

# IMPLEMENTING JUVENILE JUSTICE AND RESTORATIVE APPROACHES IN PAPUA NEW GUINEA

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## I. INTRODUCTION

The issue of crime amongst juvenile offenders continues to rise. Much of the rise is attributed to the fact that Papua New Guinea (PNG) for the past decade has seen a rapid change of development from the rural to urban drift. In most or nearly all developing countries during the course of the rapid transformation and development to meet the demands of the global standards, delinquency in adult and juvenile offenders occurs at an ever-increasing rate. Papua New Guinea after forty-one years of independence is still generally a young county. Efforts made by the government to address and improve law and justice over the years have been noted, however, more needs to be done.

In my paper, I will firstly give a brief background of Community Based Corrections (CBC). Then highlight the issue of crime in the capital city of Papua New Guinea, Port Moresby. Thirdly, touch on efforts made to address juvenile justice using restorative approaches in the field office. Also, highlight issues and challenges faced sighting the underlying problems. Finally noting possible solutions such as the use of other law and justice agencies to address law and justice in PNG.

### A. Background

PNG is for the most part is made up of average-income earners with a population of over 7,275,324 people according to the last census of 2011.<sup>1</sup> A country endowed with people from the Melanesian race from the highlands to the coastal areas. Culturally diverse, traditional values are still respected. Although there has been much development in the urban area, the vast majority of the population is widely dispersed, and the constantly challenging geographical environment makes service delivery difficult and expensive.

### B. Community-Based Corrections (Parole, Probation & Juvenile Justice Services)

A branch located within the structure of the Department of Justice & Attorney General, Community Based Corrections (CBC) provides the services of Parole, Probation and Juvenile Justice Services to everyone through the 22 field offices located around the country. Established since the 1980s, the function of CBC is mandated by four parliamentary laws, these are:

#### 1. Probation Act

The Probation Act 1991 is the basis of the community corrections system. Under the Act, there are provisions that allow the courts to tailor orders to fit most offenders and situations.<sup>2</sup> Furthermore, the Probation Act provides for both juvenile and adult offenders. The Court can impose probation for a minimum of six months to a maximum of five years. The Court can further impose any additional conditions necessary under the circumstances of the case to ensure compliance by the Probationer for his or her good conduct and welfare.

#### 2. Parole Act

Under the Parole Act 1991, all prisoners are eligible for parole consideration after serving one third of their sentence. Parole is similar to probation, except that parolees are subjected to a higher level of supervision. The transition from incarceration to returning to live in the community is for many detainees a difficult one. Detainees released under parole supervision have a better or greater chance of rehabilitation

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<sup>1</sup>National Statistical Office. National Population & Housing Census 2011-Final Figures, PNG (2011).

<sup>2</sup>Probation Act 1991 (PNG), sections 16-21

than those released on remission with little or no support.<sup>3</sup>

3. Criminal Law Compensation Act

Under the Criminal Compensation Act 1991, an offender can be ordered by the court to pay compensation below K5,000.00 in monetary value or in kind.<sup>4</sup>

4. Juvenile Justice Act

The final major act that CBC is responsible for is the Juvenile Justice Act (2014). Formally the Juvenile Courts Act (1991), recent reviews were made to incorporate international treaties and protocols of juvenile justice. The act has been repealed and is currently the Juvenile Justice Act 2014. The JJA covers all young persons aged between 10 to 18 years for all offences except for murder, rape or offences punishable by death or life imprisonment.<sup>5</sup>

## **II. CURRENT SITUATION OF CRIMINAL BEHAVIOUR IN AN URBAN AREA**

Due to the high influx of people in the rural areas migrating to urban areas such as Port Moresby, to access basic services that they are unable to in their local areas has caused an ingestion of these services in the quickest possible time. Moreover, the infrastructure of service providers has deteriorated.

Many citizens may have their reasons for the migration, however, the underlying cause tends to be the lack of access of basic services in the rural area; such as, inadequate if not the lack of medical supplies at the local health centre or aid posts, educational materials for schools, or employment opportunities for the young and productive population. Therefore, this has led to the increased influx of the rural to urban drift. Hence this has caused the creation of many informal squatter settlements and has become evident in the recent times in the country's capital. Thus, crime and ethnic conflicts have become prevalent in the city. Children who are born in squatter settlements are commonly seen to come into conflict with the law.

## **III. IMPLEMENTING JUVENILE JUSTICE PROGRAMMES USING RESTORATIVE APPROACHES IN THE FIELD OFFICE NCD**

### **A. Assisting Juveniles through Court Process**

Juvenile Justice Officers (JJO) or Voluntary Juvenile Justice Officers (VJJO) work closely with police and the courts to ensure that juvenile's rights and issues are given their time in court. In the National Capital Provincial Office there is an officer designated for juvenile duties alone. However, in other provinces a probation or parole officer also carries out juvenile court duties.<sup>6</sup> The JJO attends weekly court hearings and also visits and performs diversions within the cells if the offender is found to be held for a less serious offence and placed in the custody of parents. Apart from that, a JJO or VJJO must always be present during juvenile court without the presence of a JJO or VJJO the court is unable to proceed.

A JJO or VJJO means a person appointed to the Juvenile Justice Services under section 8 of the JJA. These persons are officers or employees of the public service and officers of the court. They are designated to perform juvenile work only. Unlike a JJO a Probation Officer deals with adult cases, however, can also deal with juvenile matters in the absence of a JJO/VJJO.

### **B. Appropriate Imprisonment Alternatives**

Juveniles who are sentenced to a non-custodial sentence are either placed on Probation or receive a Good Behaviour Bond. If a juvenile is placed on probation, then CBC is responsible for the juvenile until he or she is discharged. During the period of his probation the juvenile is supervised and rehabilitation programmes through the arrangement of the officer are carried out through the community with proper supervision.

<sup>3</sup>Parole Act 1991 (PNG), sections 17-24.

<sup>4</sup>Criminal Law (Compensation) Act 1991 (PNG), sections 2-7.

<sup>5</sup>Juvenile Justice Act, 2014 (PNG) part II-XI.

<sup>6</sup>National Juvenile Justice Report 2015. DJAG, PNG.

### **C. Restorative Justice Based Approach and Diversion Programmes**

Using other mediation processes and approaches to handle juvenile offenders while in detention is also used as an alternative: Counselling — derived from the Royal Papua New Guinea Constabulary (RPNGC) Principles and Guidelines — tends to be the next alternative to a warning. This is because the juvenile can be taken to the police station or home to his/her parents, to be spoken to more officially. However, the juveniles should not be threatened or placed in a police cell to scare them.<sup>7</sup>

Diversion means diverting or referring a juvenile away from the formal court system to a more informal resolution in the community. It is one way of promoting restorative justice, in accordance with the National Law and Justice Policy, by allowing minor juvenile crimes to be dealt with informally by the community, rather than formally through the courts. Diversion is already being done in practice by both the police and the courts, for example, by giving juveniles warnings or mediating a dispute instead of charging the juvenile. The courts are operating under a Juvenile Court Protocol issued by the Chief Magistrate, and the police pursuant to the diversion programme under the RPNGC Juvenile Principles and Guidelines for Police.<sup>8</sup>

### **D. Management of Juvenile Institutions and Remand Centres**

Juveniles who are sentenced to custodial sentences are placed in juvenile institutions apart from the corrective facilities. The environment and setting of the institutions is one different from the corrective institutions.

The Director for Juvenile Justice is responsible for overseeing and supervision of six (6) Juvenile Institutions. The Institutions which provide rehabilitation programmes are as follows:

- Erap Boys Town in Lae, Morobe Province
- Wewak Boys Town in Wewak, East Sepik Province
- Jegarata Male Juvenile Centre in Popondetta, Oro Province
- Hetune Female Institution in Popondetta, Oro Province
- Hohola Remand Centre in Port Moresby, NCD
- Mabiri Juvenile Rehabilitation Centre, Buka, Autonomous Region of Bougainville (AROB)

### **E. Working with other Stakeholders**

Working together with other key agencies has drawn the message of restorative approach in assisting juveniles throughout the system. UNICEF works closely with all the other governmental law and justice sector agencies to improve the juvenile justice system by conducting workshops, trainings and the creation and publication of policies, handbooks, regulations.

## **IV. CHALLENGES FACED**

As with achievements come challenges and issues, at the field level to improve rehabilitation and reintegration of offender's. Most constraints are faced due to lack of resources. Below are some of the challenges faced in the CBC NCD Provincial Field Office:

### **A. Awareness**

There is still a great deal of awareness that needs to be carried out to the general public about the functions of Community Based Corrections. Many people are unaware of the service and are unable to utilise it when they are caught in the justice system. In turn we are unable to perform our duties to service the general public.

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<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

### **B. Capacity-Building, Infrastructure and Assets**

Resources are another major setback for a field office. Infrastructure and office assets play a vital role in administering service delivery. Human capacity is also a challenge. The national capital has a population of over one million; however, the provincial office has a full-time staff of nine at the moment. Due to budgets cuts at the national level the office is lacking the capacity to provide a quality service. Therefore, stakeholder partnerships are vital in ensuring that justice is served to all persons regardless of background.

### **C. Coordination among Courts, Police and Corrective Institutions**

Implementing law and justice outcomes is a collaborative initiative. One major setback is when key stakeholders are unable to cooperate. This may be due to a number of reasons, but most of the time human capacity is the setback.

## **V. IDENTIFY UNDERLYING PROBLEMS**

Nonetheless there have been overall issues and challenges faced in providing the service. These are three of the notable points the administrative continues to work towards improving the accessibility and effectiveness of the service.

### **A. Staffing Capacity**

Juvenile Justice Structure, in recent years, has been streamlined from the overall Community Based Corrections (CBC) branch under the Department of Justice and Attorney General (DJAG). While certain administration arrangements have been clearly separated to effectively implement mandated roles and functions of Juvenile Justice, human resource capacity including other operational aspects, particularly at the provincial level, still remain as Community Based Corrections. Community Based Corrections officers will continue to perform all CBC functions on Probation, Parole and Juvenile Justice, until such time the Juvenile Justice Structure becomes fully funded and specific reporting systems streamlined to Branch Heads under the three main functions at CBC headquarters.<sup>9</sup>

### **B. Integrated Information System**

While individual agencies collect and record their own statistical information and data, there is no integrated sectoral information system to evaluate and analyse trends in crimes committed in urban areas. The lack of 'real time' data has contributed to poor planning and disbursement of scarce resources in the law and justice sector.

### **C. Stakeholder Cooperation**

The lack of inter-agency cooperation has been a major hindrance to the successful working of the law and justice sector. The better coordination of sector planning and budgeting is essential and would go a long way towards improving the deterrence system in the country.

## **VI. EXPLORING POSSIBLE SOLUTIONS**

The establishing of Provincial Juvenile Justice Working Groups is important. This is a way to improve coordination and collaboration in dealing with juvenile issues in provinces to promptly and effectively process juveniles.<sup>10</sup>

There exist a number of community-based institutions that provide effective means of diverting juveniles away from the more formal state procedures. The most common is village courts, which are able to adjudicate disputes through reliance on custom and may hear minor civil and criminal matters but must have District Court approval to jail juveniles. Village Court Act 1989 (PNG), section 69-70. While community-based mechanisms are subordinate to official state justice regimes, it has been suggested that their ability to deliver swift justice, often more restorative in nature, within their immediate communities may be a valuable solution to the problem of diverting youths away from the potential harms of the formal State system.<sup>11</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

Village Courts are also one of the services provided by the government, and they have a big role to play in the community setting. Most people respect the village court and see its usefulness and the role it plays in mediating many community disputes and finding solutions while incorporating Melanesian values.

### VII. CONCLUSION

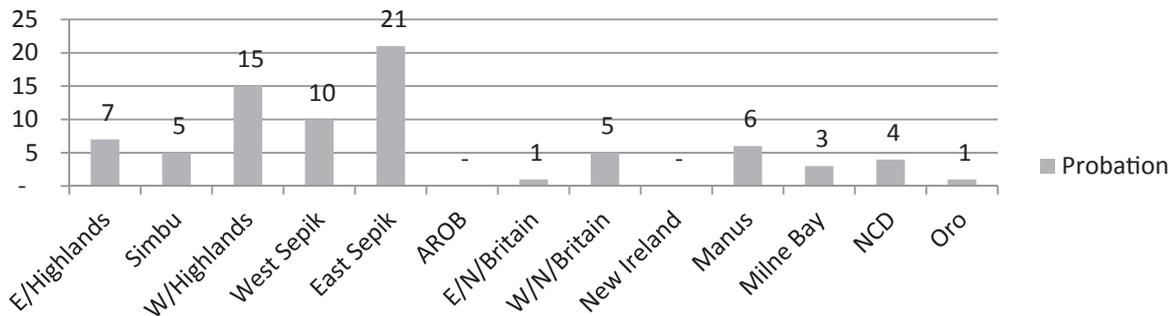
Although the country has clearly detailed and differentiated the criminal justice system from the juvenile justice system, PNG still faces many difficulties in the implementation of justice administration outcomes and the NCD field office is no exception. The breakdown of the family structure and urbanisation and other factors have catapulted the increased rate of criminal activity in Port Moresby.

However, the NCD Provincial Field Office continues to strive to work together with other agencies regardless of the limited resources to ensure that restorative approaches are practiced and that rehabilitation and reintegration of offenders back into society is taking place and in the quickest time possible.

With the continued assistance from the government and non-governmental organisations, some challenges will be addressed in the near future as we continue to promote a safe, just and peaceful society for one and all.

### APPENDIX A

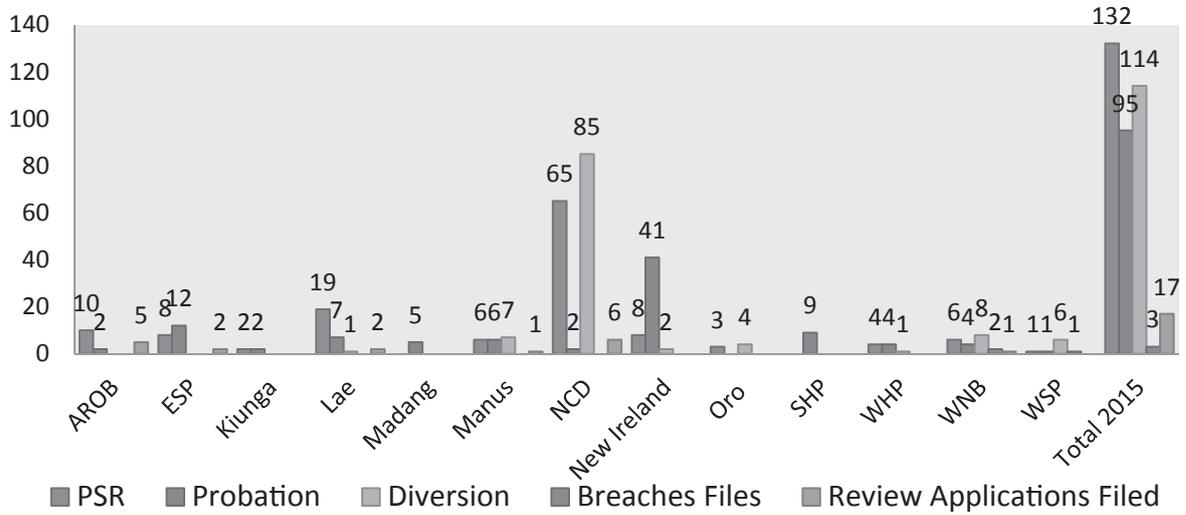
#### Juvenile Probation 2014



<sup>11</sup> Ibid.

APPENDIX B

JUVENILE STATISTICS 2015



Source Ref: Juvenile Justice Report 2014 and 2015 respectively

- Comparison of Juvenile's placed on probation supervision in 2014 and 2015 shows that probation supervision of juveniles has increased by 30.96%.
- Diversion has been performed, however, statistics do not clearly indicate at what point.
- Statistics indicated that Pre-Sentence Reports are regularly ordered by the courts.