

TUESDAY 8TH APRIL 2014

The Speaker, Sir Allan Kemakeza took the Chair at 9.45am.

Prayers.

ATTENDANCE

All were present with the exception of the Ministers of: Mines and Energy; Fisheries; Infrastructure Development; Education and Human Resources Development; Development planning and Aid Coordination and the Members for Fataleka; North West Guadalcanal; Malaita Outer Islands; Maringe-Kokota; Temotu Pele; South New Georgia-Rendova/Tetepari; North Guadalcanal; North New Georgia.

PRESENTATION OF PAPERS AND OF REPORTS

- Report on the Magistrates' Courts (Amendment) Bill 2014 and the Criminal Procedure Code (Amendment) Bill 2014 (*National Parliament Paper No.3 of 2014*)

BILLS

Bills – Second Reading

The Magistrates Courts (Amendment) Bill 2014

Hon COMMINS MEWA (*Minister for Justice and Legal Affairs*): Mr Speaker, I rise to move that the Magistrates' Courts (Amendment) Bill 2014 be now read the second time. This Bill is one of the two that I will be presenting in this House at this parliamentary sitting to allow for the sound recording of evidence in the magistrates courts. The other Bill is the Criminal Procedure Code (Amendment Bill) 2014.

This Bill seeks to make some minor amendments to the Magistrate Court Act. Section 69 currently requires the magistrate court to take down in writing the oral evidence before the court. If the magistrate is unable to do this due to the incapacity the Clerk of the Court must record the oral evidence in writing. This Bill replaces Section 69 with a plain English version that is easier to read and understand. It preserves the requirement to record the evidence in writing. This is necessary in circumstances where sound recording equipments may not be available.

The Bill also introduces Section 69(a). This Section modifies the effect of Section 69 by providing that sound recording by a suitable recording device operated by the Clerk of the Court may be used to record the evidence. The evidence is then transcribed, examined by the magistrate and certified as the accurate and faithful record of the proceedings.

The effect of this amendment is to allow magistrates to continue to take written notes of evidence if they prefer or if there is no sound recording equipment available. However, where equipment is available proceedings maybe sound recorded. This makes the recording of the evidence faster and more accurate. It also allow magistrates to observe witnesses more closely and to notice the domineer, man of delivery and their reaction to questions.

Mr Speaker, it is important for Solomon Islands to continue to build upon this only foundation, we have laid down for justice sector.

We embrace new technology and new practices where they can lead to better services and more timely delivery of justice to our people. These small amendments are incremental steps that can provide a large improvement in the speed and accuracy of the recording of evidence and make a significant contribution to improving the operation of the courts. It is for these reasons that I urge honourable Members to support these reforms to the Magistrate Courts. With those remarks I beg to move.

Mr Speaker: Debate on the Bill commences now.

Hon DEREK SIKUA (*Leader of Opposition*): First of all, I would like to thank the Minister for Justice and Legal Affairs for introducing this very important Bill to the House; the Magistrates Courts Amendment Bill (No. 1) of 2014.

At some stage of our lives, some of us have had the experience of going to court in the Magistrates Courts or the High Court. I have had the experience of appearing before the Magistrates Courts once in my life and many, many times in the High Court and so I have experienced the difference of our two courts in this country.

What I have seen in the Magistrates Court is the Magistrate taking notes whilst a person is talking, and if a person talks fast he would ask that person to slow down. In the High Court, I have an experience, a very long experience of more than one and half years through my petition case which was from around November 2010 to June 2012, a long running petition from the previous elections, and so I have had a good experience in the High Court for me to observe what a judge has available to him. Therefore, when this Bill was brought before the Committee, I very much welcomed it and now that it is before the House, I really do not have anything to say against this Bill for the very reasons the Minister has expressed.

The difference between the two systems is very obvious as the Minister mentioned and was also mentioned in the report of the Bills and Legislation Committee. The difference being the fast and efficient service that is available to judges in the High Court is not made available to our Magistrates. The Bill therefore seeks to address that particular issue for the use of recording devices in the Magistrates Courts. I think this is a move in the right direction as times have changed and therefore we have to change accordingly to times as well.

As you know, these changes we want to introduce to the Magistrates Court also come with inherent costs and with that also come the need for people who are going to use the new technologies to be trained. I think that would be one of the things that I would like to ask the Minister and his Ministry to ensure first of all that funds are made available for introducing those changes. We usually approve such bills and not being able to operationalize them because money does not go along with what Parliament approves. I am urging the Minister to make sure that as soon as possible financial resources must be found and made available for purchase of the necessary equipments. And along with that is the need to train the people who are going to use the machines so that the equipments and machines are made available, so that what the Bill wants is made available to our Magistrates Courts as soon as possible. Along with the recommendations of the Bills and Legislation Committee urging the Ministry to make all the necessary resources and training available to enable these things to happen quickly.

May I add as well that the introduction of new technologies to our court system also needs to go down to the lower courts. And if possible and where practical it should go down to our local courts and also the lower courts. Out in the provinces when Magistrates go to hear local court cases in the provincial headquarters, that these equipments and machines be made available to those in Gizo, Auki, Kirakira and wherever they hear court cases in provincial headquarters and not only here in

Honiara. This technology should not only be made in the Magistrates Court here in Honiara but I hope the Bill makes it available to be used in magistrates court in the provinces.

I have also mentioned that when Local Courts hold cases that these equipments be made available to them as well and even in other lower courts in the country so that there is accuracy in the records of court cases to the lowest court possible.

With these few remarks, I thank the Minister for Justice and Legal Affairs again for bringing this Bill to the House, and I support the motion.

Hon JOHN MANENIARU (*Leader of Independent Group*): Firstly, I would like to thank the Minister for Justice and Legal Affairs for bringing this very, very important Bill to the House, though minor it may be but as far as our country is concerned and our Magistrates Courts, this amendment is very, very important, and so I do not have any problem with it.

At the outset, I support this bill and what it seeks for the House to approve. On that note, I would also like to thank the staff of the Ministry for putting this Bill together for our purpose and deliberations.

I would like to endorse the contribution by the Leader of the Opposition. I think the Bill is simple and has no major issues to be debated. I fully support the recommendations by the Bills and Legislation Committee. On that note, I would like to thank the hardworking chairman of the Bills and Legislation Committee and its members and the secretariat for preparing this report to guide our debate.

As alluded to by the Leader of the Opposition, I would like to reiterate the costs that come with the amendments. Our resources are called to be considered so that we can implement amendments that we pass on very important Bills in this chamber. We pass them for a purpose. In particular, as highlighted very clearly by the Honourable Minister of Justice and Legal Affairs, we pass amendments for efficient

service to our people. We have magistrates that look after people in the rural villages in the provinces. The objectives of this amendment will not be met if there is no budget support, particularly, what is considered under this Bill- the equipments for recording.

I would like to emphasize on the call for training. We need to train our magistrates and the clerks. This is so that they know how to use those equipments. Whilst you are looking at the inherited cost incurred by this Bill, we already have a situation that even the Magistrate Courts are not staffed to the required number to serve our people. We need to deal with the issues to create a conducive environment to develop on, especially in the business sector and our economy.

During the hearings conducted by the Bills and Legislation Committee, witnesses revealed that magistrates that look after our courts are not enough. There are only six magistrates that serve the 39 circuit centres throughout the country. Our provinces are scattered. How will these six magistrates provide effective and efficient services in legal justice that should reach our people? It poses the challenge that whilst looking at the inherited costs incurred by this amendment, we cannot even provide the right number of staff to provide legal justice to the people. We already have a case here. It brings a further challenging situation that resources have to be allocated and budgeted so that the intended services this Bill seeks are accorded to our people and also the system of justice in our country at large.

I also want to touch on the difficulties faced by our magistrates in doing their work in trying to provide services to our people. I would say this amendment will certainly aid their current situation, especially in their work of manual recording as highlighted by the Leader of Opposition. Such recording is not easy and demands a lot of work from the magistrates as well as a lot of concentration and therefore this piece of equipment will certainly aid their situation and the things that will make their work become more efficient so that magistracy services is provided effectively and efficiently to our people. Efficient services were highlighted by the Minister and this is what I

would like to reiterate. And efficient services cannot come without a price or cost. We already have a situation of shortage of staff and now we are talking about a bill that comes with costs. And so I trust the Minister ensures this Bill will be implemented so that services in the objectives of the bill will be achieved.

I want to touch on the problems that are uploaded at the magistrates, especially when it is a lower court as the Leader of Opposition rightly highlighted. If you look carefully at many of the cases that come before the magistrates, they are from the rural areas created by our chiefs' panel. This is creating more problems in terms of court cases for our magistrates. One of the common cases is logging. We know that logging is doing a lot to our economy, both good and bad and which we rely heavily upon. It is obvious that a lot of cases that come before the magistrates courts are from logging sectors and it would seem that chiefs' panels have not been receiving proper and appropriate guidelines to be able to make them function.

It is sad to note that in some of our areas, the chiefs panels comprise very young people because they get money from logging and so they come and sit in the panel and make a mess of it, creating more confusion and a lot of cases for our magistrates. They need to be provided with guidelines as this is absent at the moment. Who is the right authority to appoint the chiefs panels? What sort of qualifications should the panel have to sit down and accord our people the justice they need under our customs and our ownership of customs? And I understand it is the jurisdiction of the High Court to provide guidelines for them to follow because at the moment it is very messy in that just about anyone sits in the chiefs' panels and they tend to make decisions that are unrealistic and are sometimes against our customs. But because the panel has the power to make decisions, they usually make a lot of mess which are then passed onto our magistrates who are very few resulting in cases piling up. And today we have backlogs in cases that are yet to be heard by magistrates. But we need to address the cases quickly to get economic environments in the rural areas to progress

Mr. PETER SHANEL AGOVAKA (*Central Guadalcanal*): Firstly, I would like to thank the Minister for Justice and Legal Affairs for the amendment bill that he brought to parliament. I also would like to thank the Bills and Legislation Committee for the recommendations it made. The Bill is very simple as the two speakers have already alluded to and my voice adding to this debate is meant to support the bill. But before I support the bill, let me say this that whilst we are making the amendments from the magistrate going up. What the leader of independent just said, we already forgot the lower court. I suggest to the minister that he should bring another amendment to allow the lower courts to use recording devices as well to record the court proceedings.

The amendment actually asks the House to pass the requirement of the court clerks and any other officers performing the duties of the clerk to record the evidence using suitable recording devices. The second part of it is after the recording the transcribers will write down the recordings and that becomes an official record of the court proceedings and I fully agree with that.

Like the Leader of Opposition has mentioned earlier some of us have been to court already and we have experienced that. If you look at the court of appeal and the high court, there are a lot of court cases pending. They are waiting for the evidence from the magistrates to high court and a lot of court times spent on people going to the records. And if the records are properly done, transcribe or written then the proceeding and court process will be quick and easier to finish off the court cases. You will see that there are lots of high court appeals and because of our current problem now; with this new amendment it will allow the magistrate to quickly produce those evidence and the recording of proceedings from the magistrates up to the Court of Appeal and the higher courts. I think that is one strong impact this Bill is going to have, and it is a very good improvement, which I support. Like the two preceding speakers have mentioned, its

budgetary provision needs to be relooked into as well as the manpower to enable us capacitate this piece of legislation to become effective in its administration.

I would like to question one thing and I would like the Minister to take note of. After the recording and transcription of the proceedings, what will happen after that? Are the records going to be kept up to a certain period of time and then erased? If you look at the recordings like the tapes, disks and so forth, we need to know ourselves how long we are going to keep those recordings whether it is going to be for six months, one year, six years or whatever. This is so that after the recordings we know whether the records are going to be kept up to a certain period of time or kept them forever. That is what I would like to know in your winding up. I think it is very important for us to know this.

The other thing is the use of the recordings. What you are saying is that it is going to be used in court of appeals or the higher courts but you failed to explain how we are going to use the recordings so that we know how the evidences are going to be used. Just for the purpose of clarity to Parliament. Those are the two questions I want to ask the Minister to clarify to us in your winding up.

I will take the recommendation of the Bills and Legislation Committee in passing these two Bills. I also take the recommendation of the Committee that the recording equipments should be used in the magistrate courts and for the recordings to be used as official recordings when this is written. With these few comments I support the Bill.

Mr MILNER TOZAKA (*North Vella Lavella*): I would also want to contribute very briefly to this Bill. I am sure the people of North Vella would want to hear their representative contribute to these Bills and so I must talk. Election is coming very close and if my people do not hear me contributing, they might question as to whether I understand the bills at all.

In general, I am very, very glad with the Minister for Justice and Legal Affairs for bringing this Bill to this House. It is a very simple, straight forward and short Bill. I am happy because the reform program of the Government in regards to capacity building is functioning and that is why they did recognize this weakness in the magistrate court and made recommendations to the government to bring this Bill to Parliament. This will really improve the work of the magistrate court as well as the services provided therein.

It is also good that the Bills and Legislation Committee is functioning very well and we can rely upon its decisions and recommendations. In its recommendation it pointed out two areas which are very important in regards to costs and I think the Minister would also take note of the important recommendations the Committee has made.

Mr Speaker, I also would like to say other things that have been mentioned insight of weaknesses of our Magistrate services which I think the reforms they also had come up with them but they have not yet been recommended that this side of this House have also brought some of these things to government's attention but I think the government is bringing these things as they see its fit and as we go along we will improve especially in sight of accommodation because of these Magistrate Courts are lacking on these ones here. In Gizo, I am happy that they have a new Magistrate Court building which in other provinces I am not aware but I am sure that some of them have some difficulties to cater for.

And not only in sights of office accommodation but also with the Magistrates themselves such as staffing which this is also lacking so if we can have upgraded all these equipment or made them available to our staff but if these things is not also addressed that the morale of officers is bound to be affected.

So Sir, this is my contribution to this Bill, I really support it and I join the Leader of Opposition and Leader of Independent the other have spoken we completely support it from this side of this House and thank you Minister for introducing it and thank you Government.

Hon WALTER FOLOTALU (*Minister for Communications & Aviation*): , I would like to contribute briefly to the Magistrates Courts (Amendment) Bill 2014.

This is very timely for those devices to make available to Magistrates Courts. They are as important as I have featured out for the purpose of speed and accuracy of recording evidence that were given in court or that are to be given in court, so this is a good thing.

As we all aware, magistrates are mere human beings who sometimes might have problems in hearing and sometimes with perceptions as well like for example; a person might say in court that I am in my vehicle then all of sudden my vehicle capsized. The Magistrate will be confused with what the witness mentioned that 'his vehicle capsized'. So the Magistrate has to think around it and might ask himself because we know only canoes capsized in the sea. If those recording machine are available in court it will help the magistrates a lot when they interpret it or it will even help the interpreter, the prosecutors in the courts. Generally, it will help everybody.

With regards to the costs raised by the Leader of Opposition and Member of Parliament for Central Guadalcanal, I do not think it will be expensive. It will not cost millions and millions of dollars to establish such devices in Court, they can be affordable.

Some claims such as Good will and all that are too big. But such devices Mr. Speaker are for good purposes and we will not have pay for them every month or every year, maybe one machine can take years to be used in courts. So it's good idea for us to purchase those devices.

The point raised by the Member of Parliament for Central Guadalcanal on how those records will be dealt with. This is taken care of by section 69 (a) (2) that states that: "As soon as practicable after the conclusion of a case, the Magistrates must cause the recording to be transcript into writing and shall pursue and examine such writing and certify that it is an accurate and faithful record of the oral evidence given." So that is taken care of by this provision. The recording of evidence will be helpful especially when appeals are made to higher courts. This will really help the Judges when they are look at and hear the evidence. This is because it will preserve the evidence when they reach the higher courts.

I just want to put forward a situation here. I do not know how we will deal with this because I just saw it in the paper the other day when I was in Fiji that the court will

bring in a dog inside the witness box to give evidence in support of his master who was killed. The dog was brought in, but I do not know how the dog will talk or in situations where animals are brought in. That is what I do not know. But all in all, I support this amendment.

Hon CLAY FORAU (*Minister for Foreign Affairs and External Trade*): Thank you Mr. Speaker for giving me the opportunity. I also want to stand here in support of my colleague Minister of Justice and Legal Affairs with this Bill. I also wish to thank my colleagues on the other side for making very constructive comments and also for supporting the Bill.

Sir, I think we are doing justice to our Magistrates by making these amendments. Sometimes we learn of backlogs in our courts. One of the reasons for this is because of the time that our Magistrates take to make proper judgment of cases that come before them. I believe that this amendment will allow our Magistrates to be able to make proper judgment if they concentrate on listening to what the witnesses are saying in the witness box. You know Sir, if you have to listen and at the same time require to write, you will not be able to pay very close attention to what is being said. So I thought that this amendment is necessary, not only because our current legislation requires that records must be written, but our Magistrates need to be paying very close attention to what is being said. Otherwise some cases will not be properly charged because our lawyers or Magistrates have to split their attention into listening and at the same time write the evidence of what is being said. So in saying that, I also wish to thank the Minister for Justice and Legal Affairs for seeing it fit to add another section to Section 69 that is being amended to allow for that to happen. I think we now have progressed so much in technology, and this is just fitting for us to do this in order for us to keep ourselves relevant to the changing time and technology that is happening in this world.

I think the Ministry of Justice and Legal Affairs is doing the right thing in ensuring that our system is not very much outdated hence the need to be able to do things to help us efficiently provide the services required by the Magistrates Courts.

The other point is that those of you who have gone through the High Courts would have known that the system used there is really what the magistrate is trying to adopt now. There is the need to bring our Magistrates Courts to the standards and systems used at the High Court. I therefore wish to congratulate my colleague Minister for Justice, who is also from Temotu Province for taking this very much needed necessary change.

I think lawyers working at the High Court would agree with us this morning that they are able to do their work efficiently because of the systems in use there. It is up to the Magistrates to ensure that when the recordings are transcribed later on, they are certified as correct recordings of evidences given by witnesses in the court.

In supporting my colleague minister, I just want to share those few points. Our magistrates sometimes complain about the backlog in cases, the pay they get and so I hope by doing this, we will help them deliver the services more efficiently and in an accurate manner. It will also make us join the rest of the world in the system we are trying to adopt. I have also learned that the magistrates have already purchased the equipments and so as far as the cost is concerned, the efficiency of the system will help in reducing the cost of transcribing voice recordings into writings later on.

Many important points have already been mentioned that when cases are referred to the high court, recording becomes very important. In supporting the Bill this is all I wish to share and I wish to thank you for the opportunity to briefly contribute to the Bill. Thank you.

Hon. SAMUEL MANETOALI (*Minister for Culture & Tourism*): We all know that in this country we have three arms of the state - the Legislature, the Executive and the Judiciary, and this Bill belongs to the Judiciary. This Bill is for the administration of justice in this country. Amending this Act will improve the recording system in the Magistrates Court.

I am very happy to hear those who have already spoken were in support of this amendment. And that is the reason why I would like to contribute to this Bill, especially the contribution by the Leader of the Opposition and the Member of Parliament for West Are Are.

Firstly, I would like to touch on the points raised by the honourable Member for West Are Are, my good friend because we attended King George VI School in our high school days. I would like to respond to one of his comments about our local courts and the lower courts.

In this country, there is this hierarchy of courts and there are reasons for this hierarchical court system. First, if someone is not happy with the decision made by the lower courts, maybe decisions made by chiefs, they can make an appeal to the higher courts.

In regards to appointments to lower courts, especially chiefs, local courts, the CLAC or whatever courts down there, that is done by the judiciary itself. It is done by the Chief Justice through the advice of legal officers who appoint chiefs/leaders in the rural areas to sit in the local courts, the customary land appeal courts or whatever lower courts and the magistrates court. That is why if anyone is not happy with the decision made in the lower courts, they can make an appeal to the magistrate court, the High Court and even as far as the Court of Appeal. Personally, I think it is not good for the legislature to criticize the work of justices because there are procedures there. That is my first point.

I also want to thank the Leader of Opposition for fully supporting this Bill. He is also one of my very good friends. I used to serve as his minister of police and also lands and housing in his government. I am happy with him because he made very good comments about this Bill. He told us that he has gone to the High Court for a petition and he has also gone to the

magistrate court for whatever reason I do not know because he did not tell us what sort of case made him to go before the magistrates. He did not inform Parliament what sort of case made him to appear before the magistrate court. I used to go before the courts not to defend myself but as a representative of clients in court.

Furthermore, this Bill does not need a lot of debate as it is just a straight forward Bill to improve the recording system in the magistrate court and so I fully support this Bill. With those comments, I resume my seat.

Mr MANASSEH SOGAVARE (*East Choiseul*): As other colleagues have already stated, this Bill is supported by both sides of the House. It came before the Bills and Legislation Committee and we recommended for it to be passed by the House as its objects are very noble and we should support it.

At this stage of second reading, we can only speak broadly about the principles of the Bill and therefore this side of the House has spoken along those lines. The Bill enhances and strengthens the fundamental principles of admissibility of evidences in court that it must be timely, reliable, accurate, fair - those principles, and so we do not have any problem with it.

Sir, what this side of the House is saying is not criticism of the judiciary. It should not be taken that way and we recommend that any reforms we wanted to do to the judiciary are what two of the Leaders have already emphasized that it should be extended down to the lower courts because that is probably where most of the problems are happening. Land issue is probably one of the major causes of disharmony in this country. And about 80% of the population of the country are living down there and are engaging in disputes like that. What the Committee gathered is basically lack of guidelines given to courts at the lower level, especially at chiefs hearing. We say this because some of the things they are doing borders on criminality. A certain group may have already heard a land case and hands down the decision and the procedure is if people do not agree they can appeal to the local court. However, the losing group goes and asks another council of chief to sit and hear the same case. That is very un-

procedural and probably borders on criminality and may be they have taken bribes; I do not know. What the Committee has gathered from the hearing is certainly the lack of guidelines that must be put down to the courts; and maybe infrastructures too.

While I am standing here, I thank the Government for helping East Choiseul to build a court house. We are building a court house because of this experience that our chiefs are hearing cases under the trees, the classrooms and buildings that are not proper and there is no basic security there. People are having access to the chiefs when they sleep at night. People go to see them at night, talk with them and maybe bribe them.

The Government helped us last year by giving us funds and this year the court house will be completed, a complete court house where chiefs can sit down and listen to cases. Not only land cases but every other case to do with breaking the customs. There will be tight security when they come and they will not leave that place. When they go out to do surveys in the forests they are to be accompanied by security officers so that people do not have undue access to them so as to be wrongly influenced. When they return they are secured in where they live, they listen to the case, they write the decisions, they hand down the decisions before they leave. Currently, that is not happening because after hearing the cases they go somewhere else to do the writings and when decisions are not given, the next thing we hear is that another group goes to see them. That is what is happening.

While the reforms are very good, we touched on these areas because of the general discussions on the need to improve justice down to the local level. May be if recording devices are introduced at that level would be much better so that there are accurate records of what people that came before the chiefs hearings actually say.

I just want to assure the House that this side of the House is not criticizing the judiciary. We are not. We are only expressing views on how we can seriously look into this area. What we have gathered from the evidences brought before us show that very

little is done to seriously improve courts right at the local level. With that I support this Bill.

Mr JAMES TORA (*Ulawal/Ugi*): I would like to join other speakers who have contributed on this Bill, especially the Minister of Tourism, my good brother. I would like to thank the NCRA Government through the Ministry of Justice and Legal Affairs including his staff for seeing it fit in bringing these amendments to the floor of Parliament this morning.

I think everybody has already covered everything and I do not want to prolong the debate. However, there is one point I would like to touch on and this is in regards to the security of this new amendment in terms of what is happening to the magistrate courts or even other courts below. From a few experiences in the past, when a court, say for an example a local court sits to hear cases, at the end of the hearing after giving evidences, about two or three days later the other group would have already been made aware of the decision although it is yet go before the court.

The security and safety of equipments that will now be introduced in courts is very important. Who can guess that maybe in the future when people know that courts are going to record evidences in the magistrate court, if there are no proper security measures to check people coming in to listen to the court, some people may bring in their own recording devices to record the evidences given?

I think it is important that when we look at improving things in the magistrate courts that we must also seriously look at the security aspects of it. People coming in to listen to court proceedings must be properly checked before allowed in. Those are my points I would like to contribute and I join my other colleagues here in supporting this very important Bill.

Hon STANLEY SOFU (*Minister for Public Service*): I also want to give my support and join both sides of the House in supporting this piece of legislation. I also want to join my other colleagues who have spoken in thanking the hard working Minister for Justice and Legal Affairs, including his staff and those who have given support and legal advices for this very important amendment. I would also like to take this opportunity to thank the Chairman of the Bills and Legislation Committee and his members for the good work they have done in going through this piece of legislation before it came here. Reading through the recommendations in the report of the Committee, I agree with the recommendations.

My first point in discussing this Bill is that this is a small amendment that is part of the ongoing reforms in the Ministry of Justice and Legal Affairs to improve and modernize the delivery of justice in our community. I understand that the starting point of this particular ministry is improvement. I am certain as we go along, it will find its way down there or go up where necessary and will end up again here at this House for us to debate and bless again. I therefore want to encourage my colleague Minister for Justice and Legal Affairs to look at it carefully.

The points raised by those who have spoken before me, those on the other side of the House and this side of the House are very important points for the ministry and the Minister to take note of because we want improvement to the justice system of the country and this is what is Bill is about.

In regards to training and cost, obviously it is something that will happen to any new reforms that governments in the past, the present or future governments would have to do. It is very good that our colleagues on the other side of the House have raised important points which I believe the ministry takes note of.

These might be some of our last bills coming to Parliament and I think it is not good for the Member of Parliament for East Kwaio not to be heard on this very

important debate, and so I must stand up to place my support to this very small piece of amendment.

The benefits of the sound recording, as I can see in this report here, are stated very clearly here and one of them is what my other colleagues have talked about that when a person is giving evidence, the Magistrate would write and after sometime would stop. With this improvement, I believe the Magistrate will no longer be writing notes but concentrate on the person giving evidence and the actions going on. The Magistrate physically witnesses a person giving evidence and can make decision accordingly.

Should there be any need arising, the device can be replayed. That is stated in the amendment. Any single words given as evidence are recorded and so this is a very good start and a very big improvement. As I said earlier, I stand up to pledge my support to this very small piece of legislation. With these few remarks I support and resume my seat.

Mr. MATTHEW WALE (*Aoke/Langalanga*): I was not intending to talk on this Bill even though I support it as part of the Bills Committee, but as I was listening to my colleague Member for East Kwaio, it really unsettles me that I must talk. My colleague Member for East Kwaio said that these reforms were part of past governments, the current and future governments and so I must talk as part of the future government because the future government also supports this. It is important that these reforms must happen. However, another part of me is sad because we have not been recording things, in our custom it is just oral tradition where the grandfather sits by the fireside in the evenings telling stories to his sons and grandsons about their history. I can sense this oral tradition dying away too.

I am not saying this is not good but what I am saying is that the other side of it makes me sad because our customs are based on oral traditions and it is good for oral

traditions to be strengthened in the conventional western systems we have inherited as well so that it integrates very well our two systems; our customs and the western system we are inheriting from our colonial masters. However, my sadness is not very much and I am happy with this amendment. I think the Minister for Aviation and Member for Lau/Mbaelelea said earlier on that magistrates are just mere human beings, and he is right. And especially with magistracy, our magistrates are not like the judges of the High Court Judges who do not mix around with everyone else. Magistrates mix around with everyone else. A magistrate will go to court at the Central Magistrates Court and the next time you see him, he is on the other side of the road near the United Church waiting to board a bus to return to his home at Panatina. And so by virtue of their engagement on a day to day basis in our community, it is likely that pressure is much greater on them than it is with judges of the High Court who seem to be a bit shielded off from the community. And perhaps also some prejudices and biases that are inadvertent, but as we are only humans and so it can come into play. Therefore, witnesses, people who are accused and everyone else, it is in our interest that such a recording system is in place to protect the integrity of our judicial processes.

The concerns raised by members and Chairman of the Bills and Legislation Committee with regards to the wider judicial system, and we talked about the chiefs and the Local Court, Customary Land Appeal Court (CLAC) up to the Magistrates Courts, that aspect of our judicial system is very clear to all of us that it needs fixing. Starting from the chiefs, right up to the magistracy really needs fixing. Whilst today is the first part of starting to fix the magistracy, there are amendments that will come, which are good ones, but we must go further and address issues that are likely to undermine judicial independence of the other tribunals from magistrates right down to the community.

We know what has been always said, and it is true that justice delayed is justice denied. And there are obviously a number of factors that contribute to such situations. But the lack of a recording system is more likely to also delay justice if minutes are not ready in time and the magistrate changes and a new magistrate comes in and things like that. Such things can have an impact on the discharge of justice within our magistracy.

The other benefit is one of accountability that the magistracy is likely to be far more accountable. It is not that they have not been accountable but the accountability aspect will improve more if records are accurate when captured on tape or on video because they can go back to such records and refresh their memories before giving their decisions.

Magistracy has in recent times come under the microscope. There have been issues of corruption within the magistracy. This is not to criticize the magistracy but we say it out of concern. And this is an important first step to try and eliminate any possibility that casts doubt on the integrity of the magistracy and therefore greater accountability is welcomed.

The other aspect I would like to touch on, and I am not sure whether this still continues in the High Court, is that they have judge associates that helps them to do research and so forth. I therefore think it is good to have recording systems in place and to also have magistrate associates, you could call them, who are qualified people or perhaps para-legally qualified to assist magistrates to do research and even bounce-off some of their ideas and thoughts and debate opinions so as to sharpen their understanding of issues they are facing every day when administering justice in our system. But apart from that, the Bill itself is straightforward and it is good that we support its passage. Thank you.

Mr MOFFAT FUGUI (*Central Honiara*): Thank you Mr Speaker for allowing me to contribute to the Bill that is before the House today. It is an important Bill because

judiciary is the most preserved arm of state that needs to be reformed. Of the three branches, I think judiciary needs to be reformed. In that sense, I would like to thank the Government for bringing this amendment, timely but a little overdue. And amendment alone in this perspective is not enough. I think a whole throe of reforms is needed.

I would like to zero in on technology. It is very important in terms of recording. I had an experience of watching judges both here and abroad and American judges for sure are very different from British judges. When you watch some of the judges and magistrates presiding over hearings, they seem to be sleeping and that is the beauty of experience. Sometimes you may think they are asleep, especially expatriate judges because with closed eyes they kept quiet until the end when they say "are you finished Mr so and so". That is very, very interesting. I think they might be doing their recording in silence, and that is even fascinating. I think this Bill is important and we must pass it. In terms of the veracity of the evidence or statements given in court, this is very important.

But technology is what I want to touch on. I think this is the area that we are way back, way overdue on in terms of modern technology. For instance, if mobiles are used for recording in the magistrate court, it is not good. The thing I want to say here is that we must have prescribed technology and not just any sort of technology. That is the contrast I want to make. Make sure the recording technology or recording machines used here are prescribed by the courts. It will not be acceptable if the magistrate comes in late to court and just uses his mobile for recording because that would be deep trouble in terms of the recording and transcribing of what transpires in the courts. I want it stated in the Bill that the technology must be prescribed by law for our courts. I am saying this because of recent experiences and incidents we have had that are not encouraging at all.

When infrastructures like roads, government contracts and even other things in terms of private sector are subcontracted, it is actually multiplying the risks. And

courts are very conventional and very conservative institutions and I hope we take of this and the courts also take note of this so that technology is prescribed by the courts in terms of the equipments that they are going to be used for recording.

Finally, I want to thank the Government again for bringing this amendment because sometimes in between the actual hearing of the tape and the actual transcribing of transcripts, in between are oceans of defenses that can happen. We must make sure therefore that soon after the court hearing transcribing must take place. The transcribers must also be professional transcribers employed by the courts purposely to do exactly what it is being done to help the magistrates or should this go further into the high courts or even the appeal courts in doing the same thing. Take note of technology because it is above us in terms of the very nature of technology. On that note, I want to thank you for allowing me to make a few points on this important Bill this morning and I support it.

Hon COMMINS MEWA (*Minister for Justice and Legal Affairs*): I rise once again to thank colleagues who have contributed to this short amendment Bill, from both sides of the House. I can see that everybody supports the Bill and this is good because it is good for the country moving forward. I also want to thank the Chairman of the Bills and Legislation Committee for scrutinizing the Bill and coming up with good recommendations, which I take note of. I will discuss with my officials how we can look further into the recommendations made.

I will answer some of the comments raised by speakers in their debate. Firstly, the Leader of Opposition speaking earlier on raised an important question on the likely cost of equipments. We may or may not be aware but I can assure this House that these equipments have already been bought and installed here in Honiara, Gizo, Lata and Auki. Therefore, any costs to these equipments that we might be looking at would probably be for replacement of the equipments in the future and manpower that will be

working on the new system. If the ministry sees the cost is going to be huge, we will include it in our budget if deem necessary.

There were some comments made concerning our local courts in the villages. But this amendment on the floor of Parliament today does not cater for local courts as yet. But it is something the ministry can look at, as most speakers have raised because village courts are very important because issues that cannot be resolved at the local court level are brought to the magistrate courts causing a backlog to cases because of the shortage of magistrates to dispense with cases. The Leader of Independent, in his remarks earlier on today touched a bit on the shortage of magistrates. We will be looking into that issue in the next bill and therefore I do not want to comment very much on the shortage of magistrate.

The other comment raised by the MP for Central Guadalcanal is on how we can use this equipment. This equipment will be used exactly the same way that hand written records are used. For those of us who have already appeared before the high court would see that this is exactly the same system or the same equipment. Probably the same systems because equipments could be different but the same system used at the high court is the same system that would also be used at the magistrates. As many speakers have suggested if it is seen necessary in the future we will bring in another amendment to bring it even lower down at the local courts level.

As we all know, this is a very short amendment and we might not talk very much tomorrow because these two bills are interrelated. These are some of the queries that were raised in regards to this Bill and I thank those of you who have raised these questions. I believe I have answered some of your queries but if you are still not satisfied with my answers then you are welcome to come and discuss it with our office. With those, I will resume my seat.

Hon Derek Sikua: Point of Order, Mr Speaker. I think the Minister has not moved the closing of his debate, can he move that?

Mr Speaker: Did he say beg to move? Can you move?

Hon Commins Mewa: Yes, Mr Speaker, I am sorry. With these few comments I beg to move.

The motion agreed to

Bills – Committee Stage

The Magistrates Courts (Amendment) Bill 2014

Clauses 1, 2 agreed to.

Clause 3

Mr Moffat Fugui: Clause 3 on page five contains “suitable recording device.” The suggestion here is to put a prescribed device or something similar to that. I suggest prescribing the recording device instead of it being ‘suitable recording device’. Can the Minister comment on that?

Hon Commins Mewa: Can I ask my colleague Member to repeat his question?

Mr Moffat Fugui: I want to suggest that instead of putting “suitable recording device” can the device be prescribed by the court? I just want the Minister to comment on this.

Hon Commins Mewa: Yes, the word 'suitable' is used to prevent other amendments that could be made in the future because if we use any other term then that will call for another amendment in the future. When we use the word suitable it could mean that any device that is suitable to record any proceeding at a certain time and at a particular place. This is the word the Bill is using, 'suitable' means that we can use any suitable device to suit that time when the proceeding takes place and whatever context or location where this equipment could be used. I think that is why the Bill used the word suitable because if we try to specifically name any special device or to prescribe and so forth and every time we will keep on prescribing it. Suitable is really describing that at any proceeding any suitable device can be used.

Hon Derek Sikua: This phrase 'suitable recording device'. I think the point which the Member of Parliament for Central Honiara is trying to stress is still very important. If in the event of a power cut for example, the suitable or the device that is used by the Magistrates Court to record the proceedings will be unable to work because it rely on electricity.

Could the Magistrate then, use his mobile phone to continue with the proceeding to record the proceeding or he will suspend the proceeding until the power is restored? In the High Court that is the case, however, the judge is not using his mobile phone, he said, stop talking, we proceed when power restored. And as you know, in Honiara we almost have frequent power cuts. Rather than prescribing it, we need to put in a definition as to what we mean by a 'suitable recording device' rather than prescription, we define it and it definitely does not mean recording through a mobile phone that is my idea. And in this case Mr Chairman, a suitable recording; recording device are in two types, it is audio and visual, so which one are you talking about? My other question is, can we do an audio and visual at the same time or just an audio recording

device. It is not like the camera, and it is just for listening so it is an audio recording. I think that can be best handled in the definition as well. We need to bring in a definition of what a suitable recording device to be used in the Act and that will take away the need for any rigid prescription. It is just a suggestion, and if the Minister can make a comment on it. Thank you.

Hon Commins Mewa: Yes, I will still maintain the word suitable that is used in this Bill here it means 'suitable for that purpose. If instances of cases that you give an example of when it happens in Magistrate because the Bill does not stop you or stop the Magistrate to take notes of the proceedings. If there is a power disruption or cuts then they can continue on handwritten information, I mean the proceeding can be actually handwritten. It's just like that but that word '*suitable*' like you said just simply means good for the purpose of this proceeding. For your other comment with regards to audio or visual, both can be used, but it must be approved by the presiding Magistrate. If he says for this case, I will allow you to have video recordings. But that is up to the presiding magistrate.

Mr. Matthew Wale: I am still on this suitable device. I agree with him because it is not good to keep coming back and amend it if a prescribed term is put so it is good. The aspect of 'suitable' left entirely to the presiding magistrate worries me a bit. In some of the legislations that prescribe things, there are generally three levels - (i) prescribed by Parliament, (ii) prescribed in Cabinet and with regards to judicial system under our court rules, it also has authority chaired by the Chief Justice that can prescribe rules. And so in that sense, the recording devices could fall under such prescription so that standardized systems and equipment re used throughout the country in the magistracy and one that takes into account our contexts or our situations throughout the rural areas if the magistrates go out on circuits, for example.

I know my dear brother, the Leader of Opposition said that it should be defined not to include mobile phones. But increasingly everything goes to mobile devices; the way for the future will be mobile devices and so we should not be afraid of mobile devices. But I suppose we should not be afraid of the word 'prescribe' as well. This is because 'prescribe' means as technology changes or as the context requires it, the prescription could be changed without having to come to Parliament at all. It can be changed just be whatever the authority is that can set court rules and things like that. And so it is no really a big issue. It is here now, and the Minister does not want to amend that word. There is no great damage, but it would be better for something that will become a fundamental aspect to how magistrates conduct proceedings to be prescribed above.

Mr Chairman: Can we have the question?

Mr Matthew Wale: My question is whether the Minister ever considers that sense of 'prescribe' as opposed to his first understanding when the Member for Central Honiara raised it, is not the same in the way it would be prescribed and must come back to Parliament?

Hon Commins Mewa: Yes, the equipments we are talking about are suitable equipments. We are not sure what kind of equipments may be used in the future but the one we are talking about here is what is currently being used at the High Court, which the High Court has used for years, and there is not a problem with it. That is what is being intended to be used here and I believe it will not cause us a lot of problems as we might think. The Bill says 'suitable' and I have explained earlier that there are instances this equipment might not work properly like what the Leader of Opposition said, for example, in the event of a power-cut, the magistrate can suggest

using whatever equipment in order for the court to proceed. That is the reason why the equipments are not prescribed in the Bill. But I can assure the House that the type of equipment envisaged here is the same one used by the High Court for years now which the High Court does not have any problems with up until today. Thank you.

Mr John Moffat Fugui: I would like to take the Minister at his words. When the Minister said that we have used this machine for years, he must have had some experience with it and it was without any problems. Does that indicate it was the courts that agreed to use it or not?

Hon. Commins Mewa: The short answer is yes!

Mr. John Moffat Fugui: This is a good minister; I would not leave him alone because this is good. If that is the case, if he is afraid of the word 'prescribe', if you look at the sentence in the middle of page 5 starting 'of the Clerk of the Court recording the evidence using a suitable recording device', if I were the Minister I would include 'as prescribed by the Court'.

If he is afraid of the word 'prescribe', can an alternative recommended by the courts is an easier word or would make any difference? I am asking because of the technology part of it. That is the point I would like to come back to. Right now, the Minister said there were not any problems using this machine for many years now. However, there is no guarantee that technology will remain like that forever. Can the Minister relook at this and assure the House?

Hon. Commins Mewa: This equipment we are trying to talk about here or any equipment or system in the past is prescribed by the Chief Justice. It is the Chief Justice that must agree on the most suitable equipment that can be used in the courts. There is

no need to prescribe the type of equipment because in the past up until now looking at how magistrates preside over courts in taking down written notes, it does not state whether to use red, blue or black biro but it just says 'written'. Legislation does not state what type of biro will be used; and so this is just the same thing.

Hon. Derek Sikua: I thank the Minister for informing the Committee on the progress of installation of the suitable recording devices in three of our provincial centres, including the Honiara Magistrates Courts. Can the Minister inform the Committee on the progress of training staff who will be using the recording devices?

Mr Chairman: That is an administrative issue and has nothing to do with the Bill.

Hon Commins Mewa: Yes, this is new equipment and new to the magistrate and before the equipment was installed, staffs were already trained and are prepared to use this equipment.

Hon. Derek Sikua: I am just going to question the inverted commas and the full stop at the end of the Bill in clause two, what are those? I was wondering what those things are doing there.

Hon Commins Mewa: I think the Attorney General would agree with me that it is a typing error.

Clause 3 agreed to

Parliament resumed

BILLS – THIRD READING

Bills – Third Reading

The Magistrates' Courts (Amendment) Bill 2014

ADJOURNMENT

The House adjourned at 11.40 am