

THE ENHANCEMENT OF APPROPRIATE MEASURES FOR VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS

*Donald Yamasombi**

I. INTRODUCTION

Papua New Guinea adopted its laws from the British common law in 1972 before independence in 1975 and did likewise with its policing and judicial practices.

Crime is governed by two sets of legislation:

- (i) The Summary Offences Act, chapter 262, which deals with minor offences and carries sentences from court fines to five years' imprisonment; and,
- (ii) The Criminal Code Act, chapter 262, which deals with serious offences and carries sentences from five years to life imprisonment.

These two sets of legislation recognize a range of offences which cover both consensual and non-consensual activities and are designed to help prevent these crimes as well as to seek justice and safety for victims or survivors.

However, in almost every part of the process most attention is given to the apprehension and processing of the suspect in order to secure a desired outcome in the courts. This is because all offenders are presumed innocent until proven guilty beyond reasonable doubt before a competent court.

The victims or survivors of crime, though left out of the picture, are expected to assist the police and the public prosecutor with corroborating evidence to support the charge against the accused. This dilemma has created an unfortunate situation for many victims and survivors of crimes.

In this presentation I will highlight the role of the police in the criminal justice system of Papua New Guinea, and with the given major crime statistics of the last five years, will point out some of the challenges faced by victims of crime in the criminal justice process.

I will then conclude by pointing out some measures currently being worked on to address victims of crime by making the process more user-friendly.

II. CRIME STATISTICS

Table 1: Major Crime Statistics between 2005 and 2009

Reported Crimes	2005	2006	2007	2008	2009
All Murders	587/122	614/173	514/168	610/206	619/253
Manslaughter	17/9	13/1	11/2	18/4	14/7
Rape	878/194	799/182	674/149	943/262	794/215
Other Sexual Offences	418/105	472/97	308/80	229/60	237/57
Robbery	172/250	1605/252	1170/206	1466/301	1306/288
Robbery MV	879/68	797/42	583/30	563/17	654/21
Breaking (Commercial)	642/71	549/69	488/98	389/55	395/55
Breaking (Domestic)	879/72	705/80	442/56	529/101	538/87
Stealing (MV)	289/18	245/25	197/15	216/32	248/16

* Chief Inspector, Director of Criminal Investigations, Crimes Division. Royal Papua New Guinea Constabulary, Papua New Guinea.

THE 144th INTERNATIONAL SENIOR SEMINAR
PARTICIPANTS' PAPERS

Stealing	716/ 149	902/ 235	621/ 107	1026/ 107	981/ 276
Fraud	196/ 88	186/ 83	161/ 58	220/ 111	219/ 120
GBH	1443/ 203	1302/ 207	828/ 120	1003/ 144	1204/ 177
Firearms	201/ 142	154/ 126	108/ 117	79/ 70	98/ 90
Drugs	690/ 732	536/ 559	663/ 777	435/ 514	585/ 720
Escape from CIS	242/ 76	64/ 10	23/ 27	18/ 9	22/ 21
Escape from Police	229/ 97	183/ 59	208/ 68	90/ 46	124/ 77
Arson	284/ 18	276/ 18	268/ 81	284/ 50	239/ 37
Abduction	146/ 5	137/ 15	109/ 9	128/ 16	159/ 18
Bribery	2/ 	1/ 1	1/ 1	4/ 2	3/ 3
TOTAL CRIMES/TOTAL ARRESTS	10459/ 2419	9540/ 2237	7448/ 2171	8511/ 2353	8765/ 2616

Note: The arrest figures are shown in bold type.

III. NATIONAL PROSECUTION'S SUCCESS RATE OF CASES PROSECUTED (2005-2009)

The prosecution's records showed only the number of cases that were prosecuted and the successful convictions as percentages for each month over the five year period as listed below.

Table 2: Cases Prosecuted and Successful Convictions

Month / Year	2005	2006	2007	2008	2009
January	71%	74%	75%	76%	66%
February	71%	74%	73%	77%	56%
March	71%	71%	79%	79%	54%
April	75%	74%	68%	69%	63%
May	72%	70%	74%	70%	57%
June	73%	73%	63%	71%	62%
July	71%	72%	62%	77%	59%
August	74%	69%	66%	71%	72%
September	75%	70%	73%	Not recorded	58%
October	72%	70%	67%	59%	45%
November	70%	69%	67%	67%	65%
December	71%	79%	59%	69%	71%

Papua New Guinea has serious concerns in its law and order problems. There are many crimes reported daily but the attendance rate by police to these cases is very poor. This is further compounded by the poor rate of convictions by investigators for the same reasons: lack of manpower and training.

The above table can be used as an illustration to show the number of victims whom the law has not protected or to whom justice been denied for the reasons mentioned above.

IV. THE CRIMINAL JUSTICE SYSTEM IN PAPUA NEW GUINEA

The following flow diagram shows the Criminal Justice process in Papua New Guinea.

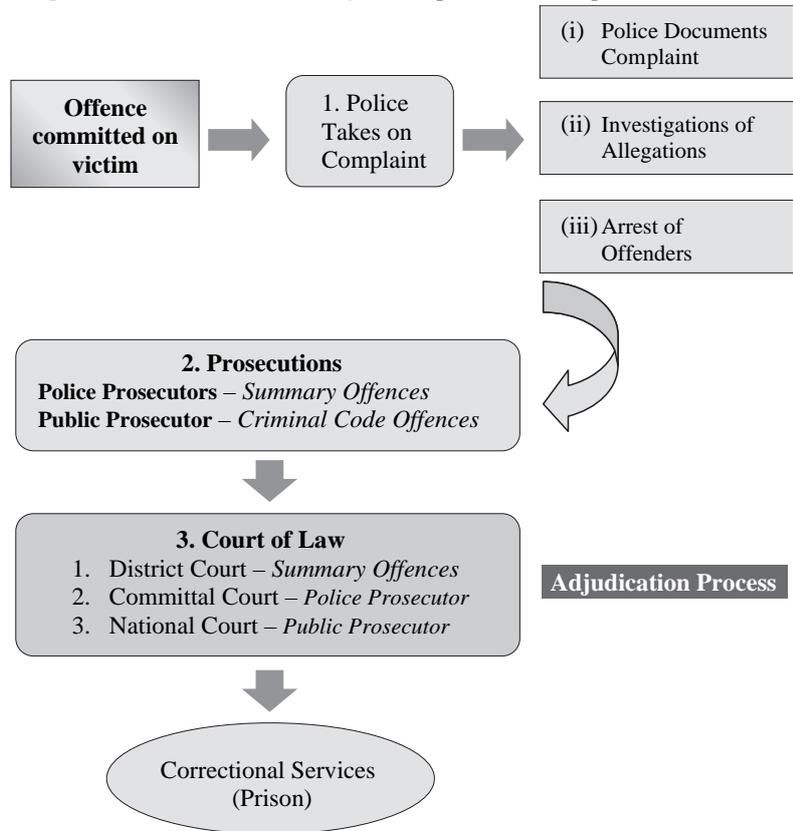


Figure 1.

In the above process, there remain many inadequacies regarding accessibility to justice on the part of the victims.

The key functions and duties of the individual agencies are highlighted below.

A. The Role of the Police

The Royal Papua New Guinea Constabulary is the only recognized national agency of the country whose primary functions are to:

- (i) preserve peace and good order in the country, and
- (ii) maintain and, as necessary, enforce the law in an impartial and objective manner,

as per stipulated under section 197 of the National Constitution, chapter 1. As such, the police are the first agency to be approached in any conflict or crime situation.

Complaints are registered on receipt into an occurrence register and allocated to investigators to investigate. Depending on the seriousness and nature of the crime, it may be delegated to the Criminal Investigations Directorate to conduct detailed investigations before an offender is arrested and charged.

The Criminal Investigation Directorate comes under the Crimes Division and is the key functional directorate in investigating and dealing with serious criminal offences.

In so doing the police initiate the whole criminal process as shown in Figure 1 above by documenting the complaint, then investigating the crime to establish the truth of the incident.

They are required to identify what law has been broken, identify the person(s) who may have committed

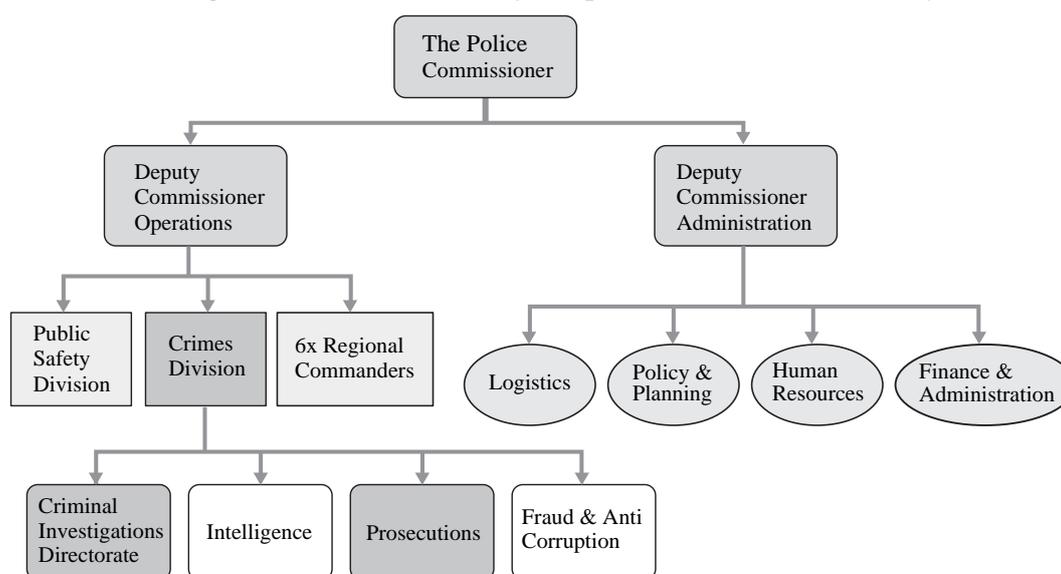
the offence and gather necessary evidence to support the charges against that person before he or she is brought before the court.

It is the responsibility of the police to seek and identify sufficient evidence on the complaints reported by the victims to eliminate mere suspicions before a person can be arrested and charged with an offence. Other minor offences are investigated and dealt with by the uniformed branch under the Public Safety Division. The criminal investigators in the course of their investigations are also duty bound to ensure that offenders or suspects of any offences are treated with due diligence as human beings until proven guilty by a competent jurisdiction of law beyond reasonable doubt.

In so doing, investigators spend more time on investigation by establishing avenues of enquiries to gather enough evidence to charge a suspect. The victims, on the other hand, are also placed in a position to assist police investigations with corroborating evidence, should it be medical reports, eye witness accounts or other material evidence. The state gives little to no consideration at all to the victims in terms of their security, assistance to overcome traumas, assistance to free legal aid or the assistance to obtain medical reports.

With the country's population at about 6.5 million and the police manpower strength at 4,700, the ratio is one police officer to every 1,382 people. Therefore, the crime statistics in Table 1 clearly show the inability of police to attend to and deal with all reported crimes because of the lack of manpower, which is compounded with logistical, training and funding constraints.

Figure 2: Structure of the Royal Papua New Guinea Constabulary



B. The Prosecution

Because of the court systems in the country, the summary or minor offences are prosecuted by Police Prosecutors in the District Court, which is the lower court.

Serious criminal cases are firstly heard in a Committal Court presented by a police prosecutor before a senior magistrate to determine the sufficiency of evidence on hand before it can be committed for a trial proper in the National Court or be struck out.

When the cases are committed to the National Court, the Public Prosecutor then takes carriage of the matter as this is a higher court.

C. The Courts

The court system in the country is based on the burden of proof. The court is really an independent body that functions impartially on cases brought before it.

All criminal cases are deemed to be the state's case, hence the onus is on the state to present its case beyond reasonable doubt to prove guilt of an accused, because the accused is presumed innocent until proven guilty.

V. SOME ASSOCIATED CHALLENGES FOR VICTIMS AND SURVIVORS OF CRIME

Having briefly discussed the criminal justice process, the following are some obvious challenges faced by the victims and survivors of crime.

- Costs involved at certain points of the process. These costs include medical bills for victims and medical reports, transport fares to the nearest police stations to lodge complaints and even legal fees.
- Delays in the process. Police investigators most times delay investigations unnecessarily. As such cases may get adjourned in the Courts over extended periods and sometimes get struck out. Lack of manpower and logistics may be some reasons for this; however this does not serve justice on the complainants or victims.
- Difficulties with the Court administrative processes. Some case files get misplaced and lost in court houses and other times cases are dismissed due to non-compliance with court procedures, processes and rules.
- Lack of information and trust in certain points of the process. Inadequate awareness of the procedures and processes of investigations and the Court processes leads to mistrust and ignorance.
- Lack of resources. This causes undue delay in the production of case files in the initial stage by the police, thus leading to undesired striking out of cases in Courts due to time limitations
- Lack of adequate and affordable legal representation. Because victims cannot afford legal fees many at times their cases are thrown out as the defence can afford legal counsel to adequately argue their cases in court.

A. Current Measures

In 2006 some attention was drawn to address the effect of crimes on the victims. They included issues as:

1. Victim Impact Statement

It is vital that at the trial of the matter, police and prosecutors must provide to court the impact of the crimes on the wellbeing of the victim to assist the court in its decision making and imposition of appropriate penalties. Recent meetings between the police and public prosecution on who should obtain victim impact statements have agreed that the public prosecution obtains and presents these statements as part of evidence in the court of law.

2. Medical Report

Victims experience significant problems as they have had to pay their own expenses after undergoing medical treatment. Then they have to pay for medical reports to form part of the evidence of the crime inflicted on them. Furthermore, the doctors' affidavits are not always available to assist the courts.

On occasions that the doctors' affidavits or statements were provided, they have been written in medical terms difficult for laymen to understand.

A number of measures are now in place to address this situation, including:

1. Meeting with the Health Department authorities to formalize a pro-forma for medical officers' affidavits to be presented in a language easily understood by all;
2. Medical pro-forma prepared for victims of crime to be presented to the hospitals so that they are treated at no cost;
3. Reception centres created within the hospitals to cater for victims of crime, especially women and children;

THE 144th INTERNATIONAL SENIOR SEMINAR
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4. Reception Centres are established with trained officers at selected police stations and hospitals to deal with the problems of victims of crime, especially cases involving women and children.

Reception Centers were introduced between 2005 and 2006 in the two major cities of Papua New Guinea. The main reason for the establishment of these centres was to deal with the victims of crime against women, child victims and sexual assault victims.

Women and children were seen as the most vulnerable group that cannot speak out in public of the abuses and traumas they have been through unless they have been treated with compassion and respect.

Although no formal training is provided in government institutions like the police, some workshops have been run by NGO groups and the United Nations Save the Children Fund to deal with the victims of crime. At the police stations the staff of the reception centres are taught to deal with this vulnerable group more attentively in order to make them feel comfortable and assist in the investigation process.

In hospitals, when these victims are referred, they are attended to in a separate set up from the main out-patient area.

These arrangements are basically to provide a more conducive environment for victims, especially women and children, to be attended to compassionately and with care so that they are at ease and comfortable in assisting the investigation process.

3. Working Collaboratively

Policing in Papua New Guinea is promoted as everybody's business. Every individual and organization in the community has a part to play in making the society safe. Thus, the Royal Papua New Guinea Constabulary adopted the mission statement: "Securing a Safer Community in Partnership".

Currently many non government organizations are advocating for the rights of all people from all forms of violence and this is beginning to get off the ground with considerations given to victims of crime. Unlike in the past, victims had no support from the community around them and they feel cornered and helpless. The police are collaborating with all these groups through the concept of Community Policing. In this concept, people with respectable characters are identified from within the communities they live in and sworn as auxiliary constables. They do not have the power to arrest offenders but they can mediate trivial conflicts and resolve them using the accepted customary practices of the community.

It is essential that a collaborative effort is to be made to create harmonious environments for victims of crime to feel at home and able to willingly support case officers or the courts. This working relationship requires all agencies and whole government approach and support, especially from key organizations that are actively involved in handling victims of crime cases. They include the Office of Public Prosecution, Police, Department of Health and NGOs, as in the case of Port Moresby; House Ruth (an NGO group) and other safe passages or safe houses are made available to victims of crime by certain private companies including Digicel, Protect Security and other stakeholders in the business community.

This collective effort by the community is really making an impact in actually providing the temporary shelter needed by the women and children who are being abused or harassed at their homes.

4. Legal Aid/ Investigations Oversight

In Papua New Guinea victims of crime are at liberty to seek legal representation at will. However, the cost involved in seeking this service is very high.

Apart from the services of private lawyers, which are expensive, the Public Solicitors' Office, which is a government agency, does provide some form of legal advice to victims of crime, though in most instances they represent the defendants or suspects in court because they likewise cannot afford to engage private lawyers.

One avenue that is really gaining momentum is the 2005 Memorandum of Agreement between the Police and the PNG Ombudsman Commission. In this MOA, the Ombudsman Commission is obliged to oversee

that reported cases are fairly investigated without fear or favour by the police and justice is delivered to the concerned party.

Early September 2009, two murder cases, one alleging the involvement of a policeman and another alleging the involvement of a prominent businessman, were investigated under the Police Ombudsman oversight arrangements as the cases were unnecessarily delayed by police investigators under suspected undue influence by the suspects.

In November 2009, I investigated and charged a police officer for wounding another person using his official firearm on a mere suspicion that he was a suspect in a stealing offence. The victim's family and relatives were very much overwhelmed by the action because it took a year before this action was taken under the arrangement.

Under this same arrangement all witnesses and victims are protected from any threats or harassment by the suspects or their accomplices according to the existing law. Although no restitutions are imposed, any threats, harassments and inducements on the victims or the witnesses are treated as new offences.

5. Court User Forums

In about mid 2006, the National Court Judges initiated and introduced the idea of running Court Users Forums especially in the Port Moresby and Lae cities.

The key issue was to assist stakeholders of the Criminal Justice System to see the Courts as not only a place where punishment is imposed on lawbreakers but a place where both parties, the suspects and the victims, can access services more freely.

It was obvious that some court processes were very rigid and the judges, magistrates, police, the correctional services and lawyers needed to come together and discuss issues of common interest and make the process more user-friendly.

Some positive outcomes from these meetings have been the understanding of the courts on extending timeframes for case files to be prepared as agencies like the police do not always have resources available to complete investigations and case files on time.

Another outcome has been to address the previous years' cases dating back some five to seven years as this was seen as denial of justice to those who reported the matters.

VI. CONCLUSION

The approach to the Criminal Justice Process in Papua New Guinea has been concentrated on the handling of the suspects, administering their rights and presuming that they are innocent of any allegations until proven guilty by the competent jurisdiction.

It was only in 2005 that the measures I have briefly highlighted above were introduced and many more consultative meetings and workshops need to be held before more refined, practical and constructive approaches are put in place to better treat and deliver justice to the people who fall victim to the hands of criminals in Papua New Guinea.

On the outset it is my firm belief that victims of crime and the criminals are part of the society that allows the criminal justice system in PNG to remain a vibrant process; hence it is critical now that the victims and survivors of crime be given similar if not better treatment by the government and its agents.

However, in order to do so, proper training must be conducted in all government law enforcement agency institutions on the appropriate procedures and processes of receiving and processing the victims of crime.

Appropriate legislation also needs to be put in place to foster trust and confidence of the public and better serve the victims of crime in Papua New Guinea.