



**NATIONAL PARLIAMENT OF SOLOMON ISLANDS
BILLS AND LEGISLATION COMMITTEE**

**Report on the Criminal
Procedure Code (Amendment)
Bill 2009**

NP-Paper No.32/2009

Presented on 17 August 2009

National Parliament Office

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1 INTRODUCTION

The Bills and Legislation Committee has completed its review of the *Criminal Procedure Code (Amendment) Bill 2009* (“**Bill**”) introduced in the House during the current (10th) meeting of Parliament by the Minister for Justice and Legal Affairs. The Bill was submitted to the Speaker through the Clerk to Parliament as required under the *Standing Orders*¹. The Speaker examined the Bill² and authorised it to be introduced in the current Parliament meeting.

The Bill was read the first time on Tuesday 11 August 2009 according to the government’s revised order of business. The Bill was also read the second time on Wednesday 12 August 2009 and then adjourned for debate on Monday 17 August 2009. On Friday 14 August 2009, the Bills and Legislation Committee considered the Bill and heard evidence from a range of stakeholders. Following that, the Committee makes this report to Parliament, with recommendations, for the information of Members and for Parliament’s consideration.

Terms of Reference

Pursuant to its mandate under the *Standing Orders*, the terms of reference of the Committee in this instance is to examine the Bill and to report its observations and recommendations on the Bill to Parliament.

Functions of the Committee

The Bills and Legislation Committee (“**Committee**”) is established under *Standing Order 71*, an Order made pursuant to the *Constitution*³, and under that Order has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;

¹ *Standing Order 44* (1).

² As required by *Standing Order 45* (1).

³ Section 62, *Constitution of Solomon Islands 1978*.

- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

Membership

The current members of the Bills and Legislation Committee (9th Parliament) are:

Hon. Severino Nuaiasi, MP (Chair)

Hon. Manasseh Sogavare, MP

Hon. Siriako Usa, MP

Hon. Isaac Inoke Tosika, MP

Hon. Augustine Taneko, MP

Hon. Nelson Ne'e, MP

Hon. Japhet Waipora, MP

2 POLICY BACKGROUND

Purpose of the Bill

The policy objectives of the government introducing the **Criminal Procedure Code (Amendment) Bill 2009** may be summarised as follows:

The Bill seeks to increase the jurisdiction of the magistrates in relation to hearing of offences and sentencing of offenders⁴.

Background

The Criminal Procedure Code (Cap 7) is a comprehensive piece of legislation that sets down procedures for conducting criminal proceedings in court. It prescribed powers and jurisdictions of courts in Solomon Islands. It stipulates police powers in terms of criminal arrest, investigation, and proceedings. It also regulates evidence gathering in criminal proceedings as well as procedures for conducting trials in different court jurisdictions. Part II of the Code deals with powers of Courts. Section 4 of the Code that is amended in this Bill stipulates the jurisdiction of the Magistrate's Court. It sets the powers of the Magistrate Court to try criminal offences. Section 7 of the Code provide for sentences which the Magistrates' Court may pass. As a result of the amendments to the Criminal Procedure Code, it directly affects Section 27 of the Magistrates Court Act. Section 27 of the Act stipulates the criminal jurisdiction of the Magistrates' Court.

The inception of this Bill is a result of the Penalties Miscellaneous Amendment Act that has recently passed by Parliament. The said Act increases penalties of different legislations to embed a fine (Penalty) system that is uniform as far as judiciary is concern. Such reform to legislations in Solomon Islands will lead to the improvement and effectiveness of our justice system, particularly the courts in administering justice.

⁴ See the Objects and Reasons attached to the Bill, page 5.
BLC – Report on the Criminal Procedure Code (Amendment) Bill 2009

3 REVIEW OF THE BILL

In its review of the Bill, the Committee considered secondary materials and also heard from certain key witnesses.

Secondary Material

In order to review the Bill in its proper context, the Committee received briefings from the Committee Secretariat on the reasons and purpose as to why this bill is important. Particularly, this bill is important in that it had to be consistent with the Penalties Miscellaneous Act that was previously passed by Parliament in terms of converting fines into penalty units.

Public Hearing

The Committee held a public hearing on Friday 14 August 2009, with the view to hear from relevant officials of the Ministry and key stakeholders. The following witnesses appeared before the Committee at the hearing:

- Permanent Secretary, Ministry of Justice and Legal Affairs;
- Principal Legal Advisor, Ministry of Justice and Legal Affairs;
- Legal Draftsman, Attorney General's Chamber;
- Registrar (Acting) of the High Court;
- Chief Magistrate, Central Magistrates Court;
- Director of Public Prosecution.

A complete list of witnesses who appeared at the hearing is annexed as **Appendix 2**.

4 ISSUES ARISING

From its preliminary research and evidence gathered at the hearing, the Committee identified a number of issues arising from its review of the Criminal Procedure Code (Amendment) Bill 2009. These are considered in this Chapter, together with responses from witnesses and, where necessary, recommendations of the Committee on a specific issue.

Consultation on the Bill

One of the important functions of the Committee is to ensure that there is proper scrutiny of the proposed legislation. The Committee has on many occasions entreated the Government to consult widely with stakeholders before introducing legislation to parliament and placing it in the hands of this Committee. Upon that, the Committee enquire with the Ministry of Justice and Legal Affairs who is responsible for this Bill if wider consultation has taken place especially within the legal fraternity, other government Ministries as well as the public.

The Ministry of Justice and Legal Affairs submitted that this Bill, unlike the Penalties Miscellaneous Amendment Bill that has recently passed will not directly affect the public as it only increases the jurisdictions of magistrates. However, it further submits that with such increase, it is a matter for the police and the courts to be aware of in order to identify which court has the jurisdiction to try certain offences. The Ministry of Justice and Legal Affairs stressed that it is now their responsibility to consult with other Ministries who are covered by this Bill as well as the Penalties Miscellaneous Amendment Bill in terms of increased penalties. Purposely, this is to discuss with relevant Ministries as to how those Ministries intend to aware public on such increases.

Rationale and Approach

Parliament had recently passed the Penalties Miscellaneous Amendment Bill 2009 which converts monetary fines into penalty units as well as increase fines. This is to have a standard method of imposing fines by courts and to keep up to date with other commonwealth jurisdictions around the world. As part of the reform, this Bill specifically deals with increasing the jurisdictions of magistrates in order to complement the adjustments made to the provisions of the various legislations under the Penalties Miscellaneous Amendment Act 2009. The adjustments increases the penalties especially the fines in the various legislations mentioned in schedule 2 that Act.

In support for the rationale of the Bill, the Central Magistrates Court further submits that it is timely for the Criminal Procedure Code and the Magistrates Court Act be amended to increase the jurisdictions of the Magistrates' Court. In light of the Penalties Miscellaneous Amendment Act, magistrates must have proper powers in order to exercise such powers in applying these laws.

With regards to the Committee's inquiry into why this Bill came before Parliament, the Attorney General's Chambers submitted in summary that the request came from the Chief Justice for the jurisdiction of the Magistrates' Court be increased to complement the passage of the Penalties Miscellaneous Amendment Act. The Attorney General's Chambers clarified that this Bill firstly, intends to increase the jurisdiction of the magistrates in relation to offences that can be heard by a Magistrate Court and secondly, the penalties that can be imposed by a Magistrate. In that regard, there are two pieces of legislations that cover the jurisdictions of the Magistrates; that is the Criminal Procedure Code and the Magistrates Court Act.

Sentencing

The Office of the Director of Public Prosecutions has raised important issues regarding sentencing in its submission. The issue of sentencing is significant and relevant when considered in terms of putting in place such amendments to allow Magistrates to hear matters that come before them and impose appropriate penalties. In its submission, it refers to the case of *Gerea and others v Director of Public Prosecution*⁵, which emphasise that;

"It is common ground that it is for the Legislature when it creates an offence to prescribe what punishment shall attach to the commission of such offence. It is also common ground that the Legislature may for a particular offence prescribe a single or fixed penalty or a maximum penalty or a minimum penalty or alternative penalties or a range of penalties."

However, the Office of the Director of Public Prosecutions further submits in referring to the case of *Gerea and others v Director of Public Prosecution*⁶, that in the final analysis, the selection of the actual penalty to be imposed to the particular perpetrator before the Court is a matter for the judiciary where choice is open to them. This was expressed in the words of Judge Pratt as quoted by the Director of Public Prosecutions;

"In my opinion the selection of punishment is an integral part of the administration of justice and as such cannot be committed to the hands of the Executive. Judicial power is

⁵ [1984]SBCA 2, [1984] SILR 161(11 December 1984)

⁶ [1984]SBCA 2, [1984] SILR 161(11 December 1984)

exercised on matters of guilt or innocence and is also exercised in determining the punishments to be inflicted upon persons found guilty of offences charged against them which punishments if then becomes the obligation of the Executive Department of government to carry into effect.”

Exercise of Discretion in sentencing

The Office of Director of Public Prosecutions also submits that In the process of sentencing, law always gives discretion to the courts depending on the circumstance of individual cases. When sentencing, the Court has to consider aggravating factors as well as factors that mitigate and call for leniency. For instance, customary considerations should be taken into account by the Courts in appropriate circumstances. In that regard, the Office of Public Prosecution refers to the case of *Ironimo v Reginam*⁷ in which the then Judge Kabui commented that;

“There are no hard and fast rules about the process of sentencing.”

It further submits, referring to the words of Chief Justice Ward in *Joel Likilua and Allen Kokolabu v. R*⁸ that;

“Sentencing is not a process that follows exact mathematical rules. Circumstances and people vary and it is undesirable to consider such comparisons as more than a very imprecise guide.”

The Committee seeks further clarifications on the notion which states that ‘there are no hard and fast rules in the process of sentencing’. The Committee also enquire into how the concept of ‘exercising discretion in sentencing’ fits into the Criminal Procedure Code (Amendment) Bill 2009. In response, the Office of the Director of Public Prosecutions explained that courts in this jurisdiction (Solomon Islands) and courts in every other parts of the world have understood that the process of sentencing renders on discretionary powers. ‘There is no hard and fast rule in sentencing’ means that there are certain circumstances in which courts take into consideration in the process of sentencing, unlike mathematical calculations where one plus one equals two thus, there is no other result. Now, when a law stipulates or provides for a penalty to be imposed for a matter that comes before a particular judge, for instance rape. The court, in sentencing a convicted person cannot directly impose the maximum penalty but rather consider aggravating and mitigating factors in deciding the appropriate sentence. Aggravating factors would influence the court to

⁷ [1998] SBHC 88; HCSI-CRC 3 of 1998 (29 May 1998)

⁸ [S.I. L. R], 1998/89

impose a higher sentence while mitigating factors would render a lesser penalty. Thus, in the range of sentence from one day to life imprisonment the court will decide on what is now being presented before it and decide whether to impose one day imprisonment or whether to impose a ten years imprisonment or a life sentence. In that sense, there is no hard and fast rule to follow. Sentencing will always be influenced and determine by the aggravating and the mitigating factors that are presented before the court.

Capital Punishment (Death Sentence)

The Committee also wanted clarity on why courts impose life imprisonment sentence but not capital punishment. The Office of Public Prosecution stated in response that it is a matter of policy, thus it rests in the hands of leaders (policy makers) of Solomon Islands. In that regard, the type of crimes that prevail in our society today must be considered in making policies that would impose stiffer penalties. The case of Papua New Guinea was used as an example, where very serious crimes prevail recently in their society unlike in the eighties. Thus, that is the reason why they then called for the imposition of death penalty. As far as Solomon Island is concerned, the highest sentence that can be imposed for serious crimes like homicide is 'mandatory life imprisonment'. But as our society develops, and as people become violent, it is recommended that perhaps it is for leaders and Policy makers to be aware of their environment and create laws that reflect current societal changes. In terms of the issue of capital punishment, it is a policy matter in which this nation (Solomon Islands) needs to ponder on, whether it is appropriate to have that type of punishment when a lot of other jurisdictions in the world no longer have it.

Also, in response to the question of capital punishment raised by the Committee, officials from the Attorney General's Chambers stated that;

“Death sentence has become a human rights issue internationally. You will note that the international human rights are going to countries that have death sentences requesting them to abolish death sentences in their countries... it is really a policy matter that needs to be... but there is a strong movement out there by the international human rights to abolish death sentences.”

Effectiveness of the Bill

In the course of its review, the Committee also considered the effectiveness of the Bill in light of the increased penalties and powers of magistrates. This issue was raised in a discussion on how this Bill could improve the effectiveness of the justice system of Solomon Islands. In giving evidence, the Chief Magistrate confidently explained that in general, if this Bill is passed, the increase in penalties will deter people from committing offences with higher penalties. For instance, the previous fine for drunk and disorderly under the *Penal Code*⁹ is twenty dollars (\$20). Under the recently passed Penalties Miscellaneous Amendment Act, it is now increased to six hundred dollars (\$600). With such substantial increase, this will deter people from committing such offence thus means that the justice system will be improved as crime rate will be reduced. In support, officers from the Ministry of Justice and Legal Affairs commented that, it is the deterrence aspect of the Bill which is the most important factor. Accordingly, the Permanent Secretary (Mr. Remobatu) states;

“We hope that this bill and the penalties one (Penalties Miscellaneous Amendment Bill) would go in some way in trying to address some of the calls by people in our society about the effects of legislations that govern how people behave in our society. We hope that the penalties bill and this bill should complement each other in assisting to deter people generally from having the propensity to go about committing offences.”

Jurisdictional Issues of Magistrates

Chief Magistrate

The Committee in its review of this Bill also enquired into the powers of a Chief magistrate. This concerned the maximum sentence that can be imposed as well as the types of offences prescribed by law to be tried by him or her. Officials from the Central Magistrates Court in their evidence before the Committee explained that the office of the Chief Magistrate is an administrative office created purposely to supervise Magistrate courts in Solomon Islands. In terms of the Chief Magistrate’s power, it exercises the jurisdiction of the Principal Magistrate.

Principal Magistrate

The Committee also queried the powers and jurisdiction of the Principal Magistrates, especially in light of the amendments. In response to that query, witnesses explained that the type of offences that can be tried by a Magistrate remains unchanged. It is the monetary fines that are amended by this Bill. For example, the maximum penalty that a Principal

⁹ Section 175

Magistrate can impose still remains at five years imprisonment. The monetary penalty is amended, from \$1000 to 50,000 penalty units.

Backlog of cases in the High Court

The Committee also raise the concern of backlog of cases in the High Court if this Bill is defeated in Parliament. The intention of this Bill is to increase the jurisdictions of magistrates to impose higher fines, thus, if it is defeated, Magistrates cannot impose sentences with higher penalties. This raises the issue of which jurisdiction will suffice in trying as well as imposing fines when such offence is committed. In response, the witnesses from the Ministry of Justice and Legal Affairs commented that in such circumstance, the Magistrate Court still has the power to hear any offence that falls within its power to try offences, however, where the appropriate penalty is higher than what is prescribed by law for a Magistrates' Court, then such case can be forwarded to the High Court for sentencing. When the number of such cases rises, the High Court could then experience accumulation of cases which will result in unreasonable delays. With the limited resource that the High Court has, such backlog could become a real problem as far as administration of justice is concern.

5 RECOMMENDATIONS

The Committee has reviewed the bill and recommends that the government monitor matters raised in this report, in terms of assessing its implementation and effectiveness in achieving its important objectives, and in particular recommends:

1. That there be proper consultation on the Bill between the relevant Ministry and the relevant departments involved in the administration of this Bill; and
2. That the Ministry develop Public Awareness strategies to inform and educate the public about the increase in the powers of the Magistrates Court.



Hon. Severino Nuaiasi

Chairman

Bills and Legislation Committee

Monday 17 August 2009

APPENDIX 1: MINUTES



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Deliberative Proceedings

Tuesday 11 August 2009

Conference Room 2, Parliament House, 1:00pm

Members Present

Hon. Severino Nuaiasi, MP (Chair)
Hon. Augustine Taneko, MP
Hon. Japheth Waipora, MP

Apology

Hon. Manasseh Sogavare, MP
Hon. Isaac Inoke Tosika, MP
Hon. Nelson Ne'e, MP
Hon. Siriako Usa, MP

Secretariat:

Mr. Stanley J Hanu, Committee Secretariat
Mr. David Kusilifu, Committee Secretariat

1. Opening Prayer / Welcome

Hon. Taneko said the opening prayer.

The Chair welcomed Committee members and Secretariat.

2. Brief on objects and rationale into Criminal Procedure Code (Amendment) Bill 2009

The Committee Secretariat briefed committee on objects and rationale of the Criminal Procedure Code (Amendment) Bill 2009.

3. Deliberation

The Committee deliberated and resolved that a public hearing into the Criminal Procedure Code (Amendment) Bill 2009 be convened on Friday 14 August 2009.

4. Close

Hon. Waipora said the closing prayer.

Meeting ended 1:42 pm.



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings

Friday 14 August 2009

Conference Room 2, Parliament House, 1:30pm

5. **Members Present**

Hon. Severino Nuaiasi, MP (Chair)
Hon. Manasseh Sogavare, MP
Hon. Augustine Taneko, MP
Hon. Japheth Waipora, MP
Hon. Nelson Ne'e, MP

Secretariat:

Mr. Stanley Hanu, Committee Secretariat

Witnesses:

Mr. James Remobatu, Permanent Secretary, Ministry of Justice and Legal Affairs
Ms. Pamela Wilde, Principal Legal Officer, Ministry of Justice and Legal Affairs
Mr. Rupeni Nawaqakuta, Legal Drafter, AG Chambers
Mr. Kelly Levi, Registrar (Acting), High Court
Mr. Leonard Maina, Chief Magistrate, Central Magistrates Court
Mr. Ronald B. Talasasa, Director Public Prosecution, DPP Office

6. **Opening Prayer / Welcome**

Hon. Severino Nuaiasi (Chair) said the opening prayer.

The Chair welcomed the Committee and witnesses to the public hearing into the Criminal Procedure Code (Amendment) Bill 2009.

7. **Hearing into the Criminal Procedure Code (Amendment) Bill 2009**

The Chairman made a brief opening statement and called on witnesses to make an opening statement to the Committee as they so wished.

The Witnesses introduce themselves and made their opening statements to their position on the Bill.

The Committee questioned the witnesses.

The evidence concluded and the witnesses withdrew.

8. **Close**

The Chair thanked the witnesses for their attendance.
Hon. Manasseh Sogavare said the closing prayer.
Meeting ended 2:53 pm.

Minutes of Proceedings
Meeting No. 27

Monday 17 August 2009, Conference Room 2, Parliament House, 9:45am

Members Present

Hon. Severino Nuaiasi, (Chair) MP
Hon. Manasseh Sogavare, MP
Hon. Nelson Ne'e, MP
Hon. Japhet Waipora, MP

Apologies:

Hon. Isaac Inoke Tosika, MP
Hon. Augustine Taneko, MP
Hon. Siriako Usa, MP

Secretariat:

Mr. David Luta Kusilifu, Committee Secretariat
Mr. Stanley Hanu, Committee Secretariat (Legal)
Mr. Calvin Ziru, Committee Secretariat (Legal)
Mr. Ian Rakafia, Committee Secretariat

In attendance:

Ms. Taeasi Sanga, Clerk to Parliament
Ms. Florence Naesol, Deputy Clerk
Mr. Noel Matea, Committee Secretariat

1. Prayer

Hon. Waipora said the opening prayer.

2. Chair's welcome and opening Remarks

The Chair welcomed and thanked the members for their attendance, offered apologies on behalf of members who were unable to attend and delivered his opening remarks.

3. Chair's Report on the Criminal Procedure Code (Amendment) Bill 2009

The Chair tabled his draft report, which having been previously circulated, was taken as being read a first time.

According to Standing Order 72 (8) the Chair proposed the question 'That the Chair's report be read a second time page by page.' Question put and passed.

The Committee deliberated and sought advice and briefings on relevant matters from the Secretariat staff.

Consideration of the report concluded.

The Committee resolved on the motion of Honourable Née that the report be the report of the Committee to Parliament.

4. Chair's Report on the Customs Valuation Bill 2009

The Chair tabled his draft report, which having been previously circulated, was taken as being read a first time.

According to Standing Order 72 (8) the Chair proposed the question 'That the Chair's report be read a second time page by page.' Question put and passed.

The Committee deliberated and sought advice and briefings on relevant matters from the Secretariat staff.

Consideration of the report concluded.

The Committee resolved on the motion of the Chair that the report be the report of the Committee to Parliament.

5. Brief on the Telecommunications Bill 2009

The Committee Secretariat briefed committee on the hearing times and the stakeholders for the inquiry into the Telecommunications Bill 2009.

Committee deliberated.

6. Close

Mr. Kusilifu said the closing Prayer and the Meeting ended at 10:15am.

APPENDIX 2: WITNESSES

Witnesses who appeared before the Bills and Legislation Committee on Friday 14 August 2009 were:

1. **Mr. James Remobatu**, Permanent Secretary, Ministry of Justice and Legal Affairs
2. **Ms. Pamela Wilde**, Principal Legal Officer, Ministry of Justice and Legal Affairs
3. **Mr. Rupeni Nawaqakuta**, Legal Draftsman, Attorney-General's Chamber
4. **Mr. Kelly Levi**, Registrar (Acting), High Court
5. **Mr. Leonard Maina**, Chief Magistrate, Central Magistrates Court
6. **Mr. Ronald B. Talasasa**, Director Public Prosecution