



The Need for Law Reform in Papua New Guinea: Part 2 – Updating Drug Laws

Glen Mola Pumuye and Jennivive Kuman

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This paper is the second part in a two-part series on the need for law reform in Papua New Guinea (PNG). Part 1 outlined some challenges for law reform and suggested that with more attention and political will, progress can be made. This second part highlights how some drugs entering into PNG, such as methamphetamine, were not captured by the Dangerous Drugs Act 1952, and in response, the PNG parliament recently passed the Controlled Substance Act 2021.

In PNG, the most prevalent drug is cannabis or marijuana (Broekhoff 2012; Johnson 1994). Although synthetic drugs are increasingly entering the market, there is little evidence they are being manufactured in PNG. The Dangerous Drugs Act criminalises the use, possession, production and transportation of cannabis and other drugs. However, methamphetamine is not covered under the list of dangerous drugs provided in Schedule 2 of the Act. The new Controlled Substance Act 2021, which has been passed by parliament, is expected to come into force in early 2022 and criminalises the use of methamphetamine. The introduction of the new Act in response to what was determined to be a pressing need reveals that PNG's legislature can carry out effective law reform.

Laws legislating dangerous drugs in PNG

Criminal law in PNG is grounded in the Criminal Code Act, which was modelled after the United Kingdom's common law (Luluaki 2003). Other acts of parliament also cover criminal offences, such as the Dangerous Drugs Act. The PNG criminal code is based on Australia's Queensland Criminal Code (Fletcher and Gonapa 2010). However, PNG's Criminal Code Act 1974 does not provide regulation against illicit drugs. That is left to the Dangerous Drugs Act 1952, introduced after World War II (Halvaksz 2007), and will be until the Controlled Substance Act 2021 comes into force, including for crimes committed between now and then.

The need to update the Dangerous Drugs Act

For decades there was a widespread call for the 1952 drug law of PNG to be updated. Commenting

on the Dangerous Drugs Act in 2014, PNG police officer Philip Mitna stated that 'legislation relating to serious offences is also often outdated; for example, the Dangerous Drugs Act 1952 does not provide an effective deterrent to those involved in the drug trade' (2014). With the 2021 discovery of a methamphetamine lab in PNG, along with packets of methamphetamine, calls to update the drug law were made by the police hierarchy and the minister for police, culminating in the passing of the new Bill in December 2021.

The first widely reported case of methamphetamine production and use in PNG was by an Australian named Mr Jamie Pang. It was believed he produced the methamphetamine in his hotel room. Methamphetamine, called meth, crystal or speed, is a central nervous system stimulant that can be injected, smoked, snorted or ingested orally. However, methamphetamine is not covered under the list of dangerous drugs provided in Schedule 2 of the Act.

According to Section 37(2) of the PNG constitution, a person cannot be charged for an offence not provided by law. In essence, this lengthy provision was interpreted by the Supreme Court of PNG as:

The fundamental proposition is: nobody may be convicted of an offence that is not defined by and the penalty for which is not prescribed by written law. (SC REF NOS 2, 3 & 5 OF 2014).

At first glance, it would seem that although Mr Pang was found with a dangerous drug, he could not be prosecuted, because methamphetamine does not fall within the definition of dangerous drugs under the Dangerous Drugs Act. However, police can still prosecute if methamphetamine is broken down in a lab and its components identified. This is because, although methamphetamine is not covered by the act, the drug amphetamine — present in methamphetamine — is listed as a dangerous drug under Schedule 2. If sufficient traces of amphetamine are found, the prosecution team can argue for a conviction on this basis. The task of the police prosecutor was to analyse and chemically break down the confiscated

methamphetamine to prove that chemicals/substances covered under the Dangerous Drugs Act were present. There was sufficient evidence of amphetamine within the methamphetamine in Mr Pang's possession to prosecute him.

This case shows that there was an urgent need to upgrade the drug laws of PNG to ensure that newer drugs such as methamphetamine are criminalised in PNG. Apart from this reported case, there might be more labs in PNG producing and distributing methamphetamine. The offenders must face the full force of the law. The duty to bring offenders before the courts rests with the prosecution, and for offences committed before the new Act comes into force, expensive and time-consuming scientific procedures need to be implemented and evidence documented to assist the prosecution's efforts.

Passing of the new Controlled Substance Act

The PNG Government has responded positively to the need to usher in updated legislation given the presence of dangerous drugs in PNG. The Controlled Substance Bill 2021 has been drafted and passed by parliament. Dr Eric Kwa has said that 'the new Bill will cover cocaine, ice (crystal methamphetamine) and all matter of drugs including the use of certain medicines for mixing and developing illegal drugs'. The purpose of the new Controlled Substance Act 2021 is to:

- (a) provide for and regulate controlled substances to protect individuals and society from their illicit and harmful effects
- (b) establish criminal offences related to the use and abuse of illicit drugs and precursor chemicals and implements.

The new Act, however, does not have retrospective powers for the perpetrator of the methamphetamine case, Mr Pang, to be charged under. This is because Section 4 of the Act clearly states that the Act does not have a retrospective effect on the past commission or omission of an act that constitutes an offence under this Act. This is a correct application of the law and a reinforcement of Section 37(1) of the PNG constitution. Therefore, it is suggested that Mr Pang be charged and prosecuted under the provisions of the Dangerous Drugs Act, with the extra complications that entails.

Timely law reform is required in PNG, for no one can be convicted of a crime that is not set down in law. The passing of the new Controlled Substance Bill indicates that, with sufficient impetus and public attention, PNG's members of parliament can undertake necessary law reform for the ever-changing needs of society. The lesson here is that law reform can, and should, happen more quickly.

Author notes

Glen Mola Pumuye is a PhD candidate at the faculty of law at Bond University, Australia. Jennivive Kuman is a final year (LLB 4) student attending the University of PNG School of Law.

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