



The Need for Law Reform in Papua New Guinea: Part 1

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This In Brief is the first in a two-part series on law reform in Papua New Guinea (PNG). Part 1 highlights the importance of law reform and law reform bodies as well as the existing barriers to the implementation of adequate law reform. Part 2 deals with the difficulties of criminalising drugs new to PNG.

Recently, there have been calls to review several laws in PNG. One major reason for this push is because these laws, such as the Worker's Compensation Act, labour laws and resource laws, were enacted years ago and are now outdated. Many laws in PNG were either passed in the colonial era and are no longer relevant to today's circumstances or are outdated criminal laws that are not up to date with international standards (Corrin 2019).

In 2018, Dr Mange Matui, the Secretary for the Constitutional and Law Reform Commission (CLRC), stated that 'more than 370 of PNG's current laws are outdated by at least half a century'. Many other Pacific Island nations also face problems with outdated laws from pre-independence that are now culturally inappropriate and lack operational effectiveness (Howse 2012).

Barriers to law reform in PNG

In PNG, the task of law reform proposals is vested in the CLRC through provisions set out in Section 21(2) and Schedule 2.13 and Schedule 2.14 of the CLRC Act 2004. There are, however, certain barriers to updating and reforming laws in PNG, of which two are most significant:

1. Failure to recognise that lawmaking is an important parliamentary function and must be a priority in the government's legislative agenda.

In a common law system such as in PNG, the majority party forms government, and the legislative initiative is vested in the majority party. Civil society and other non-governmental agencies can propose ideas for laws, however, for law reform to occur, government support is required for policy justification and drafting.

Successful law reform further requires a vibrant parliamentary democracy in which there is a culture

of debate and proactivity in responding to emerging situations. However, as summarised by Gelu (2010), 'the lack of quorum and persistent absenteeism have come to define the nature of Parliament in PNG. MPs [members of parliament] do not see the importance of their role to intelligently debate bills and other issues'. Several factors contribute to the lack of interest in proper debate by MPs in PNG:

- An MP's performance is measured in terms of service delivery, not lawmaking. MPs are seen as the key conduits to deliver services to their electorates because other systems of service delivery do not work effectively in PNG. There are few incentives for MPs to engage in law reform, a problem magnified by the absence of political parties with clear policy platforms (Reilly et al. 2014).
- Melanesian cultures foster clientelist rent-seeking, which still dominates political life (Kurer 2007). This means that leaders are voted into parliament by people who expect benefits in return. As a result, MPs are more focused on re-election than parliamentary obligations. This aspect of Melanesian political culture draws MPs' attention away from their institutional responsibilities as lawmakers and overseers of government (Morgan 2005:12).
- Instead of debating and passing laws, MPs' time is taken up with frequent motions of no confidence. Motions of no confidence are valid constitutional procedures and to be expected during a five year term of parliament. They can be destabilising and affect the lawmaking process; only when a government is stable can it concentrate on lawmaking (Fraenkel et al. 2008:5).

PNG's MPs must balance the functions of service delivery and lawmaking and ensure they are present in parliament to debate and pass important legislation that affects the people they represent.

2. Lack of human and financial resources. Law reforms in PNG have been hindered by a lack of both human and financial resources (Sayers 2008).

This is linked to the aforementioned barrier because in order for bills to be introduced in parliament to be

passed into law, the groundwork and policy justification needs to be done by knowledgeable public servants. By the late 1980s and early 1990s, PNG's CLRC had begun to experience a serious decline in its work caused by a suite of negative political interference, neglect and a chronic lack of funds (Kuemlangan 2008). In 2000, then Chief Justice of PNG Sir Gibbs Salika described this neglect and how 'ad hoc committees' had been created to do the work of the virtually 'defunct' CLRC (Salika 2000).

A new CLRC and a new direction for law reform

More recently, the CLRC has performed well despite its limitations. This improvement began when Dr Erick Kwa (a highly respected academic and scholar) was appointed secretary, spearheading reforms such as whistleblower legislation. He was also instrumental in the formulation of the Independent Commission Against Corruption legislation and the Lukautim Pikinini Act, a benchmark for the protection of children in PNG. Under the leadership of Dr Matui, who succeeded Dr Kwa in 2020, multiple law reform agendas are being pursued: the income tax review, a review of real estate and housing issues and the review of court procedures. Many young lawyers were recruited, and senior lawyers sent for postgraduate studies in Australia. Further, leading lawyers, bureaucrats and academics have been appointed commissioners of the CLRC.

In our opinion, the CLRC is currently adequately staffed, and it should be given additional and adequate budgetary funding and utilised to assist the government in its law reform agenda. Now is an ideal time for the government to undertake significant law reform.

Conclusion

There is a need to aggressively push for an update of PNG's laws, as many were passed either before or right after independence and are not up to date with the current state of affairs. With qualified people working for the CLRC and greater attention to law reform in parliament, there is an opportunity to update PNGs' outdated laws, including ensuring that the possession, production and usage of new drugs are criminalised and perpetrators prosecuted. Part 2 of this series deals with the need for PNG's drug laws to be overhauled and the 2021 passing of the Controlled Substance Bill.

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