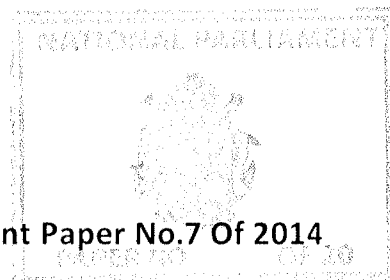




**NATIONAL PARLIAMENT OF SOLOMON ISLANDS
BILLS AND LEGISLATION COMMITTEE**

**Report on the Constitution
(Status of Magistrates)
(Amendment) Bill 2014**



National Parliament Paper No.7 Of 2014

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CONTENTS

EXECUTIVE SUMMARY	2
1. INTRODUCTION.....	3
1.1 Functions of the Committee.....	3
1.2 Terms of Reference	3
1.3 Membership	4
2 BACKGROUND	5
2.2 Shortage of Magistrates	5
2.4 The Constitution (Status of Magistrates) (Amendment) Bill 2014	6
3 IMPACTS.....	6
3.1 Constitutional office holders.....	6
3.2 Job Retainment.....	7
a) Remuneration	7
b) Security.....	7
c) Workload.....	8
3.3 Qualification.....	8
3.4 Discourage Corruption.....	8
3.5 Judicial Independence.....	9
4 RELATED ISSUES.....	10
4.1 Cost.....	10
4.2 Lay Justices.....	10
4.3 Code of Conduct.....	11
5 RECOMENDATIONS.....	11
6 APPENDICES	12
APPENDIX 1: MINUTES.....	12
APPENDIX 2: WITNESSES	13

EXECUTIVE SUMMARY

The Bills and Legislation Committee inquired into the *Constitution (Status of Magistrates) (Amendment) Bill 2014* on the 26th of March. The Committee sees the importance this significant judicial development will have in the country and therefore express its support for it. Further the Committee wish to express its acknowledgment to the Ministry of Justice and Legal Affairs for bringing this important amendment to Parliament.

The shortage of Magistrates in the Magistrates' Courts can be largely attributed to the terms and conditions of their employment. The salary and allowances under the current remuneration package are insufficient to attract or retain talented legal professionals.

The Bill sought to elevate the status of Magistrates from being ordinary public officers to become constitutional office holders. This is envisaged to contribute towards improving Magistrates' remuneration, security and the overall independence of the judiciary.

There are other matters that are associated to this amendment that the Committee looked at. This includes the need for an assessment of the costs associated with this development and the budget support that the Ministry of Justice had allocated towards this development. Also, the Committee is concerned that those administering justice in the lower subordinate courts are not properly trained to perform their role. There is great need for guidelines to be produced by the Judiciary with the assistance of the Ministry to direct lay justices on how to properly perform their roles.

The Committee, at the completion of its inquiry to this Bill, commends this development and recommends its passage through Parliament. Furthermore, the Committee recommends that a guideline must be published under the relevant regulations to assist lay justices to properly and effectively perform their roles.

1. INTRODUCTION

The Bills and Legislation Committee (“the Committee”) had completed its review of the *Constitution (Status of Magistrates) (Amendment) Bill 2014* on the 26th of March 2014. The Bills was submitted on the 12th of March 2014 to the Speaker through the Clerk to Parliament as required under the *Standing Orders*¹.

The Committee had its deliberative meeting on the 24th of March and resolved to invite stakeholders² to make presentations on the contents and policy matters of the Bill. The hearing into the Bill with the stakeholders was held on the 26th of March. The minutes of these proceedings are in Appendix 1.

1.1 Functions of the Committee

The Bills and Legislation Committee is established under the *Standing Orders*³. The Order made pursuant to the *Constitution*⁴ 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;
- (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.

1.2 Terms of Reference

Pursuant to its mandate under the *Standing Orders*⁵, the terms of reference of the Committee in this instance is to examine the Bills and to report its observations and recommendations on the Bills to Parliament.

¹*Standing Order 44 (1)*

²See Appendix 2

³*Standing Order 71*

⁴*Section 62, Constitution of Solomon Islands 1978*

1.3 Membership

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

Hon. Manasseh D. Sogavare, MP (Chairman)

Hon. Dr Derek Sikua, MP

Hon. Milner Tozaka, MP

Hon. Matthew Cooper Wale, MP

Hon. John Maneniaru, MP

Hon. James Tora, MP

Hon. Douglas Ete, MP

Hon. Sam Iduri, MP

Hon. Johnley Hatimoana, MP

2 BACKGROUND

The Preamble to our Constitution paragraph 1(2) (a) reads, “*We declare that all power in the Solomon Islands belongs to its people and is exercised on their behalf by the Legislature, the Executive and the Judiciary established by this Constitution*”. In this context, the judicial power of the people is exercised by the Judiciary for which the Magistrates’ Courts is one of those courts that is the custodian and exercises this judicial power of the people.

The Magistrates Courts are established under the *Magistrates’ Courts Act* [Cap 20]. Sections 3(1) & (4) constituted courts of summary jurisdiction known as the Magistrates’ Courts and expressed it as a court of record. In this context, the Magistrates’ Court is a court of first instance and a court of record.

Throughout the country we have five main Magistrates’ Court Centres; **Malaita, Western** for Western and Choiseul Provinces, **Eastern** for Makira and Temotu Provinces, **Central** for Guadalcanal, Isabel, Rennell & Bellona Provinces and **Honiara** for Tulagi and Savo/Russells. Within these five Circuit Districts, there are 39 Circuit Centres where Magistrates are required to visit at least twice a month in order to effectively administer justice⁶. The 39 Circuit Centres include Shortland Islands in the west to Tikopia in the far east, then to Sikaiana and Lord Howe in Malaita Province.

2.2 Shortage of Magistrates

It is well known that the Solomon Islands justice sector is currently experiencing a critical shortage of Magistrates to sit and determine cases in the Magistrates’ Courts. According to the Ministry of Justice and Legal Affairs there are six Magistrates. Three are in Honiara; one is in Gizo, another one in Lata and one in Auki.

The Committee was informed that the number of established posts should have been sixteen but this has never been achieved. Since 2007 four sets of recruitments had been held without yielding sufficient suitable applicants. The Ministry informed the Committee that in their recent recruitment action this year, six vacant positions yielded a small field of candidates with only three suitable applicants selected.

The Magistrates’ Courts deal with over 90% of the criminal matters that come before the courts. The lack of Magistrates to sit in the courts means that the delivery of justice is greatly

⁶ Ema Garo, oral evidence, 26th March 2014.

compromised. Generally, this is not in line with the Constitution as stressed to the Committee during the hearing of the Bill. Under section 10(1) & (8) of the Constitution, any person that appear before a court of law must be accorded a fair hearing within a reasonable time by an impartial and independent court established by law. The critical shortage of Magistrates results in substantial backlog of cases. It also hampered the timely delivery of quality justice services and equal access to these services. Therefore, and the recruitment of fit and proper persons as Magistrates will go a long way in protecting the fundamental rights expressed in the Constitution and the timely delivery of quality justice services.

2.4 The Constitution (Status of Magistrates) (Amendment) Bill 2014

The Bill seeks to amend the Constitution to enable Magistrates to become Constitutional Office holders. Section 116(3) of the Constitution is amended by deleting paragraph (a) and substituting a new paragraph in the following terms;

(a) The office of any judge of the High Court, the Court of Appeal or any Magistrate of the Magistrates' Court;

However, the Committee understand that under Section 61 of the Constitution such amendment requires votes of not less than two-thirds of all members of Parliament. Section 61(3) states;

A Bill for an Act of Parliament to alter any provision of this Constitution (but which does not alter any of the provisions of this Constitution as specified in subsection (2) of this section) shall not be passed by Parliament unless it is supported at the final voting on two separate readings in Parliament by the votes of not less than two-thirds of all the members of Parliament.

3 IMPACTS

3.1 Constitutional office holders.

A direct result of the Amendment, if passed, is the elevation of Magistrates from being public officers to Constitutional Office holders. Currently, the Magistrates are regarded as public officers under the authority of the Judicial and Legal Services Commission (JLSC). Section 118 of the Constitution subjects Magistrates to the authority of the JLSC in appointments and discipline. The Amendment Bill sought to omit Magistrates from being subject to the PSC and include them amongst those mentioned under section 116(3)(a) of the Constitution and including them in the amendment to the schedule of the *Constitutional Offices (Terms and Conditions of Service) Act* [Cap 84].

3.2 Job Retainment

Another effect of the Amendment Bill is the possibility of retaining people in the job for a long time. As previously mentioned the Magistracy is experiencing shortage of Magistrates because they are resigning and moving to other jobs due to their discontent over the terms and conditions of their job or lack of interest because the incentives are not attractive. Some of the issues highlighted during the inquiry into the Bill that discourages people in retaining the job or planning to take the job are discussed below.

a) Remuneration

A former Magistrate when appearing before the Committee mentioned the basic remuneration a Magistrate receives is often not enough to sustain their families. The witness in giving evidence commented;

"In preparing to come and make this presentation I ask one magistrate if he can disclose his pay slip for the purposes of this presentation. It is confidential but he has agreed and I won't say the name but if you look at his net salary per fortnight, he earns about \$1,666.26. Now on a basic calculation - this is basic goods where a father or a mother expects to pay every fortnight then assuming that she buys that on bulk. A 20kg bag of rice is \$168; one sleeve Toilet paper \$20; two six pack niu bar soap \$22; one niu clean powder \$48; four packet tea leaf \$12; one carton of Mammei Noodle \$48. If he has taiyo every day for fourteen days, one meal of taiyo mixed with vegetable will need 14 cans of taiyo. At \$6 per tin it is \$84; one packet steel wool if he budgets for it that fortnight it will be \$6; axiom dish cleaner is \$10. If he has children to send to school and if he or she has three kids at \$30 per day for 10 days - it is \$300. And then one off payment for his bus fare at \$6 every day for fourteen days is \$84. The allocation for mobile at the minimum price you can go to allocate for fortnight would be \$50. One off payment, the lowest possible is \$100 for electricity and another \$100 for SIWA bill. One carton of Navy biscuit for breakfast every day—this is the small carton—is \$59 and gas is \$250. This comes to a total most reasonable—but on the verge—of \$1571.00. When you take that away from that net salary of \$1666.26 this magistrate is left with a \$195 that is if he buys bulk of everything on the payday on Thursday".⁷

b) Security

Being a Magistrate is quite a risky profession due to the likelihood of being confronted by convicted offenders. It was highlighted before the Committee that, sometimes former offenders confront Magistrates and issue threats against them. By not having any incentive to safeguard their personal security or the security of their families, Magistrates sometimes quit their job because of harassment from offenders.

⁷ Emma Garo, Oral Evidence, 26th March 2014.

c) Workload

According to evidence gathered in the inquiry, the number of cases that comes before a Magistrate tends to increase each year. One witness⁸ commented there has been an increase in the types of cases heard by Magistrates and the jurisdiction. It was used to be any claims up to \$2,000, but now it is \$100,000.00 if the parties agree. The witness further commented;

“We have put a lot more work on the Magistrates, but we have not protected and remunerated them properly. So if they fall on the wrong side of the law, we can say that, it is no excuse. But the next question we must ask is, is it fair when we fail to protect them, and when they fall, we punish them harsher than any ordinary citizen?”

3.3 Qualification

The representative from the Prime Minister’s Office (PMO) when appearing before the Committee stressed the need to have people with proper qualification for the job. Due to the fact that the structure and the opportunities provided for magistrate is not that attractive, the system has allowed people without relevant expertise and experience to get through and be magistrates. And the downside of this is - it undermines the quality of the magistrate and his ability to critic, his ability to process information, ability to write good judgment because he is a first timer, a first year law practitioner. He is able to get through that because we do not have people to fill that position. He only practises law for two years, three years, but we are force to take the best person that comes in through the door.

On the other hand, the Magistracy is unable to retain qualified people because the job conditions did not commensurate to the risks involved or the expertise they have.

3.4 Discourage Corruption

The status of Magistrates is of a different nature than any ordinary person. To display the impartiality of the judiciary they represent, they often are required to be beyond reproach. However, lately public confidence in the Magistrates’ Courts had been low due to the conviction and termination of some former Magistrates. Some senior Magistrates had been convicted in the High Court for mishandling of court fines and other office monies⁹. Recently, there had been allegations of extortion for judicial decisions. Those appearing before the Committee alluded to the slow process of getting touring allowances on time and the need to sustain their families may drive the Magistrates to handle funds they are not supposed to. A member of the Committee also expressed this;

“When I was with the Ministry of Education and met up with them at some provincial headquarter; they used to be quite frustrated. Their allowances are not always ready on time

⁸ Emma Garo, Oral Evidence, 26th March 2014

⁹ Regina v Leua [2012] SBHC 16; HCSI-CRC 105 of 2011 (22 February 2012)

when they are conducting cases in the Provinces. That is why they use the money, and then you took them to Court and have them sacked. These are some of the reasons why they use the money collected from fines. It is the fault of the government, not the Magistrates”¹⁰.

The Ministry of Justice believes that by elevating the position of the Magistrates and providing them with good remuneration will deter them from using court fines or office cash for their own needs.

3.5 Judicial Independence

Judicial independence is one of the core elements required for the separation of powers in a democratic state to protect the rule of law. It serves democracy and the community. It encompasses decisional independence, which is a judge’s ability to decide cases free from political or popular influence and institutional independence, which is the separation of the organisation from other branches of government.

Judicial independence is required to comply with national and international laws. Chapter VII of the Constitution deals with the legal system and confers unlimited original jurisdiction on the High Court. Section 10 is a provision which guarantees protection of the law and requires that courts must be “independent and impartial”.

According to the Ministry of Justice there are three basic conditions that must be met for a judiciary to be independent from the executive and legislative branches of the government. These are:

- (a) Security of tenure for a fixed term not subject to discretionary or arbitrary interference by the executive.
- (b) Financial security meaning the right to a fair salary and pension established by law and not subject to arbitrary interference by the executive.
- (c) Institutional independence with respect to matters of administration that relate to the exercise of the judicial function so that the executive cannot interfere with matters which relate to the adjudicative function such as court lists, court sitting times, court locations or assignment of officers.

Currently, the remuneration of Magistrates is administered by the executive and they are subject to the same conditions and disciplinary processes as other public servants. This contravenes the principle of impartiality and does not provide them with the necessary conditions to be free from undue social, executive or political influence.

¹⁰ Hon. Dr. Derek Sikua, Oral Evidence, 26th March 2014.

The importance of the judiciary as the third arm of the government in the protection of individual liberty and human rights cannot be overstated. It is the duty of the legislature and the executive to support and value the role of the judiciary and to preserve and foster its impartiality and independence.

Judicial officers are not part of the executive and should not be subject to the conditions applicable to persons working in the public service and implementing executive policies and orders. Judicial officers owe allegiance to the law and must be allowed to make their decisions and run their courts according to the rule of law.

Judicial independence is not required for the benefit of the Judges and Magistrates. It is required for the application of the rule of law, for the benefit of individuals in a society and to give legitimacy and public confidence to the status and actions of the executive and the legislature.

4 RELATED ISSUES

During the inquiry there are other issues that the Committee uncovered that affects the delivery of justices services in the country. These includes the effect the new judicial development will have on the overall budget cost of the Ministry of Justice and the role of lay justices in the lower subordinate courts.

4.1 Cost

The Committee, though supports the new development in the judiciary, expressed its concern that the Ministry may not be able to fully support the changes from its current budget. The Committee is aware that the Ministry of Justice did not supply a cost assessment of the impacts this changes will have on the consolidated fund and how it is going to fund its implementation. The Committee however, encourage the Ministry of Justice to fully implement the changes so that the Magistracy can regain public confidence in its proceedings.

4.2 Lay Justices

The Committee also expressed its concern on the manner of proceedings in the lower courts such as in the local courts and the House of Chiefs. Public confidence in these courts is very low. The view is that their proceedings are unregulated and in instances not impartial. Witnesses expressed the need to have a practice direction or some sort of guideline to guide proceedings in these courts. According to *the Local Courts Act* [Cap.19], the Chief Justice has

the power to make such regulations. The Committee therefore encourages the Ministry of Justice to work with the High Court to come up with a guideline for the lower courts.

4.3 Code of Conduct

Committee members also express their concern on the behaviour of some of the officers performing judicial functions in the Magistracy and the lower subordinate courts. There is concern that public confidence in the judiciary is lacking due to how some judicial officers are performing judicial functions. The Committee feels that a code of conduct should be produced to guide members of the judiciary in performing their roles.

5 RECOMENDATIONS

1. The Committee recommends the passage of the Amendment Bill.

2. The Committee recommends the Ministry of Justice and Legal Affairs to provide funding support towards this judicial development.

3. The Committee recommends the Ministry of Justice and Legal Affairs to assist the Chief Justice in formulating regulations, to produce a guideline for Lay Justices, to abide by in performing their roles in the lower subordinate courts.

4. A code of conduct is promulgated for the Magistracy and all lower tribunals.



Hon. Manasseh Sogavare

Chairman

Bills and Legislation Committee

23rd April 2014

6 APPENDICES

APPENDIX 1: MINUTES



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes

Deliberative meeting on the Constitutional Offices (Terms and Conditions of Service) (Judicial Reform) (Amendment) Bill 2014 and the Constitution (Status of Magistrates) (Amendment) Bill 2014.

Held: Monday 24 March 2014,
Venue: Parliament Conference Room 2
Time: 12:08pm – 12:17pm

1. Members Present

Hon. Manasseh D. Sogavare (Chairman)
Hon. Matthew Wale
Hon. John Maneniaru
Hon. James Tora
Hon. Johnley Hatimoana

Secretariat

Wilson Anii, Committee Secretariat

2. Chair's Opening Remarks

The Chair calls the Committee to order and introduced the two Bills.

3. Committees resolution

The Chair invites members to suggest witnesses to be invited to appear before the Committee and suggest date for the inquiry to commence. The Committee resolved to invite the following:

- PMO
- PS Ministry of Justice
- President Solomon Islands Bar Association
- Emma Garo- Former Magistrates

4. Close

Closing prayer by Hon. John Maneniaru

Minutes of Proceedings

Inquiry into the Constitutional Offices (Terms and Conditions of Service) (Judicial reform) (Amendment) Bill 2014

Date: Monday 26 March,
Venue: Parliament Conference Room 2,
Time: 10:18am – 11:35am, 11:42am – 12:57pm

Members Present

Hon. Manasseh Sogavare, MP (Chair)
Hon. Dr. Derek Sikua, MP
Hon. James Tora, MP
Hon. Matthew Wale, MP

Hon. John Maneniaru, MP
Hon. Johnley Hatimoana, MP

Stakeholders (Witnesses)

Pamela Wilde -Legal Policy Adviser
Freddy Mesa- PS Mins of Justice & Legal Affairs
Ranjit Hewagama- Legal Draftsman AGC
Dr. Philip Tagini- Special secretary to Prime Minister

Secretariat

Mr Wilson Anii, Committee Secretary

1. Welcome & Opening Statement

Chairman acknowledges and thanked the stakeholders for their commitment to appear before the committee for the public hearing into the two Bills.

2. Hearing into the Bill

The Chairman made welcome remarks and inform the witnesses on parliament privileges. He then invited those who appear to make opening statements to the Committee on the Bill. The PS Ministry of Justice introduce those who appear. The SSPM, Policy Advisor, President of SIBA and Ms Emma Garo made presentations to the Committee. The Committee questioned, made comments and seek clarification from those who appear on the different issues covered in the Bill. The evidence concluded and the Chair thanked the stakeholders for their attendance.

3. Closing

The hearing closed at 12:57pm.

APPENDIX 2: WITNESSES

The following witnesses appeared before the Bills and Legislation Committee;

Date of appearance	Name	Ministry/Institution represented	Position/Job title
Monday 26 th March 2014	Pamela Wilde	Ministry of Justice & Legal Affairs	Legal Policy Adviser
	Freddy Mesa	Ministry of Justice & Legal Affairs	Permanent Secretary (PS)
	Ranjit Hewagama	AG Chambers	Chief Legal Draftsman
	Dr. Philip Tagini	OPMC	SSPM