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THEME: EFFECTIVE REGIONAL CO-OPERATION IN CRIME PREVENTION
AND CRIMINAL JUSTICE IN THE NEXT MILLENNIUM

A COUNTRY POSITION PAPER FOR PRESENTATION UNDER AGENDA
ITEM FIVE: PROBLEM OF OVERCROWDING IN PRISON AND NON-
INSTITUTIONAL TREATMENT OF OFFENDERS

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Introduction

The problem of prison overcrowding and non institutional treatment of offenders are shared by many countries in the world. However, the factors that go to give rise to the existence of this problem and the difficulties to solve them vary from one country to another.

In this paper I intend to discuss the problems, effects, causes and offer some suggestions as to how it can be remedied in the context of Papua New Guinea's (PNG) Criminal Justice System.

Prison Overcrowding

Overcrowding is a grave and most urgent problem faced by prisons in PNG, Prisons that were designed and built to cater for certain number of people have increased it's intake and holds twice or three times more than the required number.

Prison authority's concern and their report to governments does not seem to have any immediate recognition to try and attempt to remedy this problem hence, keeps growing every day.

The remand list of remandees also increases thereby adding extra burden on prison authorities.

In the months of June and July, 1999, remandees at two major prisons boycotted attending court cases because of overcrowding and the snail pace at which their cases were being processed.

Just recently, on the week commencing Monday 8th to 10th November 1999, remandees at a major prison boycotted attending court cases again and went on a hunger strike to protest against the authorities to improve conditions in the cell block.

In their petition sent to the medial, the remandees said the Problem of overcrowding at the jail was a direct result of the failure of the police and courts to deal with bail applications quickly. (See Extract from the National Daily, enclosed herein as Appendix 1).

To properly understand and appreciate the problem of overcrowding in prisons, I have attached as Appendix 2 a brief Flow Chart of the criminal justice process of PNG.

EFFECTS OF OVERCROWDING

Efforts of overcrowding are numerous includes firstly, the ineffective implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners which require separation of prisoners taking into account factors such as sex, age, criminal record and that accommodations have to meet all health

requirement, climatic conditions, cubic content of air, minimum floor space, lighting and ventilation.

Secondly, the uneven distribution of prison/correction officers to prisoners make the task of a prison/correction officer very difficult. These factors contribute to the non-proper maintenance of discipline, which eventually has the effect of deteriorating the relationship between prison/correction officers and inmates hence, destroying the notion of 'corrections'.

CAUSES OF OVERCROWDING

The causes of overcrowding of prisons can be identifying by examining the processes, of the criminal justice agencies in the country with specific references to police, public/state prosecutors defence counsels/lawyers, judges, magistrates, prisons/correction officer's and institutions that deal with non institutional treatment of offenders.

The noted causes of overcrowding in PNG include the following;

(a) case are not brought to court quickly,

(b) right to bail under the National Constitution is not fully utilised due to offenders ignorance and indigence,

(c) restriction of bail to National Courts for cases involving the use of firearms and treasonable offences,

(d) bail amount granted by both police and courts are usually beyond the accused paying capacity,

(e) court delays in the sentencing of many convicted prisoners to allow for it to receive into evidence relevant materials and particulars such as probation reports, means assessment reports and character references,

(f) many sentenced offenders who could be punished more appropriately by utilising alternatives to imprisonment are imprisoned for short terms by courts,

(g) limited establishment of institutions to oversee and supervise non-institutional treatment of offenders/ alternatives to imprisonment i.e., halfway house etc,

(h) if and when fines are imposed by courts, they are usually much higher than the offenders paying capacity,

(i) Imprisonment of drug (marijuana) offenders in prison who should really be treated as 'sick people' in appropriately designed institutions; and

(j) Impositions of long term sentences.

SOLUTIONS

In order to find ways, and means to offer any possible solution to the problem of prison overcrowding is a requirement to enhance the understanding and co-operation of each of the agencies involve in the criminal justice administration namely, police, public/state prosecutors, defence lawyers, magistrates, judges and prison/correction officers.

The single most tools that can be used in PNG to assist in solving this problem is the maximum use of discretionary powers of police, prosecutors, magistrates and judges in cases that go before them.

In this connection the consideration of non-custodial measures as alternatives to imprisonment by courts in sentencing should greatly assist in solving the problem of prison overcrowding.

The available alternatives to imprisonment such as fines, probation, community works and suspended sentences should be constantly discussed by prosecutors and defence lawyers and encouraged to be considered and utilised by the courts.

Imprisonment should only be considered as a last resort, taking into account the nature and gravity of the offence, victim's rights, personal circumstances of the offender and the impact on the community.

However, this suggestion falls flat in the face of PNG in that there are not enough recognised institutions both governmental and non governmental in existence to properly oversee or supervise the alternatives to imprisonment to be given that urge or impetus for prosecutors and defence lawyers to put before courts and for the courts to in turn consider during deliberation on sentence.

RECOMMENDATIONS

Having discussed the problem of prison overcrowding and its causes, the only sensible thing left to do is to offer some suggestions to remedy the problem which I do so now under various heads.

Investigation

> Police/Investigators should collect or gather as much information as possible before making arrests as this will cut down on persons held in custody and eventually going through the court process without sufficient evidence and gets thrown out during the process

>Police should arrest, charge and bring the accused to court and process the case within a reasonable time as required under the National Constitution.

> Police and public/state prosecutors should keep in close contact with each other for purposes of sharing knowledge and guidance on a case at the genesis of any investigation.

Nollie Prosequi/Declaration (by Public State Prosecutors)

> Public Prosecutor and or State Prosecutors should within a reasonable time peruse the Committal Court documents and determine whether or not there is sufficient evidence for the case to continue or go before higher courts. If they find insufficiency of evidence they should immediately exercise their discretionary power to nollie cases and file declarations not to proceed.

> The exercise of this discretionary power should be maximised but without abuse depending on the circumstances of each case.

Bail

- > Police should utilise their powers to grant bail more readily in relation to the class of offences that fall under their jurisdiction.
- > Courts should take the initiative in considering bail for alleged offenders without lawyers.
- > The amount of bail allowed should be reasonable taking to account the seriousness of an offence, likelihood of inconveniencing witnesses and the accused appearance in court.
- > Getting guarantors to ensure appearance by accused in court should assist to lower the amount of bail granted.
- > Amendment to the Bail Act is made to allow for District Courts to entertain bail applications for cases involving firearms, which is currently restricted to the National Court.

Speedy Trial

- > Courts should be strict in ensuring that police complete their files and have the cases prosecuted within a reasonable time.
- > Courts should convene pre-trial conferences between prosecutors and defence lawyers or accused (if underrepresented) to identify issues and determine the length of trial hence, reducing unnecessary long delays.

Alternatives to Imprisonment (during sentencing)

- > Courts should be encouraged to consider imposing the available/existing alternatives to imprisonment such as fine probation, community work and suspension of sentences and that imprisonment be the last resort.
- > Awareness should be created for government, churches and community to be more responsive in building institutions such as half-way houses, and rehabilitation centres to give that opportunity for courts to consider alternatives to imprisonment when sentencing.
- > There should be amendments to the Criminal Code to allow for Courts to review (apart from the normal appeal process) sentence pattern of long term imprisonment and consider reducing to a shorter term where it is beneficial to prisoner, victim, and society.

CONCLUSION

The recommendations made above are just some of the measures that can be considered and implemented to reduce the problem of overcrowding in prisons. However, it must be strongly emphasised that these measures cannot be achieved without the full understanding and co-operation of all the institutions dealing with the criminal justice administration namely, police, prosecutors, defence lawyers, judges, magistrates, prison/correction officers and non governmental organisations that, are involved in administering some forms of alternatives to imprisonment.

Prison/Correction officers, prosecutors, defence lawyers, judges and magistrates should be encouraged to meet regularly includes periodic visits to prisons by the latter group to understand the problem of overcrowding more better.

Moreover, prison authorities should invite other concerned agencies and institutions to prison and share experiences and statistics on existing prisoners and problems encountered.

Judges and magistrates should continue to go to prisons on a more regular basis as visiting justices to get a clear view of what is happening.

For the government and it's agencies responsible for allocation of budgets and related facilities to take heed of the cries of prisoners and remandees which they have demonstrated by boycotting court attendance and going on hunger strikes to address the problem of overcrowding in prison.