.1921 (<i>Cwth. Gaz.</i> of 6.5.1921)

[Footnotes continued on next page.]

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Sections 4 and 5 repealed by No. 28 of 1912, s. 2 (Papua).

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Trials before Central Court to be prosecuted by charge.

6. All crimes and offences cognizable in the Central Court⁽²⁾ shall be prosecuted by charge under the Seal of the Court and every such charge when laid shall in the Possession be as valid and effectual in all respects as an indictment would be in England.

Form of charge.

7. Every charge shall bear date on the day when the same is sealed and with such modifications as shall be necessary to adapt it to the circumstances of each case may be in the Form No. I. in the Schedule hereto.

Charge need not set out place of offence.

8. It shall not be necessary in any charge to set out the locality or place where the offence was committed except to the extent of alleging that it was committed in the Possession of British New Guinea nor shall it be necessary in any charge to add any concluding words after the description of the offence charged.

Court may order further particulars of charge to be delivered.

9. The Chief Magistrate may at any time before verdict order that further particulars of any offence set out in a charge shall be furnished to the accused person.

Different felonies and misdemeanours may be included in one charge.

10. Persons may be charged with different felonies and misdemeanours or with different felonies or misdemeanours in the same charge when the person thereby injured is one and the same person or when the several offences so charged constitute or relate to one and the same transaction but the Chief Magistrate shall have power to prevent the trial of different felonies or misdemeanours together

(1)—continued.

PART II.—ORDINANCES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

Short title, number and year.	Date on which made by Gov.-Gen. in Council.	Date on which notified in <i>Cwltth. Gaz.</i>	Date on which took effect.
<i>District Courts Ordinance</i> 1924 (No. 4 of 1924)	22.1.1924	24.1.1924	1.6.1924 (<i>N.G. Gaz.</i> of 15.5.1924)
<i>Criminal Procedure Ordinance</i> 1925 (No. 5 of 1925)	25.2.1925	26.2.1925	26.2.1925 (<i>Cwltth. Gaz.</i> of 26.2.1925)

PART III.—ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>District Courts Ordinance</i> 1934 (No. 16 of 1934)	7.2.1934	31.8.1934	7.2.1934 (<i>Laws of T.N.G.</i> , Vol. XIII. p. 51)

(2) See Section 17 of the *Laws Repeal and Adopting Ordinance* 1921-1939. At the date of the adoption of *The Criminal Procedure Ordinance* of 1889 of the Territory of Papua as a law of the Territory of New Guinea, there was a "Central Court" in both Territories. As to references in any Ordinance to "Central Court," see now Section 7A of the *Judiciary Ordinance* 1921-1938.

The Criminal Procedure Ordinance of 1889 (Papua, adopted).

if such trial would in his opinion be inexpedient and in such case he may order separate records to be made up and separate trials to be had.

11. In a charge for felony or misdemeanours committed on the high seas or in foreign parts the allegation that the person injured or aggrieved was at the time of the offence charged in the Peace of the Queen shall be a sufficient allegation of the jurisdiction of the Court to hear and determine the same. The charge shall with the above addition be in the same form as is hereinbefore mentioned.

Venue in offences committed on the high seas.

12. Whenever any person has been committed by a Magistrate for trial at the Central Court⁽²⁾ the Crown Law Officer of the Territory shall consider the evidence taken in the matter by the Magistrate and at his discretion do one of the following things:—

When person committed Crown Law Officer to deal with case.

Section 12 amended by No. 4 of 1924, s. 6.

- (1) Lay or direct to be laid against the person committed any charge that the evidence appears to the Crown Law Officer of the Territory to warrant.

- (2) Decline to lay a charge.

Paragraph (2) substituted by No. 4 of 1924, s. 6.

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Paragraphs (3) and (4) omitted by No. 4 of 1924, s. 6.

13. If the Crown Law Officer of the Territory declines to lay a charge he shall as soon as he conveniently can sign a sealed order in duplicate which order with such modifications as may be necessary to adapt it to the circumstances of the case may be in the Form No. II in the Schedule hereto.

If charge not laid order accordingly to be made out.

Amended by No. 4 of 1924, s. 6.

14. Upon the order last mentioned being completed one duplicate thereof shall be filed in the Central Court.⁽²⁾ The other duplicate shall if the person committed be in custody be delivered or sent by post or messenger to the gaoler in whose custody such person shall be or if such person be out on bail it shall be delivered to him or sent by post or messenger addressed to him at his last known address.

Order quashing committal to be filed and served.

15. Upon the receipt by any gaoler of any such last mentioned order the person named in such order shall be immediately and without fee or reward discharged from custody in respect of the offence or matter to which such order relates.

Gaoler on receipt of order to liberate person in custody.

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Sections 16 and 17 repealed by No. 4 of 1924.

(2) See footnote (2) printed on p. 1648.

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Administrator may appoint person to perform certain duties, &c.

Amended by No. 4 of 1924, s. 6.

18. The Administrator may at any time and from time to time empower some person other than the Crown Law Officer of the Territory to perform any of the acts or duties that by Sections 12, 13, 14 and 15 hereof are to be or may be performed by the Crown Law Officer of the Territory. If any person aforesaid shall be so empowered such acts and duties shall be performed by such persons instead of by the Crown Law Officer of the Territory and such sections last aforesaid shall be read and construed as if whenever in any of such sections the Crown Law Officer of the Territory is named or referred to such person was named and referred to. If at any time after any person has been empowered as aforesaid it be desired that the Crown Law Officer of the Territory shall again perform such acts and duties the Administrator shall cancel the powers of such person and direct the Crown Law Officer of the Territory to perform such acts and duties.

Copy of charge to be delivered to accused.

19. When a charge has been laid in the Central Court⁽²⁾ against a person the charge shall be written out sealed and filed in the Court and a copy thereof delivered to the accused person before his trial comes on. Upon the copy so delivered there shall be indorsed a notice as nearly as circumstances will admit of in the Form No. III. in the Schedule hereto.

Person may be tried at a Sessions though no charge filed when Sessions began.

20. Any person committed for trial at the Central Court⁽²⁾ that shall be in custody at the opening of or during any Criminal Sessions of such Court may be tried at such Sessions if the Chief Magistrate think it just that he should be then tried at such Sessions although at the opening of such Sessions a charge had not as yet been filed against him.

Trials to be by Chief Magistrate sitting alone.

21. Trials before the Central Court⁽²⁾ shall be by the Chief Magistrate sitting alone.⁽³⁾ The Chief Magistrate shall not be bound to pronounce his verdict immediately upon the conclusion of a trial but may reserve it and pronounce it at any future time that he may see fit. If the Chief Magistrate shall reserve his verdict he shall order that the accused person be in the meantime kept in custody or let out on bail.

Charge or proceedings may be amended.

22. It shall be lawful for the Chief Magistrate at any time to amend the charge or proceedings in any matter of form or sub-

(2) See footnote (2) printed on p. 1648.

(3) Held, by the High Court, that Section 21 of *The Criminal Procedure Ordinance of 1889 of Papua*, although impliedly amended, was not repealed by Section 1 of *The Jury Ordinance of 1907 of Papua*, and (*The Criminal Procedure Ordinance of 1889 of Papua* being specified in the Third Schedule to the *Laws Repeal and Adopting Ordinance 1921-1939*) is applicable to and in force in the Territory of New Guinea. The adoption of certain provisions of *The Criminal Code* (Queensland, adopted) does not support the contrary contention. A European prisoner was therefore properly tried without a jury on charges of stealing as a servant: *Sutherland v The King* (1934) 52 C.L.R. 356; 41 A.L.R. 227; 8 A.L.J. 355. Per Dixon J. at p. 360: Trial by jury has been excluded from the Territory.

As to the validity of Section 21 of *The Criminal Procedure Ordinance of 1889 of Papua*, in relation to Section 80 of the *Constitution*, see, also, *The King v Bernasconi* (1915) 19 C.L.R. 629; 21 A.L.R. 86.

The Criminal Procedure Ordinance of 1889 (Papua, adopted).

stance the omission or insertion of which as the case may be has not in the opinion of the Chief Magistrate prejudiced or is not calculated to prejudice the accused in his defence.

23. If it shall become necessary at any time for any purpose whatever to draw up a formal record in any case where any amendment shall have been made such record shall be drawn up in the form in which the charge was after the amendment was made without taking any notice of the fact of such amendment having been made.

In record charge to be set out as amended.

24. No verdict or judgment shall be stayed or reversed on the ground of any objection which if stated at any time before verdict might have been amended by the Chief Magistrate nor for any informality in swearing or affirming any witness or interpreter nor on the ground of the incorrect or doubtful interpretation of any evidence.

Certain things not to affect verdict.

25. All the proceedings in the Central Court⁽²⁾ shall be conducted in English evidence if given in any other language being finally interpreted into English.

Proceedings in Central Court to be in English.

26. The Chief Magistrate may in respect of the Criminal procedure and practice of the Central Court⁽²⁾ at any time direct that any words or figures written or spoken in English shall be translated or interpreted into any other language or any dialect and that any words or figures written or spoken in any language not English shall be translated or interpreted into English. In all other Courts the presiding Magistrate or Justice shall in respect of such Courts have similar powers.

Courts may order language to be interpreted.

27. All the proceedings in Courts other than the Central Court⁽²⁾ shall unless the Administrator shall otherwise direct be conducted in English evidence if given in any other language being finally interpreted into English.

Proceedings in certain Courts to be in English unless Administrator otherwise directs.

28. In the Central Court⁽²⁾ the Chief Magistrate and in other Courts the Magistrate or Justice presiding in any such Court shall be the sole judge of whether any person does or does not understand any interpreter or any interpretation or translation.

Court to be judge of correctness of interpretation.

29. The Chief Magistrate may in his discretion postpone any trial and may from time to time adjourn any trial already begun if he considers that such postponement or adjournment will promote the ends of justice.

Trial may be postponed or adjourned.

30. It shall be lawful for the Chief Magistrate at any stage of a trial to summon and examine any witness whose evidence he shall consider essential to the just decision of the case. The Chief Magistrate may also examine as a witness any person who may

Power to examine person not bound over or subpoenaed.

(2) See footnote (2) printed on p. 1648.

happen to be in the room or in that portion of a building in which the Central Court⁽²⁾ is sitting although such person may not have been bound over or summoned to attend as a witness or may not be willing to give evidence.

Deposition of witness deceased, &c. may be given in evidence.

31. The examination of any witness taken and attested by a Magistrate in the presence of the accused person on any occasion or under any circumstances may be given in evidence if the witness be dead or the Chief Magistrate be satisfied that for any sufficient cause his attendance cannot be procured. The attestation of the Magistrate shall be sufficient *primâ facie* proof of such examination and such attestation shall be admitted without proof of the signature of the Magistrate unless the Chief Magistrate shall see reason to doubt the genuineness of the signature. Provided always that it shall be absolutely in the discretion of the Chief Magistrate to permit or forbid any such examination to be given as evidence.

Declaration of a deceased person may be given in evidence.

32. The declaration of a deceased person whether it be made in the presence of the accused person or not may if the Chief Magistrate shall see fit be given in evidence if the deceased person at the time of making such declaration believed himself to be in danger of approaching death but yet had hopes of recovery.

How sentence of death pronounced.

33. Whenever any person is sentenced to death the sentence shall direct that at such time and place as the Administrator may direct he the said person shall be hanged by the neck till he is dead.

How sentence of death to be carried out.

34. It shall be lawful for the Administrator to prescribe the time when and the place where any sentence of death shall be carried out and to empower any person to carry out any such sentence and to dispose of the body of any person executed in pursuance of any such sentence in any way that he the Administrator may deem expedient.

Section 35 repealed by No. 5 of 1925, s. 2.

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Fines may be disposed of by Administrator.

36. Whenever a Criminal Court imposes a fine under any law in force for the time being the Administrator may order the whole or any part of the fine to be paid to any person for expenses incurred in the prosecution or as compensation for injury loss of time or services or as a reward.

After Sessions Record of Cases to be made up, &c.

37. As soon as conveniently may be after each Criminal Sessions of the Central Court⁽²⁾ a list in such form as the Chief Magistrate shall determine of all persons brought up for trial before the said Court at such Sessions and what was done in the case of each of such persons shall be made out. Such list shall be in triplicate and

(2) See footnote (2) printed on p. 1648.

The Criminal Procedure Ordinance of 1889 (Papua, adopted).

be signed by the Chief Magistrate and sealed. One of the triplicates shall be filed in the Court one shall be sent to the Administrator and one shall be sent to the Superintendent of Prisons or Chief Gaoler or to the person into whose custody any convicted person may have been committed. Such document shall be a sufficient warrant and full authority for receiving and detaining all prisoners and for carrying into effect all sentences specified in such document other than sentences of death.

38. In any criminal case except cases initiated and concluded under the summary jurisdiction of Magistrates the Administrator shall be empowered if he shall see fit to do so to allow and to pay out of general revenue to any person called as a witness for the prosecution or defence before a Magistrate or before the Central Court⁽²⁾ a sum by way of expenses. Such sum shall be regulated in accordance with rules⁽⁴⁾ to be made by the Administrator in Council.

Payment of witnesses.

39. Any person tried by the Central Court⁽²⁾ shall if the Chief Magistrate approve be allowed to have his defence entirely conducted by some other person in lieu of conducting it himself. For the purposes of any particular case the person conducting the case for an accused person shall have the same privileges as the accused himself would have if he conducted his own case. But no person conducting a case for an accused person shall be allowed in that case to give evidence on behalf of the accused.

Accused may have his defence conducted by another person.

40. Excepting as it is provided herein to the contrary any document or instrument originating or issuing from the Central Court⁽²⁾ in its criminal jurisdiction shall be authentic and complete if it bear the Seal of the said Court whether such document or instrument be signed or not by any person. But the Chief Magistrate may at any time if he shall see fit himself sign any sealed document or instrument or direct that it be signed by any officer of the Central Court.⁽²⁾

Documents authentic if sealed except where otherwise provided.

41. If at any time there shall be no officer appointed to perform any duty in connection with the criminal jurisdiction of any Court or if there be an officer appointed but his services are not available the Chief Magistrate may perform any such duty himself or empower any other person whom he may see fit to perform it.

Chief Magistrate may perform certain duties, &c.

42. All criminal or quasi-criminal matters for which no provision has been specially made by any Ordinance Law Enactment or Regulation of the Possession shall be governed as nearly as circumstances will admit of by the law practice and procedure concerning such matters in force in the Colony of Queensland on the seventeenth day of September one thousand eight hundred and

Where no local provision Queensland practice to prevail.

(2) See footnote (2) printed on p. 1648.

(4) See the *Allowances to Witnesses Rules*, printed on p. 1655.

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eighty-eight when such law practice and procedure can be applied without contravening any Ordinance Law Enactment or Regulation of the Possession.

Ordinary seal of Court may be used in Criminal Cases.

43. When any instrument or document originating or issuing from the Central Court⁽²⁾ in its criminal jurisdiction requires to be sealed it shall be sufficiently sealed if sealed with the general seal of such Court. But if at any time a special seal shall be provided for the criminal jurisdiction of such Court then such special seal shall be used instead of the general seal of the Court.

Persons already committed to be tried under this Ordinance.

44. If any person has prior to the coming into force of this Ordinance been committed for trial by a Magistrate such person shall be deemed to be duly committed for trial before the Central Court⁽²⁾ and the provisions of this Ordinance shall apply to the case of such person.

Short title.

45. This Ordinance shall be known and may be cited as "*The Criminal Procedure Ordinance of 1889.*"⁽¹⁾

SCHEDULE.

FORM I.

In the Central Court
of British New Guinea.

A.B. stands charged that he the said A.B. on or about the
day of 18 in the Possession of British New
Guinea (*feloniously wilfully and of his malice aforethought did kill and murder
one C.D.*).

For each subsequent Count proceed as follows:—

And also that he the said A.B. on the day and in the year last aforesaid
in the Possession of British New Guinea, &c., &c.

Dated this day of 18
[L.S.]

FORM II.

In the Supreme Court, of the Territory of New
Guinea

I decline to lay a charge against
who was committed for trial before this Court by on the
day of 19

Crown Law Officer of the Territory.

FORM III.

To A.B.

Take notice that you will be tried on the charge of which this is a copy
at the Ordinary Criminal Sessions (or at a Special Criminal Sessions) of the
Central Court to be held at on the
day of 18

(1) See footnote (1) printed on p. 1647.

(2) See footnote (2) printed on p. 1648.