

**CONSULTATION ON
THE CRIMINAL PROCEDURE CODE BILL**

11 DECEMBER 2008 – 5 FEBRUARY 2009

INTRODUCTION

The Ministry of Law, together with the Attorney-General's Chambers and the Ministry of Home Affairs, are proposing the introduction of a Criminal Procedure Code Bill ("CPC Bill") to repeal and replace the current CPC. A copy of the CPC Bill is attached.

2. The CPC provides the regulatory framework for criminal investigations, trials and appeals, and other ancillary matters. While the current criminal justice system works well, there are specific areas which merit reform. The key drivers of change are as follows:

- (a) over the years, the criminal jurisdiction of the Subordinate Courts has increased and it is now quite substantive. Under the current CPC regime, trials in the Subordinate Courts are summary trials, with no formal pre-trial procedures built into the system;
- (b) we need to update current practices, but ensure that trial procedures remain easy to understand and navigable;
- (c) as our society matures, relying purely on traditional punishments of fines, imprisonments or caning is no longer optimal. Other developed countries have introduced community based sentences with success. We should introduce more graduated punishments for certain offences which will lead to better outcomes for both the individual and the State.

3. As a whole, the proposals will modernize our criminal justice framework, ensuring that it remains relevant in our current operating environment.

4. The Ministry invites interested parties to provide their feedback on the CPC Bill. The consultation period ends on 5 February 2009. You may send your feedback in electronic or hard copy form to:

Legal Policy Division
Ministry of Law
100 High Street
#08-02, The Treasury
Singapore 179434
Fax: 6332 8842
E-mail: MLAW_Consultation@mlaw.gov.sg

5. The Ministry reserves the right to make public all or parts of any written submission, unless confidentiality is specifically requested for the whole of any part of the submission.

SCOPE OF PROPOSED AMENDMENTS

6. The proposed main changes cover following main areas:
- (I) investigation and pre trial framework;
 - (II) trial process;
 - (III) post-trial process; and
 - (IV) repeal of provisions on Coroners inquiries.

I. Investigations and Pre Trial Framework

Right of private prosecution

7. Right of private prosecution will be limited to offences which are punishable with less than 3 years imprisonment. Currently, private prosecutions are allowed for "summary cases before a Magistrate's Court or in summary non-seizable cases before a District Court".

8. With the proposed increase in hearing jurisdiction of Magistrates' Courts, more cases may be heard by Magistrates' Courts. Hence types of cases which may be prosecuted privately should not be pegged to the jurisdiction of a Magistrate's Court. Also, the current test which refers to "non-seizable cases before a District Court" will be amended as some non-seizable Penal Code offences attract terms of imprisonment of 7 years or more. The revised test is also easier to apply as penalties of offences can be easily ascertained.

Form of caution

9. The current form of caution administered prior to the recording of cautioned statements will be re-drafted to simplify the current language.

Referral of cases to Community Mediation Centres (CMC)

10. The police will be empowered to refer appropriate cases to the CMC for mediation. Where the case is before the Magistrate, the Magistrate may also refer parties to mediation. The failure or refusal by any party to go for mediation is a ground for the Magistrate to take into account in deciding whether to proceed with the case or dismiss the complaint.

Power to seize property in certain circumstances

11. The police may seize and dispose of property in respect of which an offence was suspected to have been committed. This includes seizing property held in an account in a financial institution or in safe deposit boxes by serving an order on the relevant institution.

Bail and duties of surety

12. The duties of a surety will be laid down. The surety will be required to (a) ensure that the released person surrenders to custody, (b) keep in daily communication with the released person and must lodge a police report within 24 hours of losing contact with him; and (c) ensure that the released person is within Singapore unless the released person has been permitted by the court to leave Singapore. If the surety is in breach of any of his duty, the court may forfeit the whole or any part of the amount of the bond.

13. The subsections are an elaboration of the duties of a surety. It is still up to the court to decide whether the bond is forfeited, in whole or in part. Requiring the surety to do (a)-(c) above may save him from having his bond forfeited.

Notice To Attend Court (NTAC)

14. There will be a new provision providing for a NTAC, which may be used against persons suspected of committing an offence. This is to

streamline the current practice where enforcement agencies can already use the process of NTAC to compel court attendance. In this way, the police and other law enforcement agencies do not need to go through the process to pray for summons, but instead simply serve on the offender a notice to attend court, whereupon the charge will be tendered in court.

Surrender of travel documents

15. Where there are reasonable grounds for believing that a person has committed an offence, the police or the court may require him to surrender his travel documents.

Use of lethal force

16. Currently, section 111 of the CPC provides that “every police officer may interpose for the purpose of preventing and shall to the best of his ability using all lawful means prevent the commission of any offence”. It is proposed that the concept of interposition be strengthened to be in line with the current operating realities. Section 111 of the CPC will be amended to provide a defence to a police officer if he had used lethal force based on the reasonable belief that the person has committed or is, either alone or in concert with others, preparing to commit a terrorist act, and where the use of such force was necessary to effect his apprehension.

Joint trial

17. The categories for which joint trials may be held will be expanded. The changes will facilitate the conduct of trials. This will also ensure the efficient use of time and resources of the relevant parties, e.g. the courts, the police and the witnesses involved. The courts will act as a safeguard in deciding whether a separate trial should be ordered. A court may disallow a joint trial if an accused may be prejudiced or embarrassed in his defence.

Outstanding Offences

18. The CPC Bill makes it clear that the High Court may take into consideration, for the purpose of sentencing only, charges that have not yet been the subject of transmission proceedings. This will allow the High Court to mete out a more appropriate sentence by taking into account all the facts.

Initiation of Proceedings and Complaints to Magistrates

19. The modes by which criminal proceedings may be initiated against accused persons and how they may be compelled to attend court are set out.

20. The proposed Magistrates' complaints process is follows. In the case of a complaint written and signed by an officer of a public body acting in his official capacity, the Magistrate must proceed to issue the summons or warrant after examining the complaint. In other cases, the Magistrate must examine the complainant under oath and may proceed to (a) summon the person complained against or any other witness to help ascertain if the complaint is with or without basis, (b) direct the police to make inquiries to verify the complaint, (c) proceed in accordance with section 15 of the Community Mediation Act, or (d) postpone consideration of the matter to allow parties to resolve the matter amicably if possible. These amendments seek to promote the settlement of disputes by mediation.

Discovery process

21. The Bill will provide for a formalised framework for discovery so as to bring greater transparency and consistency to the pre-trial process.

22. The salient features of the proposed statutory framework are as follows:

- (a) for cases that are tried in the District Court, the prosecution will be required by law to serve the Case for the Prosecution on the

defence, which will contain: (i) the charge which the prosecution intends to proceed with at trial; (ii) a summary of the facts in support of the charge; (iii) a list of prosecution witnesses; (iv) a list of exhibits; and (v) any statement or part of a statement made by the accused that the prosecution intends to adduce in evidence as part of its case. For cases that are tried in the High Court, the prosecution will be required to follow the same procedure except that instead of a summary of the facts in support of the charge, the prosecution will have to serve the conditioned statements of the prosecution witnesses;

- (b) the defence will likewise be required by law to serve the Case for the Defence on the prosecution, which will contain: (i) a summary of facts in support of the defence; (ii) a list of defence witnesses; and (iii) details of objections, if any, to any issue of fact or law contained in the Case for the Prosecution;
- (c) after the Case for the Defence has been served, the prosecution will serve on the defence copies of documentary exhibits that the prosecution intends to adduce in evidence as part of its case, and all statements given by the accused in relation to the charge to be proceeded with which are recorded by any person under any written law;
- (d) in cases where the accused is not represented by a lawyer, the pre-trial judge must, on application by an accused person, record the Case for the Defence to ensure that the accused is not unduly prejudiced by the procedural requirements. The recording judge will not be the trial judge. The prosecution will not be present during this recording. An accused not represented by a lawyer also need not state any objection to any issue of law. These proposals serve to provide some safeguards to an unrepresented accused person so that he is not disadvantaged by the new regime in the CPC Bill;
- (e) consequences will be provided for non-compliance. The court may order a discharge not amounting to acquittal if there is non-compliance on the part of the prosecution. Similarly, if the defence

changes its case, the court may draw such inferences as are appropriate;

- (f) the pre-trial discovery framework applies only to cases that are tried in the District Court or the High Court. For cases that are tried in the Magistrate's Court, the discovery process is not mandated as these are generally less serious offences. However, parties may still choose to opt-in to the discovery process by consent. For cases triable in the District Court, the accused may choose to opt-out of the discovery process before the first pre-trial conference is held but the prosecution may not do so. If the accused chooses to opt-out of the discovery process, the prosecution will not be obliged to serve the Case for the Prosecution. There will be no inference drawn against an accused for opting out of the discovery process.

Abolition of Preliminary Inquiries for High Court trials

23. Currently, all cases to be tried in the High Court must go through a Preliminary Inquiry ("PI") before they may be committed for hearing in the High Court. For greater expediency, it is proposed that the PI formalities be abolished and cases to be tried in the High Court will simply be transmitted from the Subordinate Courts (where an accused will be produced in court and charged) to the High Court. The new discovery process ensures that the defence will still be served with the same material that it is currently entitled to for the purpose of the PI.

II. Trial Process

Composition of offences

24. The Public Prosecutor ("PP") will be empowered to compound certain prescribed offences. Under the new proposal, before composition of any offence, the PP's consent is required if investigations have commenced or when an accused has been charged in court. The rationale is that the PP should be the person to decide whether composition should

be allowed since he has control and direction of all criminal proceedings. The PP would have taken into account the public interest element in each case in assessing whether the victim should accept composition.

Persons of unsound mind

25. The amendments seek to streamline and improve administrative procedures relating to offenders of unsound mind.

Admissibility of statements of accused

26. Amendments to the current section 122(5) of the CPC will be made in order to align it with the Evidence Act which imposes the voluntariness test only in relation to confessions. With the amendments, all other statements which do not amount to confessions are admissible in evidence and any allegation as to the voluntariness of such statements will only affect the weight to be attached to them.

Duty not to reveal identity of informant

27. The new provision provides that no person can be compelled to produce any part of the first information report containing anything which may reveal the identity of the informant if the Public Prosecutor certifies that it would not be in the public interest to do so. Similar provisions are found in the Misuse of Drugs Act, Customs Act and Prevention of Corruption Act.

Ancillary hearings

28. Provisions on ancillary hearings to determine the admissibility of statements will be provided for. Ancillary hearings will include trial-within-a-trial (“*voir dire*”). Evidence given in any ancillary hearing will form part of the evidence of the main trial.

III. Post Trial Process

Address on sentence and mitigation

29. The present practice where any address on sentence, if any, is made *after* the mitigation plea is altered. It is proposed that any address on sentence will be made before mitigation. This proposed procedure shortens the process by allowing the defence to mitigate as well as respond to any matters raised in the address on sentence at the same time.

Rectification of clerical error

30. The provision has been amended to allow all courts to rectify errors (including an error in the exercise of its sentencing powers) within 24 hours from the making of the order. Currently such errors may only be rectified before the court rises for the day. The provision also explains the scope of powers to rectify.

Increased jurisdiction of courts

31. The sentencing powers of the Magistrate's Court will be increased from 2 years to 3 years imprisonment. For the District Court, the sentencing powers will be increased from 7 years to 10 years imprisonment. These increases are necessary as the penalties for Penal Code offences have been increased with the recent Penal Code amendments.

32. In relation to the fine amounts which a court may impose, the fine limit for a Magistrate's Court will be increased from \$2,000 to \$10,000. For the District Court, the fine limit will be increased from \$10,000 to \$30,000. The revision is necessary to take into account the changes in the purchasing power of money as the District Court's fine amount was last

revised in 1986¹ and the fine amount for the Magistrate's Court has not been revised since 1959.

33. The hearing jurisdiction of Magistrates' Courts will be increased from 3 years to 5 years to enable Magistrates' Courts to hear a wider range of cases. The hearing jurisdiction for District Courts will remain at 10 years.

Concurrent sentences

34. The new provision provides that where a life imprisonment sentence is imposed by the High Court at a trial, the other sentences of imprisonment must run concurrently with that sentence except that where the life term is reduced or set aside on appeal the appellate court may order any of the other sentences of imprisonment to run consecutively.

Caning

35. Two main changes will be made to the various caning provisions.

(i) A cap of 24 strokes for each occasion of sentencing or caning

36. The amendments will make clear that on each occasion of sentencing, a cap of 24 strokes will apply, even where the mandatory number of strokes for multiple charges could add up to more than 24. A similar rule will be effected for the execution of caning. Whilst sentences for caning can be combined, the maximum for any one sitting would be capped at 24 strokes. For repeat offenders sentenced and caned over different periods of time, the cap only applies to each respective sentencing or caning session.

(ii) Imprisonment in lieu of strokes where statutory cap of 24 applies and in excepted cases

¹ The fine amount was increased from \$5,000 to \$10,000 in 1986.

37. *For certain offenders where caning is not possible from the outset (females, those over 50 years old and those medically unfit) the court has the discretion to impose an imprisonment term of up to 12 months in lieu of the excess strokes forgone. This will give the court discretion in exercising parity between co-accused persons.*

Costs and Compensation for accused persons

(i) *Costs for accused at trial*

38. The courts will be conferred a new power to order costs against the prosecution, where the Court takes the view that the prosecution was brought frivolously or vexatiously.

(ii) *Costs for accused on appeal*

39. An amendment will be made to allow both the High Court and the Court of Appeal to award costs in appeals.

(iii) *Compensation to accused*

40. An amendment will be made to allow the court to order the prosecution to pay compensation to an accused person if the prosecution was frivolous or vexatious.

Period of lodging appeals

41. The notice of appeal timeframe will be aligned to 14 days for both High Court and Subordinate Court. The petition of appeal timeframe would also be increased from the current 10 days to 14 days for all cases.

Remand of accused after acquittal

42. Like the High Court, the District Court will be empowered to remand an accused for up to 48 hours (pending the filing of the notice of appeal by

the prosecution) where the prosecution informs the court that he intends to appeal against the acquittal of an accused. As the District Court deals with the bulk of cases prosecuted, they should similarly be empowered to order remand of accused persons.

Appeals

43. The Appellate court will be allowed to frame an altered charge and convict on it based on records before the court. Safeguards will be provided to ensure that the accused has an opportunity to give his defence, if any, to the amended charge.

44. Provisions will also be made for the Public Prosecutor to state case for consideration of the Court of Appeal directly instead of the High Court. The point of law must be one of public interest and ought to be decided by the Court of Appeal.

Review of order made by High Court Judge during appeal

45. A new provision is proposed to allow the Court of Appeal, comprising 2 Judges of Appeal, to review an erroneous order made by a High Court Judge when hearing an appeal (which does not amount to a final order disposing of the case). Presently, under section 266 of the CPC, if a Subordinate Court makes an order which is incorrect or has no legal basis, the High Court may revise that order. The new provision will similarly allow the Court of Appeal to remedy the error.

Community-based sentencing options

46. Our experience with community-based sentencing (CBS) options such as the Home Detention Scheme and Probation Service has been positive. In addition, a number of key trends suggest that the Government should consider a wider range of sentencing options:

- (a) A wider range of crimes, including more types of anti-social behaviour and some technical offences, may not be adequately addressed through the traditional punishment modes of incarceration or fines;
- (b) A growing recognition of mental disorders and illnesses which lead to criminal or anti-social behaviour, and an enhanced ability to treat such disorders or illnesses;
- (c) Recognition of the need to promote community involvement in the penal framework, which would also prevent the offender from “dropping out” of active society through incarceration, leading possibly to a vicious cycle of re-offending.

47. We are mindful that there should be no erosion in the underlying philosophy of our penal regime. While the CBSs should not be overly stigmatising and disruptive, public safety will not be compromised. Only offenders who have committed less serious crimes will be eligible. While CBSs are primarily rehabilitative in nature, they will also incorporate a deterrent element where appropriate. The onus is on the offender to complete his CBS.

52. With the above considerations in mind, we invite interested parties to give feedback on the following CBS options. The necessary legislative provisions will be drafted in the Bill after we have considered the feedback.

- (a) Mandatory Treatment Order (MTO) to allow the Courts to order an offender to undergo psychiatric treatment in lieu of imprisonment. No such power exists currently.
- (b) Short Detention Order (SDO) to give first time low-risk offenders a short experience of about one week of detention. The SDO is less stigmatising than imprisonment and limiting the detention period will prevent contamination. More importantly, the SDO will not dislodge the offender from his family and job. At the same time the “clang of the prison gates” helps deter re-offending.

(c) Day Reporting Order (DRO) to require an offender to report to a Reporting Centre on a regular basis and be electronically tagged, if necessary. This imposes some discipline and aids in rehabilitation as the offender's progress is monitored closely. It can be used very effectively in combination with a SDO. Other countries have used such orders to positive effect.

(d) Community Work Order (COMWO), modelled after the "Corrective Work Order" for litterers, to allow for a wider range of offences and types of work to be mandated. The type of community work should have some nexus to the offence committed. The proposed maximum length of the COMWO is up to 40 hours.

(e) Expanding the Community Service Order (CSO) to allow offenders aged 16 and above to make reparation to the community while being punished for his misdeeds. This will require tying up with Voluntary Welfare Organisations which can put the offenders' service to good use. The proposed length of the CSO is 40 to 240 hours.

(f) Expanding the Conditional Discharge to allow the Courts to specify conditions such as participation in programmes or an MTO as a requirement. The maximum term for a conditional discharge is proposed to be extended from the current 12 months to 24 months to allow sufficient time for participation in programmes.

48. The proposed CBSs hope to introduce greater flexibility in the current legislative framework and allow more gradated sentencing options for minor offences. They complement the existing community-based rehabilitation options and the work of the Community Court. They will also enable those offenders currently imprisoned for short terms to be adequately punished without disruption to family life or loss of job.

IV. Repeal of provisions on Coroners Inquiries

49. The provisions in the CPC relating to Coroners inquiries will be repealed and a separate Coroners Bill will be enacted to deal more comprehensively with Coroners Inquiries. The proposed Coroners Bill takes a “fact-finding” approach to replace the current one which assigns criminal liability for deaths. The Coroners Bill will be separately made available for feedback.

MINISTRY OF LAW

11 December 2008