

## **EFFECTIVE REFORMS IN THE CRIMINAL JUSTICE SYSTEM**

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Attorney General's Conference, Fijian Resort, Yanuca Island, Sigatoka

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Honorable judges, distinguished guests, ladies and gentlemen!

When I was asked to be on this panel to talk on effective reforms in the criminal justice systems, I agreed almost instantly and when told that Madam Justice Shameem was going to be in the panel, I immediately withdrew my agreement given earlier. I thought to myself that if we get Madam Justice Shameem to speak, you simply don't need to get another speaker! I was persuaded otherwise when we had our first discussion two weeks ago when we discussed the topic and shared amongst ourselves who would take what issues in the topic. At that time also, we realized the breadth of the topic that was given to us to discuss at this conference and it could literally, become the theme of any given conference or the subject of a one week workshop.

Be that as it may, a country's criminal justice system, much like the entirety of its judiciary and its effectiveness is a matter of national interest and it must be. A country's criminal justice system reflects on other areas of a nation's development and vice versa and for a country like our republic, the need for reforms to our criminal justice systems is ever more eminent now than it was so many years ago.

For a country such as Fiji whose Criminal Procedure Code and the Penal Code, two of the most important pieces of legislation are simply out of date. Other legislations such as the Police Act, Magistrates Court Act, Court of Appeal Act and so forth, will also need in depth revision of its contents, worth and desirability of the present provisions to address our criminal justice problems. For it is only in a wholesome review exercise of the laws that relate to our criminal justice systems that an immediate effect or an overview of how bad our present system is can be gauged.

In 2000 – 2001, there was a griping need to bring some changes to the present Penal Code and the Criminal Procedure Code and so government thought it necessary to commission a review of the two codes. Although it has taken a number of years to get a commission report ready, draft legislations prepared, Fiji will be on the right track to put some serious thoughts about adopting what is contained in the report.

We are given to understand that a draft Crimes Act, a draft Criminal Procedure Act and a new Sentencing Act are currently being discussed amongst stakeholders. These proposed new legislations in its draft form is commendable as it will bring some form of exposure to the inadequacies that our judges, magistrates, practitioners alike all face with the current forms of the codes.

Whilst crimes these days have outran the provisions of the Code and in some instances, criminal acts or activities are not seen as a crime simply because our laws have not recognized it as such. Criminal enterprising that thrive on the misuse, abuse and exploitation of computer or cyber space activity are

not seen as a crime although it is morally blameworthy and could literally have the effect of bankrupting individuals or companies. With sentencing of offenders are more reviewed these days based on their harshness and disparity, a legislation that would assist sentencing courts apply correct principles and therefore the right sentence is clearly the way forward for our criminal justice system.

In the penultimate, one must remember that our criminal justice system is not only designed to protect the interest of the State run courts, its design must ensure that the interests of stakeholders such as the police in crime detection, practitioners at the bar, the interest of an accused person is preserved and protected are all but different straws in the same are of effective criminal justice reforms.

What does Fiji need then to launch a successful criminal justice reform? Well, to begin with, we have a Commissioned Report on the proposed Crimes Act, the Criminal Procedure Act and the Sentencing Act. Similar resolve must be shown to all other legislations that tie into the above mentioned. Whilst adoption of laws that is imported from other jurisdiction in the above exercise, it is usually practicable that provisions or laws are given a homegrown edge that reflects on the local circumstances as opposed to its raw importation status.

Wide and consultative meetings needs to be held with major and minor stakeholders in the criminal justice system in order for views to be absorbed into the consultative process. This is critically important. For instance, the Department of Social Welfare, Prisons Department, Salvation Army, Save

the Children (Fiji) and perhaps another NGO or two may be interested in crimes provision relating to children or young offenders. These consultations must as stated above, be made as far and widely as possible and the government be accredited if it shows the resolve in supporting these reform process.

One thing is clear to us all here. The inadequacies that currently exist in our criminal justice system cannot be ignored. From the lack of criminality that exists in the laws regarding false pretences to the absence of sentencing guidelines that puts more strain on the High Court and the Fiji Court of Appeal to design sentencing guidelines. Our laws on the offence of rape is archaic, our procedure of appeals are time consuming, our courts need to practice case management and quick disposal of offences, particularly in the magistrates court. These are all issues that needed to be addressed. It cannot be addressed by trying to work within the current legislations. An efficient and responsive criminal justice system simply cannot operate in the current forms of our legislations. Criminal activities these days have become more sophisticated, crimes are more notorious then ever. It is time for our government to place an emphasis on the passage of new reform measures to bring about a reformed criminal justice system that benefits all who are concerned with the system.

Whilst crime detection is important and the police must be given all powers as is possible to be given to them in a democratic environment, it is essential that the use of police powers are balanced against the rights of persons under the constitution. A legislation like the Police and Evidence Act in England will be a meaningful tool to providing legislative framework of police

powers and provide codes of practice for the use of those powers. In a country like Fiji where police powers are often found to be abused by those who are tasked with upholding the law, the adoption of specific legislations that will ensure that nothing less than full compliance will suffice when evidence is tested in a court of law.

In this paper, any reforms to our current criminal justice systems must bring about some end results. It must bring an increase fairness and accuracy of the process. It must secure order and promote the State's ability to administer justice in the interest of all for the interest of all.

Fair and effective justice systems based on the rule of law are a prerequisite for open societies. Conversely, poorly functioning systems disserve crime victims, suspects, convicted offenders, and members of the general public. An essential function of a criminal justice system in an open society is to safeguard individuals from crime, protect the rights of victims, and assure due process and fair trials for those charged with offenses. In many countries, widespread fear of crime engenders support for repressive measures by state and non-state actors.

In any effective reform of criminal justice, some following observations about those involved in the system are worth noting:

- Law enforcement officials must be accountable to the courts in their evidence gathering and disclosures of evidence, usable or not, to accused person/ counsels.

- The courts must be able to adopt changes and better ways of case management as their effectiveness enhances State's capacity to promote public security, and create a more open and responsive criminal justice system.
- Persons accused of crimes must be afforded all the rights he has under the Constitution and the courts must not countenance any measures by enforcement officials that tends to sap at the free will of accused persons.
- Prosecutors must know their roles in court and so are those tasked with defending the rights of accused persons. The right to counsel must be given to accused persons who are charged with serious offences.
- Reforms must be made to ensure that alternative sentencing options are available to sentencing courts similar to the concept of restorative justice, community work plans etc.
- Reform measures must promote fairness and equal treatment in all phases of the criminal justice systems.

Now more than ever is the need more imminent to our country for a complete overhaul of our crimes and crimes related legislation as we march into the end of the first ten years after the millennium. The increase in the number of serious cases committed so often such as rape, horrific deaths and violent robberies seem to suggest either that people are getting bolder or that our criminal justice systems should show more resolve in ensuring that it is responsive to matters that come before it.

A Fair and effective criminal justice systems which ensure respect for the human rights of all those involved are a prerequisite for combating crime and for building societies based on the rule of law. Our criminal justice reform must assist the State in developing strategies to reform all the aspects of their criminal justice systems, with particular emphasis on vulnerable groups. Through perhaps the Law Reforms Commission of Fiji they can be tasked with projects in the areas of juvenile justice, penal reform and support to victims. The Office can also prepare assessment tools and manuals in all areas of criminal justice reform, based on democratic designs standards and norms in crime prevention and criminal justice.

In ensuring the above, the government of Fiji will earn considerable respect from within its citizenry as these criminal justice reforms are aptly needed to be done now. That goal is not unrealizable. It is achievable and one that is so important to lift the hope of the citizens of this country in criminal justice system. Our judiciary and those that deal with the criminal justice aspect of it, must ensure that new legislations that bring changes are followed through with the determination that it must work and be seen to get the results that it was set up for in the first place.

It is proposed in this paper that the government take a positive and unrelenting stand to ensure that the work first began after Cabinet approved the review of the Penal Code and the Criminal Procedure Code in its meeting in February 2004 is well and thoroughly discussed and implemented. Everyone, persons accused of crimes and victims of crimes alike, prosecutors and defence counsels, judges and magistrates, police officers and prison officers, youth officers and NGOs all have a role to play

in ensuring that we have a responsive criminal justice system in Fiji that is transparent, fair and effective. The government's role is to ensure that the necessary laws are put in place so that the desired ends are achieved.

In concluding this paper, I pause only to reflect back on the need for such a serious reform to our criminal justice system as its importance cannot be overemphasized. We need a criminal justice system that is:

- more effective in bringing offences, especially serious offences, to justice and helping to reduce crime and re-offending.
- The public will be informed and consulted so that they can be confident that the criminal justice system is fair, effective and meets local needs.
- will ensure that people of all accused persons of crimes regardless of races are treated fairly.
- will put victims at the heart of the Criminal Justice System and ensure that they and all other witnesses receive high standards of service.
- will speed up and simplify processes, supported by modern technology, to make them more efficient and responsive that will be transparent and fair.

If Fiji is able to attain this before the close of 2010, no one else stands to gain but ourselves and we will be right in thinking that we all deserve a more responsive and responsible reformed criminal justice system.

Thank you all for listening and now you may all direct your questions to Madam Justice Shameem!