

2022 PNG Update

TOPIC of Presentation:

“What is the future of capital punishment in Papua New Guinea?”

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Thursday 20th October 2022 @ UPNG-SBPP: Room LG 02

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6. Conclusion and Recommendation

Capital punishment: Pre-independence

Adoption

- ❖ Capital punishment formally introduced in *Papua* in 1902 (*Criminal Code Ordinance 1902*) & *New Guinea* in 1921 (*Laws Repeal and Adopting Ordinance 1921*, amended 1924) through the adoption of the Queensland's Criminal Code Act 1899 (Chalmers *et al*, 2001).
- ❖ Mandatory death sentences upon conviction (Chalmers *et al*, 2001)
- ❖ Last known execution carried out in 1954 by hanging (Amnesty International, 1996)
- ❖ Last death sentence imposed in 1971 but was successfully overturned (Chalmers *et al*, 2001).

Abolition

- ❖ PNG got self-government in 1973 headed by Chief Minister Michael Somare (Late Sir M. Somare).
- ❖ Law Reform Committee (LRC) was established by PNG's First Parliament to formulate PNG's new Criminal Code.
- ❖ The new Criminal Code was adopted in 1974 & retained after independence in 1975. Based on the recommendation of the LRC, all provisions of the death penalty were repealed (LRC Report, 1974) (Reasons to be provided in the other slide).

Capital punishment: Post-independence

Reintroduction

- ❖ Capital punishment was reintroduced in 1991 as an amendment to the Criminal Code Act 1974 due to a perceived increase in crimes (lawlessness).
- ❖ Out of 109 MPs, 48 MPs voted in favor to pass the bill, 19 voted against it and an overwhelming 42 MPs were absent (Amnesty International, 1996).
- ❖ Death sentences were imposed upon the discretion of the judge
- ❖ Death sentences were imposed since 1995
- ❖ Amendment to the Criminal Code was made in 2013 due to sorcery accusation related violence. Sorcery Act 1971 was repealed & Sorcery Accusation Murder became a capital crime including armed robbery.
- ❖ No executions were carried out since 1991 although attempts were made to implement death penalty

Abolition

- ❖ After nearly three decades, death penalty was abolished by the Parliament in January 2022.
 - ❖ 12 prisoners were on the death row at the time of its abolition. All death sentences were converted to life imprisonment with or without a possibility of a parole.
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Attempts to implement capital punishment in PNG

Attempt 1

- ❖ 2013 Fact-Finding Mission led by the Chief Secretary to the gov't to USA and Asia to seek appropriate mode of executions that could be applied in PNG. The cost of the trip: US\$600,000 (K2m). Final report entitled "*Implementing the death penalty in PNG*" submitted in 2015 but rejected seven times by the NEC.
- ❖ 2014 gov't established a committee made up of key agencies to oversee the implementation of the death penalty
- ❖ 2015: due to lack of infrastructure, gov't secured a 27 Ha of land in Manus Island to build a stand-alone facility to be equipped with execution chambers. To date, nothing has eventuated.

Attempt 2

- ❖ In October 2021, the PNG Supreme Court (*Case State v Tamate*) quashed the temporary stay order for prisoners sentenced to death.
- ❖ The decision now allows the state to carry out execution on 12 prisoners. But the problem, no Advisory Committee on the Power of Mercy (ACPM). Although announcement was made to establish ACPM, it did not happen until death penalty was unexpectedly abolished in January 2022.

Death penalty: PNG's International status

According to Amnesty International

Categories	Description	# of countries
Abolitionist for all crimes	Countries whose laws do not provide for the death penalty for any crime	108
Abolitionist for Ordinary Crimes	Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances	8
Abolitionist in Practice	Countries which retain the death penalty for ordinary crimes but have not executed anyone during the past 10 years because they are believed to have a policy or established practice of not carrying out executions. The list also includes countries which have made an international commitment not to use the death penalty	28
Retentionist countries	Countries which retain the death penalty for ordinary crimes	55

Death penalty: PNG's International status

According to Amnesty International

- ❖ PNG was “abolitionist in practice” since 1950s.
- ❖ But given that PNG has abolished the death penalty this year, it has shifted from being an ‘*abolitionist in practice*’ to “*abolitionist for all crimes*”.

According to PNG's Universal Periodic Review (UPR) reports and United Nations

- ❖ 2003, PNG was among 75 countries to support UN Commission on Human Rights resolution calling on all retentionist states to establish a moratorium on executions (UNCHR, 2003).
- ❖ Since 2007, PNG had either abstained and/or voted against UNGA Moratorium Resolutions

UPR reports after ratification of ICCPR in 2008

- ❖ 2011 1st UPR report, PNG rejected UNHRC's recommendation to abolish the death penalty (UN, 2011)
- ❖ 2016 2nd UPR report, PNG rejected UNHRC's recommendation to abolish the death penalty (UN, 2016)
- ❖ 2021 3rd UPR report, PNG rejected UNHRC's recommendation to abolish the death penalty (UN, 2021)

The question is: Why PNG abolished the death penalty unexpectedly early this year?

Death penalty: “Why” of abolition, reintroduction & abolition?

Why the death penalty was:

Abolished in 1974? (First Abolition)	Reintroduced in 1991?	Abolished again in 2022? (Second Abolition)
1. Lack of deterrence to violent crimes including capital crimes	1. To deter violent crimes including capital crimes	1. Lack of deterrence to violent crimes including capital crimes
2. Extenuating Circumstances (Difficulty in defining the meaning of EC)	2. Retribution (Public outcry)	2. Lack of necessary administrative mechanism to implement the death penalty

3. Australia abolished its death penalty federally in 1973, the year in which Australia gave self-government to PNG

3. According to PM Marape, DP is against biblical values & principles as PNG is predominantly a Christian country

The *future* of capital punishment in PNG?

Depends on two factors:

1. Deterrence to crimes

- ❖ **Firstly, there's a possibility of DP's reintroduction in the future due to lawlessness in PNG. But even if the DP is reintroduced, it would be impossible for PNG to implement it due to 'payback' being one of the reasons among others.**
- ❖ **Secondly, given that the implementation of the DP is impossible if reintroduced, it means PNG will shift from its current position as '*abolitionist for all crimes*' to its previous position as '*abolitionist in practice*'.**

2. Second Optional Protocol to the International Covenant on Civil and Political Rights (OP2-ICCPR)

- ❖ **OP2-ICCPR is the available option now for PNG given that PNG has already abolished the DP twice. The ratification of OP2-ICCPR would ensure the abolition of the DP is made irreversible in PNG.**
 - ❖ **Secondly, ratification of OP2-ICCPR is meant for those countries that have already ratified the ICCPR and abolished the death penalty in their domestic laws. PNG ratified the ICCPR in 2008 & the country can perhaps start the process of ratifying the Second Optional Protocol to ICCPR.**
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Conclusion & Recommendation

Conclusion

Recommendation

