

# EFFECTIVE ADMINISTRATION OF THE POLICE AND PROSECUTION IN CRIMINAL JUSTICE OF PAPUA NEW GUINEA

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The criminal justice system of any society depends very much on the thorough, efficient and effective functioning of its pillars that are involved in the dispensation of justice.

As these pillars are separate entities the efficiency and effectiveness of one can easily be hampered by the inefficiency and incompetence of the other. Therefore in order for the system to operate smoothly, co-operation, coordination and concerted efforts of the pillars, namely the police, the prosecutors, the judiciary as well as the correctional services is necessary.

Unfortunately this is easier said than done especially in a country like Papua New Guinea (PNG) where the governmental agencies are beset by financial, technological and other institutional restraints and where the citizenry are increasingly becoming alienated from each other.

## I. SEPARATION OF POWERS

The Constitution of PNG divides the government into three equal and coordinated branches, namely the legislative, executive and the judiciary, each of which is supreme within their respective spheres. Neither of them may encroach upon the function or domain of the other.

The law-making function is lodged with the National Parliament of PNG, whose members are elected by the people of the whole country. The executive function whose duty it is to enforce the laws falls on the Prime Minister of the country. It is to the Supreme Court and the other courts created by law that the judicial functions are lodged.

Among these three branches, those that are directly involved in the administration of justice are the executive branch through the police and the other numerous law enforcement and prosecution agencies, as well the correctional institutions, and the judiciary.

The agency that is primarily in charge of law enforcement is the Royal Papua New Guinea Constabulary and the control comes under the Minister for Police in political matters and the Commissioner of Police for all its day-to-day operational requirements.

The Public Prosecutor's office is the principal agency in charge of the prosecution of offenders and comes under the control of the Minister for Justice. There is however, a unique agency of the government, which is the Office of the Ombudsman, charged with the investigation and prosecution of certain crimes involving public officials or those connected with the performance of public functions.

## II. THE FIVE PILLARS OF THE CRIMINAL JUSTICE SYSTEM

### A. The Law Enforcement

The law enforcers are at the forefront of the criminal justice system of the country. They are the ones that directly deal with the citizens and are directly exposed to the criminal elements. There is, therefore, the necessity for the members of these law enforcement agencies to be well oriented with, and trained in the ways of the civil society.

Thus, the Royal PNG Constabulary is charged with the duties of crime prevention, law enforcement, preservation of peace and order, and as well as the internal security of the government of the day.

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Also within the police organizations, there is an Internal Affairs directorate tasked with the investigations of complaints against erring officers. The efficiency and effectiveness of this directorate help polish the image of the police organization as a body that people can rely on.

**B. The Public Prosecutor**

The prosecution function is lodged mainly with the Public Prosecutor's office, under Department of Justice. It is composed of the Public Prosecutor's office, regional and provincial prosecutor's offices. The Office of Public Prosecutor has the following functions:

- a) Receive files from law enforcement and other investigative bodies and prosecute crimes
- b) Decide appeals from decisions of the regional and provincial prosecutors
- c) Investigate administrative charges against prosecutors

The regional and provincial prosecutor's office is charged with the administrative task of supervising and coordinating prosecutions within the region and the provinces.

There has been innovations instituted by the prosecution department with regard to the handling of cases involving different crimes, particularly in terms of specialization in the handling of criminal cases, however dire shortages of manpower experienced by the department, has had prosecutors handling variety of criminal matters as they become available. This has led to prosecutors being assigned cases that they are not familiar with, particularly the intricacies and strategies in handling of such cases.

The Public Prosecutor is also involved in special cases that are referred from the Office of the Ombudsman. The office of the Ombudsman is created under the Constitution of PNG and is independent of the executive branch of the government. This office is mandated among others, to investigate and refer to the prosecutor's office cases involving public officials and employees who have committed crimes in relation to their employment. It is because of this function that its independence is of paramount importance - reason being to insulate it from the political branches of the government.

The other agency is the Electoral Commission. This agency is charged with the investigation and the enforcement of all election related matters. Matters related to electoral offences are also referred to the public prosecutor's office for determination as to whether or not offenders be charged or prosecuted. This office is also independent of the three main branches of the government.

There is also an Office of the Public Solicitor. They are paid by the government to provide legal assistance to the general public who cannot afford to pay their own legal costs. Financial and other institutional restraints like staff shortages, however limits the number of the cases defended by this office. Accordingly the Public Solicitor is quite stringent as to which cases are to be defended. Their setup in the regional and provincial level is similar to that of the Public Prosecutors.

There are also institutions or individuals outside the government that are offering legal assistance to the needy, like the PNG Law society and the legal aid programmes of the law school at University of PNG.

These benevolent institutions and the individuals help immensely in the administration of justice, as they facilitate the disposition of cases before the prosecutors or the courts and safeguard the constitutional rights of their clients.

**C. The Judiciary**

The judiciary is the final arbiter of controversies, of competing claims and interests, including the determination of guilt or innocence of a person charged with the commission of a crime. The judiciary in PNG is composed of a Supreme Court, which is at the top of the hierarchy, and the other courts created by law.

The judiciary is independent and has its own fiscal autonomy. The Chief Justice is charged with the responsibility to oversee its functions. The executive branch of the government appoints the members of the bench with the Prime Minister of PNG as the chairman. The Judges are only removable from office by a serious breach and conviction of a culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.

The other courts are the National Court, District Courts, Local Courts, village courts and the 'special courts'. Due to the diverse nature of the country with its many cultures and a little over 700 different language groups, there is a combination of traditional and imported court systems.

The Supreme Court, the National Court, and the District Courts are based on European models and have many formal rules. Appearances at these courts normally require assistance of lawyers to present arguments because of the laws and the legal procedures involved. The Local Courts and Village Courts however are more informal and are intended to deal with customary complaints between citizens.

Village Courts normally take care of problems of 5 or 6 nearby villages or settlements. The magistrate is normally a local resident appointed by the people of the area covered by the court. The aim is to have people settle local disputes in their own way.

Then we have the Special Courts. These courts have limited powers. Examples of these courts are: Land courts, Juvenile courts, Coroners court, Wardens court and finally the Court of Disputed Returns.

#### **D. Correctional Institutions**

The agencies involved in the punishment of convicts fall under the Ministry of Correctional Services. The Commissioner of Corrective Services is charged with the operational and administrative responsibilities of the services.

#### **E. The Community**

The members of the community also play a very important role in the criminal justice system. It is from their ranks that the offenders come and it is with them that they will end up. The involvement of these people in the programmes and projects of the government, even those that are not necessarily connected with the administration of justice, contribute to the lessening of crimes, as their efforts are diverted to more productive matters. They can also contribute immensely in solving crimes by assisting police in investigations, giving testimonies, providing leads and the arrests of criminals. Included as part of the communities are government agencies not involved with the administration of justice, as well as the members of the private sectors.

### **III. PROCEDURES IN THE ADMINISTRATION OF JUSTICE IN PNG**

Majority of the crimes committed in main urban centers of PNG are property related. Car jacking, break-enter and stealing, and armed robberies top the country's list everyday. Rapes, murders and drugs related matters are also common occurrences.

Regardless however of the types of the crimes committed, be they heinous, serious or light, the procedure for the investigation, prosecution and trial of the cases is more or less the same, except for those triable under the rules of summary procedures.

#### **A. The Law Enforcement Process**

The enforcement process begins the moment the crime is reported or a complaint is filed before the police. The police then conduct an investigation of the crime, take testimonies of witnesses, collect available evidences and take steps to apprehend the offender.

In cases where the police in the act of committing the crime, attempting to commit or having just committed the offence catch the offender, the suspect is detained. The arresting officer then decides if a crime has been committed or not. If he is satisfied that he/she prepares the appropriate paper work and information to have suspect processed.

If on the other hand there exists some doubt as to the proof of his case, then the member has to arrange for the release of the suspect. The decision as to whether or not to charge is made on the ground by the general duty members attending to complaints or CID members following a case.

If in the event that a decision to charge has been taken, then appropriate paper works or the complete file is then forwarded on to the prosecution section of the police Force who will then have suspect arraigned the next (working) day at a courthouse.

#### **B. The Prosecution Process**

Once the investigating officer is through with the investigation of his case, he forwards his findings to the OIC of the police prosecution unit for the proper procedures. If the OIC is satisfied with the file, the matter is then filed at the courthouse. Police prosecutors handle all minor criminal matters at the local or the district court level. Serious criminal matters are normally referred as an 'hand-up briefs' through a grade 5 District court magistrate to the Public Prosecutor's

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office for election as to whether the matter be referred to a National court for a trial. If the public prosecutor is of the opinion that the matter can be tried successfully at the National court his office takes over the file and his aides handle the matter.

**C. The Judicial Process**

Criminal matters in PNG are cited as *The STATE versus (name of the accused)*. Once the Public Prosecutor's office takes carriage of the matter it is then filed at the National Court with a date set for the arraignment of the accused. At the set date the charges are read to the accused that then takes a plea. If he pleads guilty the matter is concluded without a prolonged trial, however if the accused pleads not guilty, then the matter is adjourned for a date where the trial will take place with appropriate witnesses from both sides in place to give their testimonies.

During the adjournment period normally a Pre-Trial conference (PTC) takes place between the prosecutor and the accused's counsel to sort out all the minor details so that a speedy trial will ensure at the date of trial. Matters dealt with and agreed upon at the PTC are inadmissible as evidence against the accused. Unless the same is reduced to writing and signed by the accused and their counsel. Many judges are particular about PTCs and its importance and therefore non-attendance to a PTC by counsels can become a subject for sanction at the discretion of the Judge.

At the trial the prosecution witnesses are individually dealt with first and cross examined by the defence counsel, followed by re-examination by the prosecutor. After all the prosecution witnesses have been through, the defence brings his witnesses to the box after the accused had given his side of the story. Defence witnesses are then cross examined by the prosecutor, followed by re examination by the defence counsel should there be any damage caused by the cross examination.

After the judge has heard all the witnesses from both sides, submissions are made by both the prosecution and the defence. The matter is normally adjourned at this stage for a decision to be made by the judge.

During the trial rules of evidence is of paramount importance. PNG has not yet gone into the use of technology in the courtroom but several systems have been looked at, which will no doubt speed up trials because accused do not need to be personally in the court room to have their matters heard. This will no doubt save the judiciary system a lot of time and monies in moving prisoners from one location to another.

**D. Remedies For The Accused**

When the court finds that the evidence against the accused is insufficient to convict, the accused is acquitted and no accusation based on the same act(s) can be filed against him, nor can any appeal be therefrom because of the principle of double jeopardy.

If on the other hand the court is satisfied beyond reasonable doubt with the evidence presented to him by the prosecution, he will convict the accused and sentenced him accordingly after the counsels have addressed on the sentence.

The accused has a right to appeal to the Supreme Court on the following grounds:

- a) that errors of law or irregularities have been committed during the trial prejudicial to the substantial rights of the accused.
- b) that new and material evidence has been discovered which the accused could not, with reasonable diligence, have discovered and produced at the trial, and which if introduced and admitted, would probably change the judgment of the court.

**E. Inefficiency in Court Proceedings**

The following have been identified to be the cause for delays:

- a) Increase in number of cases filed at courts due to the general population becoming more aware of their legal rights.
- b) Lack of courts and slowness in filling up vacancies on the bench.
- c) Budget allocations by the government do not meet needs.
- d) The complexity of the rules of the procedure.
- e) Failure in the cooperation of court related agencies

### **F. Overcrowding of Jails**

As the National and the Supreme Court diaries become increasingly filled with backlog of cases from the past years, the jails throughout the country are beginning to overcrowd into dangerous proportions.

In the last few years there has been a numerous breakouts from jails through out the country, with the latest one in June/July of last year 2001, where little over fifty prisoners dashed for freedom from an overcrowded jail just outside of the country's capital city. At the time of this writing less than 15 escapees from this breakout have been recaptured. Some of those still at large are hardcore and quite notorious criminals.

Constant requests to the government from the police, the public prosecutor, the judiciary and the correctional services for additional funding to meet respective needs have fallen by the wayside. This has not been by choice. The government of PNG in the last 10 years or so has been faced with some trying economical situations. During these times many departments had huge financial cuts in their budget allocations and had to make do with whatever was allocated. The effects of these are now becoming apparent.

### **G. Strategies**

Towards the end of last year (2001) representatives from all the pillars of criminal justice system met at various locations to discuss strategies as to how to deal with the concerns of overcrowding jails, the Constitutional rights infringements, the health concerns and mass breakouts resulting therefrom.

The following matters were raised:

- a) Unnecessary arrests for trivial matters. The police through the appropriate commanders to bring to the attention of their men and women to use more discretion in assessing situations before arrests are made.
- b) Police Bails. Discretion on police bails should be encouraged wherever possible except for serious crimes.
- c) Court Bails. Courts have been overly concerned at the number of absconders and have on many occasions issued warrant of arrests, even in minor matters, rather than just having the bail forfeited. These have resulted in creating backlog of cases all listed on the court diaries. In the event that the absconder is arrested he is remanded in custody for lengthy period of time waiting for his matter to come to court. Courts are encouraged to use discretion particularly in minor and trivial matters.
- d) Mediation. Police and courts to encourage mediation between parties to have matter dealt with according to customs to prevent workload for police, courts and the overcrowding of jails.
- e) Indictable offences. In many instances police are too eager to have person arrested even before adequate evidence is collected, resulting in suspects remanded for lengthy periods awaiting his file to be completed. Police commanders to advise men to stop this illegal practice.
- f) Indictable offences that can be tried summarily. District Court magistrates should use more discretion to have matters, which in their opinion can be dealt with in their court, finalized at the time it comes before them rather than referring it to a committal court. They can take a plea so that the file is referred immediately to the public prosecutor's office for election, rather than await going before a grade 5-committal hearing, which could take months. Chief magistrate is tasked to discuss with his lower court magistrates.
- g) Election responsibilities. This task is delegated by the public prosecutor to the senior police prosecutors to alleviate workload on his office.
- h) Sentencing of prisoners. Magistrates should look at alternatives forms of punishment rather than having every convicted offender for minor offences sent to jail. Community services or other informal punishment at the supervision of police station commanders could be looked at.

### **H. Recommendations**

- a) Decriminalise some minor offences
- b) Encourage out of court settlements such as mediation, counseling.
- c) Police training to include mediation and counseling techniques.
- d) Police to improve system of adjudication of court files to ensure sufficient evidence is on hand before charges are laid.
- e) Current procedure of issuing certificate of election be delegated to senior police prosecutors.
- f) Police and courts to encourage bails.
- g) Call over and PTC between magistrates and counsels be introduced in lower courts.
- h) Custodial sentencing to be discouraged for minor offences, particularly, first time offenders.
- i) Separate jail facilities for remandees and convicted prisoners.

**IV. CONCLUSION**

As in any emerging society, our democracy cannot work unless the rule of law is objectively and impartially observed. If the government do not themselves observe the rule of law, then our society is headed for disaster.

I believe that it is up to us, the disciplines that form the pillars of the criminal justice of our society. Our cooperation with each other, regardless of the hard economical times that we are going through in limited resources, from finances to manpower to infrastructures, absolute cooperation, coordination and concerted efforts will get us there.

I believe PNG is heading in the right direction by coming together to discuss its criminal justice issues and I look forward to be part of that team.