

MULTI-AGENCY COOPERATION IN COMMUNITY-BASED TREATMENT OF OFFENDERS

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I. CRIMINAL JUSTICE CHALLENGES IN PAPUA NEW GUINEA

A. Socio-Economic Influences

Papua New Guinea ('PNG') is a developing country, with a population breaching 12 million people. Like any developing state, a large populace places a great demand on the National Government and its institutions as its socio-economic landscape continues to grow.

While the majority of the population subsists in the rural areas, urban drift has seen a large influx of people into the already heavily populated urban areas, testing the bounds of municipal authorities, and resulting in settlements springing up in and around cities and towns.

Formal employment is not always readily available for job seekers, and so most resort to the informal sector to eke out a living. The demographic competing for these limited job opportunities is mostly young adults (17-28 years) turned out into the economy with little qualification after secondary school, who cannot continue further into tertiary institutions for lack of meeting the required grades or placing, for sheer numbers vying for finite spaces. Housing standards are poor, and decent houses are too expensive to rent or purchase; families are forced to live together, two (2), three (3) generations at once in often small houses.

There are reports that the country's economy is strengthening with the major natural gas and petroleum projects currently in progress. Business investment is said to be growing and gaining firmly; however, these prospects have not translated into improved living standards for the larger population who are in the middle and lower classes. The Public Service conditions of employment are still in stark disparity to the cost of living, with remuneration levels hardly adjusted to meet the economic climate.

Bleak economic opportunities and the steep cost of living are probably the major challenges in the shift of the country; it is little surprise, then, that crime is a relative consequence of all these combustible factors. The hand-to-mouth culture has seen an increase in criminal frequency mainly out of the need to survive, let alone subsist.

II. ROLE OF COMMUNITY-BASED TREATMENT AND ITS EFFECTS

With the rate of crime and overburdened correctional facilities, alternatives to imprisonment are a viable measure toward rehabilitating offenders and curbing reoffending. The Criminal Code Act gives discretionary power¹ to the National Courts ('Courts') of PNG to impose alternative punishments to imprisonment. Indeed, the Courts have taken to suspending sentences imposed on prisoners with a view that there is some chance for rehabilitation² and as a design to prevent reoffending as stated by Justice Hinchliffe, "*The suspension of a sentence of imprisonment is not an exercise in leniency, but an order made in the community interest designed to prevent reoffending which a prison sentence alone seldom does.*"³

A. Historical Development

Historically, the concept of court-sanctioned probation began with the church, particularly, the Church of England Temperance Society (CETS) in 1876. A system was created where offenders were released by

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¹Section 19 (1) (f), *Criminal Code Act* of 1974, Chapter 262; Papua New Guinea.

²*Acting Public Prosecutor v. Clement Maki and Tom Kasen* (1981) SC205 (Miles, J).

³*The State v. Frank Kagai* [1987] PNGLR 320, citing *William Davey* [1980] A Crim R 254 (Muirhead, J).

the Magistrates' Courts only on condition that they communicated with appointed missionaries from CETS and accepted guidance from them. These missionaries would later gain recognition as 'probation officers' in 1907, with the enacting of the Probation of Offenders Act in 1907 (England). This was particularly momentous, as the Act also allowed for the Courts to suspend part or all of an offender's sentence, on condition that the offenders enter into recognizance and be supervised by a probation officer⁴.

What was regarded as 'probation work' was eventually developed with the British Home Office assuming control of the probation service in 1938, and it went further to improve its services by particularizing care for children and women, together with offenders in need of psychiatric care. By the 1980s, inter-agency partnerships had developed and systems were put in place with alternatives to imprisonment programmes, dialling into the reduction of reoffending.

1. PNG Probation Service

PNG, being a former British and then Australian colony, adopted the laws and Court systems of the Commonwealth. Indeed, our Criminal Code and Criminal Court systems are adopted from Queensland, Australia; needless to say, laws involving Probation and Parole were similarly adopted.

Community-based rehabilitation in PNG then, is supervised by the Probation Service, a part of what is now known as the Community Based Corrections ('CBC') agency. The Probation Service is established by the Probation Act⁵ and is instrumental in providing an alternative punishment to serving an imprisonment term, thereby alleviating the prison population and providing a community-based form of rehabilitation.

B. Mission

The mission of the PNG Probation Services is similar to that of the mother agency (Department of Justice and Attorney General): 'Delivering excellent legal and law and justice services to the State and people of Papua New Guinea'.

The Probation Service's core responsibilities are:

- Ensuring appropriate compliance with, and administration of, sentences and orders;
- Providing accurate and timely information to the judiciary and parole board to inform the sentencing process and release conditions of offenders; and,
- Supporting reparation in the community.

These responsibilities entail that probation officers:

- Supervise offenders;
- Conduct counselling and skills programmes
- Conduct community work and education programmes.

These responsibilities and the Mission are synonymous with the historical origins (above) of the probation service.

C. Overview of Agencies Related to Prevention of Recidivism

It is an unfortunate circumstance that crime is seen as a common occurrence in the country, due in large part to a poor economy. This rising rate of crime has to be absorbed by the criminal justice system ('System') and its agencies on a national level, and this task is an immense one. The economic strictures are all too resonant here, when there is a real need to strengthen and broaden the agencies.

With greater accessibility to the urban and rural communities, and they to it, the agencies' collabora-

⁴ *The Guardian*; Wednesday 2 May, 2007.

⁵Section 4, *Probation Act* of 1979, Chapter 381; Papua New Guinea.

tive activities would certainly work to curb the crime rate and prevent reoffending.

1. Police

The Royal Papua New Guinea Constabulary is established in each of the country's 22 provinces, with a Ministry of its own. Presently it is hampered with practical impediments, such as insufficient personnel and non-availability of utilities such as vehicles, field equipment and housing for its members around the country. This issue of accommodation for officers in the rural areas and smaller urban centres (indeed major urban police barracks are in such a state of dilapidation) truly blunts the Constabulary's efficacy.

Where there is little or no presence of the police, lawlessness will be encouraged; with the arduous geography and remote reaches of the rural areas, policing is very challenging.

Coupled with these is the ominous in-fighting in the Constabulary and the perceived political influence of its higher rank and file. It does not bode well for the public's sense of confidence and security for an already tenuous agency to be publicly embattled.

2. Correctional Service

The Correctional Service is also established in the majority of the provinces, and it also has its own Ministry. Its institutional facilities were built during PNG's colonial era, and have not been reconstructed to accommodate the population growth and crime rate expectancy. The rate of prison breaks has become frequent in recent years due to the poor upkeep of prison structures, and the decrease in correctional personnel has seen a dangerously low disproportionality of the guard to prisoner ratio.

The Court processes are also long and slow, the effect being overpopulation in the prison facilities. Everyday there are newly arrested persons who are removed from the police station holding cells to the correctional facilities to undergo the Court process. This is a real problem as remandees can wait for almost two (2) years to have their cases dealt with; one can imagine in that time, more people being remanded to the point of overcrowding the prisons and costing the National Government millions of *Kina* (PNG national currency) for their keep.

3. Courts and Court Systems

The country's Court system comprises the Lower Courts, which are the Village Courts and Magistrates Courts, and the Higher Courts, which are the National Courts and the Supreme Courts. For their part, the Courts, particularly the National Courts and Magistrates' Courts through the National Judicial Staff Service⁶ and the Magisterial Services⁷, have risen to meet this challenge; each has undergone vigorous restructuring to increase the number of judges and magistrates, with the aim of having multiple judges and magistrates to cater for each province.

Indeed, the last ten (10) years have seen this growth by the judiciary to accommodate the provinces (PNG has 22 provinces) with 43 appointed judges⁸; still more judges are needed. Again, the growing population has become better educated, and knowledge and awareness of rights at law has increased, therefore, the Courts have to meet two (2) general fronts: civil complaints of private citizens and criminal prosecution of offenders by the state.

D. Implementation of Community Based Treatment of Offenders

During a prisoner's Court process, their defence counsel (the Public Solicitor) would have submitted to the Court that the prisoner was a good candidate for probation. To assist in determining this, the Courts direct the Probation Service to prepare a Pre-Sentence Report⁹ (PSR) to garner more information.

The PSR will include detailed information about the prisoner's personal circumstances, attitude toward committing the offence and attitude toward a preferred sentence; the same information would be sought from the victim(s)/complainant(s) of the offence, and any independent source of reference for the prisoner.

⁶*National Judicial Staff Service Act 1987* Chapter 11; Papua New Guinea.

⁷*Magisterial Service Act 1975* Chapter 43; Papua New Guinea.

⁸Ano Pala, Attorney General of Papua New Guinea, *The National* Friday 23rd October, 2015.

⁹Section 29, *Probation Act* of 1979, Chapter 381; Papua New Guinea.

This is compliant with the Probation Service's responsibilities outlined above.

1. Candidates for Probation

In PNG, capital punishment is the maximum punishment for crimes of wilful murder, piracy and treason. For these offences, probation would rarely be, if ever, considered.

Likewise crimes of aggravated violence like armed robbery and serious sexual offences seldom see suspensions of sentence and probationary orders. Kidu, CJ said: "*Rehabilitation or reformation is a factor to be considered in assessing a sentence. But in serious cases...it is something to be aimed at only in so far as it is compatible with the main function of the Court of protecting the public.*"¹⁰ Therefore, it follows that the nature of the offence would be a determining factor to begin with.

With the growth of urban centres, a larger educated populace and easier access to technology, soft crimes like misappropriation, forgery, stealing and other property related offences have increased. These offences are mostly done out of need to feed a family or other financial reasons; therefore the Courts have held that imprisonment for these types of cases should be a last resort.¹¹ Community-based rehabilitation is preferred, with the peculiar sentence/orders that go with it. Again, the nature of the offence works to this end; these offences are not as aggravated, and the chances of reparation between the victim and offender, coupled with the offender's rehabilitation, are greater.

The peculiar facts and circumstances of the offence and offender are considered. The Court stated: "*While there is a need to maintain uniformity of sentence for the purpose of deterrence, the Court should not hesitate to depart from this uniformity where the particular facts of an individual case demand it. In this case, the facts militate in favour of leniency and against the imposition of a custodial sentence.*"¹²

For the sentence then, it is important to note that the Probation Officer (PO) will have input in the PSR. Having inter-acted with the prisoner, and spoken to the victims/complainants in compiling the PSR, the PO would be in a unique position to make a recommendation to the Courts on the prisoner's candidacy for a suspension of sentence¹³. The PO's experience in this regard is particularly relevant, as it will be the Probation Service that will play the principle supervisory role as only it can¹⁴.

2. Community-Based Sentence Example

A practical example of a community-based sentence through the Probation Act would be Community Work ('CW'), where the offender is sentenced to perform work in the community. This is supervised by a Probation Officer who identifies said area and maintains a schedule of the hours worked; the sentence is complete after the offender has worked all the hours set by the Court in the sentence.

i. *Case Study: The State v. XX, YY & ZZ*

This is an actual Probation Sentence imposed on three (3) co-offenders in 2004 by the National Court in Port Moresby, PNG. To protect their identities, their names and circumstances have been altered, but the offence and sentence situation has not.

The three (3) offenders (2 males and a female) all worked together in a government department. The men were experienced agricultural field officers while the third (female) was in the accounts section. The three collaborated to adjust Annual Leave entitlements, with the female offender making false invoice entries to include ghost names for each of their claims for air travel expenses. These false invoices were processed, and each offender was paid a larger claim than they ought to have been; the total misappropriated in the fraud was K 35,000.00.

¹⁰ *John Elipa Kalabus v. The State* [1988] 193 at 196-197.

¹¹ *Wellington Bellawa v. The State* [1988-89] PNGLR at 381.

¹² *The State v. Keputong Nagong* (1980) N225.

¹³ *Acting Public Prosecutor v. Don Hale* [1998] PGSC 26; SC 564 (Amet CJ, Kirriwom, Kandakasi JJ) & *Edmund Gima & Siune Arnold v. The State* [2003] PGSC 3; SC730 (Kirriwom, Kandakasi, Batari JJ).

¹⁴ *The Public Prosecutor v. Sima Kone* [1979] PNGLR 294 (Prentice CJ, Saldanha, Greville-Smith, JJ).

All three (3) offenders appeared in Court and pleaded guilty to the charges of conspiracy and misappropriation. The Public Solicitor appeared for each of the offenders and asked for a PSR for each of them. The PSR recommended they all be placed on probation, which the Public Solicitor pressed for in seeking an appropriate sentence.

Each offender was sentenced to four (4) years' imprisonment, but the sentences were suspended and they were ordered to enter into CW. This provided that they must perform four (4) hours of free labour, cleaning in and around the General Hospital in Port Moresby for two (2) years; the Probation was to supervise them and return quarterly reports to the Court.

Each offender successfully complied with the CW probation orders and were discharged after two (2) years. They have each gotten employment again and are living normal lives.

It should be noted that the opportunity to retribute the K 35,000.00 was investigated as well by the Probation Service, however, each offender was not in a situation to fully retribute any money. Therefore, only CW was ordered them.

E. Preventing Recidivism through Community-Based Treatment

As stated above, a large majority of offenders are educated, some very highly skilled in technical or forensic areas, examples being accountants, IT systems operators, and engineers. Returning into society for such persons is difficult by any measure, with the offender having to cope with being seen as recalcitrant.

The public attitude is one of mistrust and avoidance, which may cause the offender to feel ostracized and isolated. The psychological bearing of this negativity can drive an offender to feel stigmatized and so he or she, invariably, finds solace in criminal circles; the crime cycle then is enabled, as reoffending easily follows. The same is true for an offender who is not so well educated and the danger to reoffend is even more apparent.

To give every possible chance to inhibit reoffending then, the CBC must network with the wider public, government institutions and the private sector to source potential organizations who would willingly field the offenders on supervised CW. The CW itself must be oriented to accommodate offenders, where possible, with veritable technical or professional skills or knowledge so that it will be meaningful to the community, and to the offender as being accepted as a productive member. The opportunity to find employment is also increased considerably if the offender proves to be a valuable contributor.

To underline this needed change, the Probation Act is widely empowered to venture beyond the usual CW schedules involving menial cleaning work. This was raised as a serious concern by the Court¹⁵ and asked for more initiative from the Probation Service when speaking on CW orders for offenders.

1. Parole Service

The Parole Service was also established in the vein of community rehabilitation¹⁶ and was integrated into the CBC with the Probation Service. Offenders would have served a third of their sentences and would then be deemed 'minimum' security before being considered for release on parole. This form of release serves the greater purpose of assisting in the integration of the offender back into the community and society at large. It is more heavily supervised than one on probation, the rehabilitation process is more concentrated for the offender to give him/her every chance of succeeding to restart his/her life out of prison.

2. Juvenile Justice and Supervision

A third service provided by the CBC is the supervision of the juveniles in the Juvenile Courts¹⁷ and their rehabilitation. This was fully enabled in 2003 when the National Government proclaimed the Juvenile Courts Act in its entirety, observing that the primary concern is that juveniles are protected from the in-

¹⁵ Mogish, J, 14 October 2015, Waigani, Papua New Guinea.

¹⁶ *Parole Act* of 1991; Papua New Guinea.

¹⁷ *Juvenile Courts Act* 1991; Papua New Guinea.

fluences of prison.

Miles, J observed: "...*The National and Supreme Courts exercise the judicial power of the people (Constitution, section 158 (1)) and have therefore a constitutional responsibility for the welfare of minors. The nation's long term interest lies in the reformation if at all possible of young offenders, and reformation is more likely to be affected by assistance and supervision in the community rather than by incarceration in a prison, even though such assistance and supervision may be scarce.*"¹⁸

Volunteer Juvenile Court Officers were recruited to assist and liaisons made between the CBC, police, Salvation Army, City Mission (NGO) and the Courts to drive rehabilitation programmes.

i. *Case Study: The State v. XZ (Juvenile)*

Again, the name of the offender is changed to protect his identity.

The offender, then aged sixteen (16), was part of an attempted robbery in 2004; of the five (5) suspects, he was the only one apprehended. He was defended by the Public Solicitor and pleaded guilty to the offence; due to his age, a PSR was asked for. At the time, he was in the custody of the Salvation Army Juvenile Detention Centre.

The PSR revealed that he had been training as a mechanic in a vocational school, and that he wanted to return to it, while being placed in custody of his parents. The Court accepted that this was an ideal situation to rehabilitate a young offender other than imprisonment, and sentenced him to a probationary term of three (3) years to be supervised by the Probation Service. The quarterly reports to the Court progressed with the offender completing his vocational training, getting a qualification and then securing a job with an Auto Parts Dealer and Workshop.

However, since the inception of the Juvenile Courts Act, the Courts' attitude toward youthful offenders has shifted somewhat.¹⁹ As described above, it is this very class of the population that is the largest and most active in the society. It is true then that they would represent the more frequent demographic of offenders; therefore, the Courts of late have not been too keenly accommodating of the plea for leniency for being a youth. Further, a change in budgetary allocation has seen juvenile projects cut and a shortage of officers and resources to amply support the juvenile courts' programme.

The compelling story here is that the Courts must continue to strike a balance to deter re-offending, as the reformation of young offenders would be best achieved through community-based correction, by probation, as opposed to the corrupt influences of the jail.²⁰

F. Measures to Enhance Public Awareness & Obtain Public Support for Community-Based Treatment

Smart use of the media, like television and radio, with aggressive advertisement campaigns may be planned to spread awareness about this issue. Social media is also a very effective tool, and if anything, is much faster and direct to the general public. As much as gender issues and domestic violence issues are important, this is an equally important issue that ought to be given attention.

In PNG, there is a healthy base for promoting awareness on important issues, where rallies and marches are held, and special days are observed. The agencies, led by the Probation Services and Attorney General's Department, can lend voice through these means. As this is a community concern, the churches must be part of any such activities, where information may be disseminated through their members; after all, they are probably the 'founders' of the probation service.

¹⁸ *Acting Public Prosecutor v. Clement Maki and Tom Kasen* (1981); SC 205.

¹⁹ *The State v. Willie Paul Songul* (1997) N1757 (Kirriwom, J).

²⁰ *Lahey v. Sanderson* [1959] Tas SR 17 at 21.

III. MULTI-AGENCY COOPERATION IN COMMUNITY-BASED TREATMENT: PROBLEMS AND SOLUTIONS IN PNG

The base cause of crime in PNG is the poor economy of the country, and the hard circumstances that come with it. Crime will continue to be prevalent as long as it remains difficult to survive in urban areas where populations are large and job opportunities are minimal.

A. Methods and Solutions for Improved Multi-Agency Cooperation

While the prisons remain overpopulated and expensive to maintain, Community-Based Corrections can no longer be viewed with half-heartedness. A genuine effort in investing into its programmes and facilities must be made by the National Government. Importantly, the church is an integral partner in the scheme of community-based treatment; their involvement ought to be more augmented to reflect its historical connection to probation. CBC must be established throughout the country, on par with the growth of the National Courts and Magistrate Courts, and staffed sufficiently.

Past liaisons and programmes must be re-established, for instance with the Salvation Army, and regular meetings with heads of partner agencies in the police, corrections, Courts and the law offices (Public Prosecutor and Public Solicitor). Better coordination can then be meted out between their relative functions, and more aggressive awareness strategies developed.

Information Technology is a most useful tool, and for PNG it is lagging in its development. Compiling of data and statistics, and CW programme studies must be improved as it is this feed to the National Government that substantiates its positive work in the country, especially since community-based corrections is more cost effective than imprisonment.

B. Challenges Facing Multi-Agency Cooperation

The main challenges are: funding, communication and conflicting priorities. These three (3) factors inhibit any material work that can be achieved effectively and are the bane of the concerned agencies' co-operative efforts.

1. Funding

As with any government in the world, there are only finite funds allocated to government agencies for their core business and programmes. PNG is no different; although the national budget seems to increase each year, it is primarily because of global economic influences that, if anything, only make the cost of living higher.

Government agencies are made to justify their budgetary needs during budget presentations, and are mostly met with hard, immovable attitudes from budget committee panels that assent to very little. Thus, law and justice sector agencies are in this situation, where anything outside of their normal business activities are hardly entertained; unfortunately, considerations for community-based treatment (probation) programmes feature very little.

The result is, agencies have very little funding to pursue probation programmes or rehabilitation programmes for reoffenders.

2. Communication

Agencies themselves do not effectively maintain open communication with each other. This is an obvious challenge as it seems as if each is isolated to its own part in the criminal justice system, not stopping to see the c of the offender, as he continues on to jail, if he is convicted.

3. Conflicting Priorities

With poor communication, an added impediment is that agencies have priorities which almost always are not communal with their peer agencies. This situation is true when dealing with matters in Court; as far as the Courts and police are concerned, the priority is getting the cases dealt with as soon as possible to clear the number of pending cases — rehabilitation is for corrections to administer. Until Community-Based Correction becomes a shared priority, there will be some semblance of disjuncture among the agencies concerned.

C. Case Examination

1. Provincial Justice Centres

There was an idea piloted by the Public Solicitors Office in 2011 by the former Public Solicitor (now National and Supreme Court Judge), Fraser Pitpit, called the 'Provincial Justice Centre (PJC)' programme. This was a plan to have all the cooperating agencies of the law and justice sector adequately housed in one building in each of the 22 provinces of PNG.

This would enable better, effective communication and performance toward improving the law and justice sector in the provinces; moreover, it would lead to an improved reporting mechanism for the law and justice sector from the national level to the provincial level, through to the district and local levels, and vice versa. Clients of respective law and justice agencies would have easy access to each of the offices, all being housed together within the same building.

The idea would have been an ideal situation where rehabilitation programmes could be run and monitored by the concerned agencies, and would conceivably extinguish the three (3) challenges posed above.

Three (3) provinces (Manus, New Ireland and East Sepik) were selected to pilot the PJC programme, as land had already been available to construct respective PJC buildings. However, the idea was again met by funding problems and political nuances, which hampered its progress and eventually the project was disavowed. This was most disappointing for all concerned as it was a visionary pathway toward providing basic services to the country, and a vehicle for other worthy projects.

IV. CONCLUSION

There is proof that community-based corrections programmes work; two (2) of the many case examples are given above, and CBC is a sure measure against reoffending. The legislation, structures and agencies are in place, but more impetus from the national government is needed to realize the full potential of the CBC's principle services in probation and parole.