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Papua New Guinea

Joint Stakeholder Report for the United Nations Universal Periodic Review

Submitted by:

The World Coalition Against the Death Penalty

and

Eleos Justice

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The **World Coalition Against the Death Penalty** was founded in 2002 in Rome and is an alliance of more than 160 member organisations – human rights organisations, professional associations, and local authorities – that have united to campaign for the universal abolition of the death penalty. The World Coalition’s ultimate objective is to secure the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty remains in force.

The **Eleos Justice** initiative is a collaboration between the *Capital Punishment Justice Project*, an NGO working to end the death penalty, and the *Faculty of Law at Monash University*. Eleos Justice is committed to producing vital advocacy, evidence-based research and teaching concerning the international abolition of the death penalty. Eleos Justice’s primary mission is to restrict and abolish the death penalty in Asia.

1. Status of Implementation

- 1.1. In the second UPR cycle in 2016, a number of states made recommendations to Papua New Guinea (PNG) to establish a de jure moratorium on the death penalty, abolish the death penalty and to adopt the Second Optional Protocol to the ICCPR.¹ These recommendations were not accepted by PNG.²
- 1.2. PNG has yet to abolish the death penalty or ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR);³ has failed to adhere to its ICCPR art 6(2) obligation to only impose the death penalty for ‘the most serious crimes’; and has not taken steps to establish an official moratorium on the death penalty.
- 1.3. Nevertheless, PNG has maintained a de facto moratorium on the death penalty since 1954. Further, PNG has recently instituted a review of the death penalty by the Law Reform and Constitutional Commission (‘LRCC’) which may be indicative of a reform movement in this area. These are promising signs and demonstrate that there is significant opportunity for PNG to take much more deliberate steps towards ending the death penalty.

2. Papua New Guinea’s International Legal Obligations

- 2.1. PNG has ratified or acceded to six of the nine core international human rights instruments.⁴ These include:
 - The International Covenant on Civil and Political Rights (‘ICCPR’) on 21 July 2008;
 - The International Convention on Economic, Social and Cultural Rights on 21 July 2008;
 - The Convention on the Elimination of All Forms of Discrimination against Women on 21 January 1995;
 - The International Convention on the Elimination of All Forms of Racial Discrimination on 27 January 1982;
 - The Convention on the Rights of the Child on 2 March 1993; and
 - The Convention on the Rights of Persons with Disabilities on 26 September 2013.
- 2.2. Article 6(1) of the ICCPR protects the ‘inherent right to life’ of every human being which is to be protected by law and not arbitrarily interfered with. It recognises that the death penalty should only be imposed for ‘the most serious crimes’ and must only be carried out pursuant to a final judgment rendered by a competent court.

- 2.3 ICCPR art 10 also provides that those deprived of their liberty shall be treated with humanity and respect for dignity and that the purpose of the penitentiary system is to reform and rehabilitate offenders.⁵
- 2.4 Fair trial rights are guaranteed by ICCPR art 14. These include the right to have a fair public trial by a competent court or tribunal,⁶ the right to be presumed innocent until proven guilty,⁷ the right to be informed promptly of the charges faced,⁸ to have access to defence,⁹ to be tried without delay,¹⁰ and the right not to be compelled to confess guilt.¹¹
- 2.5 PNG has not yet signed or acceded to the Second Optional Protocol to the ICCPR nor has PNG signed or acceded to the *Convention against Torture*.¹²

3. Global Trend Towards Abolition of the Death Penalty

- 3.1. At the most recent vote in the UNGA moratorium vote in December 2020,¹³ PNG voted against the resolution.¹⁴ PNG also voted against the resolution in 2018.¹⁵ In this respect, PNG is currently part of a minority of States who take a more overtly retentionist position on the death penalty.
- 3.2. PNG has sought to defend its retentionist position in the context of the UNGA's moratorium resolution; adhering to the position that, 'under international law, the death penalty is not illegal' and asserting that '[t]he death penalty is an issue of the criminal justice system of sovereign independent states'.¹⁶
- 3.3. Opportunities remain for PNG to formally reflect de facto moratorium conditions by taking domestic and international steps to implement a de jure moratorium with a view to abolition in total.

4. Domestic Legal and Human Rights Frameworks

- 4.1. There are a number of civil, political, social and economic frameworks which should put PNG in a strong position for the protection and development of domestic human rights.¹⁷

The Constitution

- 4.2. The Constitution recognises a right to life but currently provides for an exception where the death penalty is prescribed by law.¹⁸ Section 36 of the Constitution also protects persons from 'inhuman treatment', including torture.¹⁹
- 4.3. Section 37 of the Constitution provides for fair trial rights, including the presumption of innocence and due process;²⁰ the right to legal representation;²¹ the right to be informed promptly and comprehensively about the charges against them and the right to free interpretation services.²²

Appeal and Clemency Process

- 4.4. Individuals sentenced to death in PNG have the right of appeal. The first avenue of appeal is to the Supreme Court of Papua New Guinea. An application for appeal must be submitted within 40 days of sentencing.²³ Section 152 of the Constitution provides for the

creation of an Advisory Committee on the Power of Mercy.²⁴ The power of mercy is available to individuals on death row who have exhausted their final right of appeal.

- 4.5. In October 2017, Justice David Cannings of the National Court of Justice of PNG handed down his findings in an own-motion investigation into the human rights protections of individuals sentenced to death under s 57 of the Constitution.²⁵ Justice Cannings found that the Advisory Committee on the Power of Mercy was ‘defunct’ because the executive government of PNG had failed to properly fund and staff the Committee so that it could carry out its work.²⁶ Justice Cannings ordered that the executive government facilitate appointments of members to the Committee by 1 January 2018 and ensure that all arrangements were made and steps taken so that the Committee could carry out its work. In finding that these failings ‘created a gap in the criminal justice system ... [involving] a breach of the Constitution and an infringement of human rights,’²⁷ Justice Canning also ordered that there be an immediate stay on the imposition of the death penalty for those on death row (whether or not they had exhausted their final right of appeal).
- 4.6. On 23 October 2017, Justice Minister Davis Stevens stated that he would ‘review whether the Committee is working or not working and why it is not working.’²⁸ However, it remains unclear to what extent actions have been taken.

Office of the Public Solicitor of Papua New Guinea

- 4.7. Where a Defendant is unable to afford counsel, they may engage the Office of the Public Solicitor of Papua New Guinea if they have been accused of a serious offense.²⁹ The Office of the Public Solicitor’s mission is to ‘create awareness of the role of the Public Solicitor of Papua New Guinea in the Justice System, and to encourage the policy that prevention is better than cure’.³⁰
- 4.8. The Ombudsman Commission has authority to visit prisons, however, it lacks the necessary resources to effectively monitor and investigate prison conditions.³¹ The government has permitted visits by independent bodies such as the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Human Rights.³² Visits are not conducted systematically. Between 2018 and 2019, no visits were conducted by the Ombudsman Commission or any independent prison monitoring bodies.³³

National Human Rights Institution

- 4.9. PNG does not have a national human rights institution. This raises concerns about the domestic implementation, protection and oversight of human rights in the country. A national human rights institution should be independent of government and given full powers and adequate resources to conduct own-motion investigations and inquiries, including in relation to the conditions of prisoners on death row.³⁴
- 4.10. Implementation and institutional protection of human rights therefore remains a challenge for PNG.
- 4.11. The international community should prioritise working with PNG on capacity-building to ensure that domestic institutions and procedures, which are required to fully implement

human rights norms domestically, are in place. Although some institutions already exist, they have been noted to have significant weaknesses which hamper their ability to carry out their roles.³⁵

5. The Death Penalty in PNG

- 5.1. The death penalty was abolished while PNG was under administration by Australia in 1970 and the last execution took place in 1954. However, on 28 August 1991 PNG reintroduced capital punishment as an amendment to the *Criminal Code Act 1974* ('Criminal Code').³⁶
- 5.2. In *Ume v State* the Supreme Court of PNG held that the death penalty may be imposed where an aggravated offence was committed and there are no mitigating factors or extenuating circumstances.³⁷
- 5.3. In 2013, the Criminal Code was amended based on an increase in sorcery-related violent crimes, expanding the method by which executions could be carried out and the offences to which the death penalty may be applied (see table below).³⁸ Currently, in addition to the historically preferred method of hanging, the Criminal Code permits for lethal injection, medical asphyxiation, death by firing squad and electrocution.³⁹

Table 1. Offences punishable with the death penalty

Offence	Legislation
Wilful murder	Criminal Code s 299
Wilful murder of a person on account of accusation of sorcery*	Criminal Code s 299A
Treason	Criminal Code s 37
Attempted piracy with personal violence	Criminal Code s 82
Aggravated rape*	Criminal Code s 347C
Robbery*	Criminal Code s 386

*added by Criminal Code (Amendment) Act (No. 6) 2013

- 5.4. Human Rights Watch reported that there were 16 people on death row in July 2019.⁴⁰ At the end of the same year, Amnesty International's Deaths and Executions Report recorded that 20 people were on death row in Papua New Guinea, and that ten of those death sentences were 'final.'⁴¹ The Lowy Institute affirmed that as at December 2020 between 16 to 20 people have been on death row in PNG for more than a decade awaiting execution.⁴² In 2021, *The National* newspaper reported there were 12 prisoners on death row.⁴³
- 5.5. Exact figures on the number of executions before 1954 are not available, although at least 67 people were executed by hanging under the Australian, British and German colonial administrations of PNG between the two world wars.⁴⁴
- 5.6. In 2019, Prime Minister James Marape threatened to employ the death penalty against the perpetrators of a massacre in the Munima and Karida villages in the country's Hela province.⁴⁵ Moreover, in 2020, Attorney-General and Justice Minister Davis Steven stated

that ‘those who have already [been sentenced to death] would be subjected to the court order and court orders are to be complied with.’ Stevens went on to say, ‘[e]xecuting the death penalty is not an option, it has to happen.’⁴⁶ However, no executions have occurred, nor has there been any subsequent formal announcement.

- 5.7. In February 2020, it was announced that the Constitutional and Law Reform Commission (CLRC) would conduct a nationwide survey to ‘gauge the views of citizens on whether the death penalty should remain a part of the laws of the country.’⁴⁷ The results of this survey do not appear to have been reported.

6. Treatment of Prisoners

- 6.1. A number of issues have been identified in prisons in PNG, and overall conditions are poor.⁴⁸ Particular issues include:⁴⁹
- Serious underfunding;
 - Food shortages;
 - Inadequate medical facilities; and
 - Overcrowding in some detention facilities, which is exacerbated by infrequent court sessions, slow police investigations and bail restrictions for certain crimes.

Minimum Standards for the Treatment of Prisoners

- 6.2. The United Nations Standard Minimum Rules for the Treatment of Prisoners (‘Mandela Rules’) are universally acknowledged as the minimum standard for the treatment of prisoners and provide guidance on best practice for their treatment and the management of penal institutions.⁵⁰
- 6.3. Pursuant to the Mandela Rules, prisoners are to be treated ‘with the respect due to their inherent dignity and value as human beings’.⁵¹ Prisoners must not be subjected to, and must be protected from, torture and other cruel, inhumane or degrading treatment or punishment.⁵²
- 6.4. The Mandela Rules make clear that different categories of prisoners shall be separated on account of their sex, age, criminal record, the reason for their detention and any other necessity of their treatment. Therefore, young prisoners should be kept separate from adults.⁵³
- 6.5. The Mandela Rules set out that accommodation provided for the use of prisoners shall meet the requirements of health with regard being had to climate conditions, minimum floor space, lighting, heating and ventilation.⁵⁴

Treatment of Individuals in Prison

- 6.6. Court sessions are ad-hoc and police investigations are typically slow.⁵⁵ Consequently, prisons are overcrowded by a large proportion of pre-trial detainees.⁵⁶ Overcrowding has resulted in outbreaks of disease and poor health outcomes across the prison system.⁵⁷

- 6.7. The treatment of juvenile offenders is problematic. A lack of prison infrastructure has meant authorities resort to routinely holding juveniles in adult police detention cells.⁵⁸ Juveniles are often vulnerable to assault by adult detainees.⁵⁹
- 6.8. Reports indicate poor sanitation, lighting and ventilation in addition to insufficient rations.⁶⁰ Reports consistently state that prison conditions are ‘unfit for human habitation’.⁶¹ Overcrowding and poor prison infrastructure means that contagious diseases cannot be contained adequately.⁶²

Disproportionately High Risk of HIV transmission

- 6.9. PNG has the highest Human Immunodeficiency Virus (HIV) incidence and prevalence in the Pacific region. In particular, risk of HIV transmission in prisons is widespread.⁶³ HIV testing capacity is limited. Supervision of inmates is also limited given understaffing and overcrowding.⁶⁴ Correctional Services do not make condoms available and consistently reiterate that they are not to be made available to inmates in corrective institutions.⁶⁵

Juvenile Population

- 6.10. Article 37 of the *Convention on the Rights of the Child* (‘CROC’) prohibits the execution of individuals under the age of 18.⁶⁶ PNG does not have any specific constitutional or legal protections to guarantee that juvenile offenders will not be at risk of execution.
- 6.11. The purpose of the *Juvenile Courts Act 1991* (PNG) (‘JCA’) is to establish a separate justice system for juvenile offenders using juvenile courts based on contemporary international juvenile justice and restorative justice principles and practices.⁶⁷ The JCA establishes the Office of Director – Juvenile Court Services which appoints Juvenile Court Officers.⁶⁸ However, the JCA does not provide any safeguards against a death sentence.

LGBTQI+

- 6.12. Currently, male same-sex sexual activity is illegal.⁶⁹ There is little reporting on the experiences of LGBTQI+ members in prisons. However, their inherent vulnerability within the broader community renders these individuals at risk within the prison system. This is compounded by the overcrowding which results in a failure to segregate vulnerable prisoners from others.

7. Recommendations

- 7.1. This stakeholder report suggests the following recommendations for the Government of Papua New Guinea:
- Work with the international community to enable capacity-building for further compliance with and enforcement of human rights norms within PNG.
 - Take immediate steps to publish official, reliable and regularly updated statistics on the number of individuals on death row and take further steps to open prisons for independent monitoring investigations, through properly funding the Ombudsman Commission.

- Take steps to respect, protect and fulfil the human rights of individuals detained in prisons and detention facilities, including by ensuring adequate protection for members of minority and vulnerable groups within the prison population.
- Take further concrete steps towards establishing a national human rights institution in accordance with the Paris Principles, with a view to having established a national human rights institution before the next UPR cycle.
- Take legislative steps to ensure that only ‘the most serious crimes’ are subject to the imposition of the death penalty.
- Take legislative steps to abolish the death penalty for all crimes under PNG law.
- Establish an official moratorium on the imposition of the death penalty.
- Vote in favour of the next UNGA resolution calling for a moratorium on the imposition of the death penalty.
- Sign and ratify the Convention against Torture.
- Sign and ratify the Second Optional Protocol to the ICCPR.
- Abolish the death penalty before the next UPR cycle.
- Immediately commute all death sentences and take steps for the transfer of individuals on death row into the general prison population.

¹ Recommendation 104.3 (Namibia); Recommendation 104.4 (Montenegro, Portugal); Recommendation 104.80 (France); Recommendation 104.81 (New Zealand); Recommendation 104.82 (Panama); Recommendation 104.83 (Norway); Recommendation 104.84 (Philippines); Recommendation 104.85 (Portugal); Recommendation 104.86 (Spain); Recommendation 104.87 (Turkey); Recommendation 104.88 (Norway); Recommendation 104.89 (Australia); Recommendation 104.90 (Holy See); Recommendation 104.91 (Italy).

² United Nations Office of the High Commissioner for Human Rights, 'Papua New Guinea Thematic List of Recommendations', *Universal Periodic Review – Papua New Guinea* (document) <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/PGIndex.aspx>>.

³ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 27 March 1976) ('ICCPR').

⁴ United Nations Human Rights Office of the High Commissioner, 'The Core International Human Rights Instruments and their Monitoring Bodies' (2021) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=134&Lang=EN>.

⁵ Ibid art 10(1), (3).

⁶ ICCPR (n 1) art 14(1).

⁷ Ibid art 14(2).

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- ⁸ Ibid art 14(3)(a).
- ⁹ Ibid art 14(3)(b).
- ¹⁰ Ibid art 14(3)(c).
- ¹¹ Ibid art 14(3)(g).
- ¹² *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).
- ¹³ *Moratorium on the Use of the Death Penalty*, GA Res 75/183, UN Doc A/RES/75/183 (16 December 2020).
- ¹⁴ United Nations, 'Moratorium on the Use of the Death Penalty', *United Nations Digital Library* (2020) <<https://digitallibrary.un.org/record/3894866?ln=en>>.
- ¹⁵ United Nations, 'Moratorium on the Use of the Death Penalty', *United Nations Digital Library* (2018) <<https://digitallibrary.un.org/record/1656169?ln=en>>.
- ¹⁶ *Record of Proceedings of the 65th Plenary Meeting*, 72st sess, UN GAOR UN Doc A/71/PV/65 (19 December 2016) 31.
- ¹⁷ Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, 29th sess, UN Doc A/HRC/29/37/Add.1 (30 March 2015) ('2015 Special Rapporteur Report'), para 8.
- ¹⁸ Ibid s 35(1)(a).
- ¹⁹ Ibid s 36.
- ²⁰ Ibid s 37(4)(a).
- ²¹ Ibid s 37(4)(e).
- ²² Ibid s 37(4)(b).
- ²³ *Supreme Court Act 1975* (Papua New Guinea) s 17.
- ²⁴ Constitution (n 28) s 152.
- ²⁵ *In Re: Enforcement of Basic Rights under Section 57 of the Constitution of the Independent State of Papua New Guinea* [2017] PGNC 266 ('*In Re: enforcement of Basic Rights*').
- ²⁶ Ibid [63].
- ²⁷ *In Re: Enforcement of Basic Rights* (n 36) [64].
- ²⁸ Christopher Yowat, 'Power of Mercy committee to act,' *The National* (23 October 2017) <<https://www.thenational.com.pg/power-mercy-committee-act/>>.
- ²⁹ Papua New Guinea News, 'A Better, More Livable City of Port Moresby and Country Awaits us When We Give Up Violence (23 November 2020) <<https://news.pngfacts.com/2020/11/a-better-more-livable-city-and-country.html>>.
- ³⁰ Office of the Public Solicitor of Papua New Guinea, Facebook About Page, N.D., viewed 4 March 2021, <<https://www.facebook.com/pubsolpng/about/>>
- ³¹ United States of America, State Department, *Papua New Guinea Human Rights Report* ('Papua New Guinea Human Rights Report') (2019), 2.
- ³² Ibid.
- ³³ Ibid.
- ³⁴ See, *Paris Principles Relating to the Status of National Institutions (The Paris Principles)*, GA Res 48/135, 48th sess, UN Doc A/RES/48/134 (4 March 1994).
- ³⁵ 2015 Special Rapporteur Report (n 27) para 11.
- ³⁶ *Act No. 25 of 1991* (Papua New Guinea) s 2.
- ³⁷ [2006] SC 836 [74]-[75].
- ³⁸ *Criminal Code (Amendment) Act (No. 6) 2013* (Papua New Guinea).
- ³⁹ *Criminal Code Act 1974* (Papua New Guinea) s 614.
- ⁴⁰ Stephanie McLennan, 'Papua New Guinea Massacre Doesn't Justify Death Penalty' (11 July 2019) <<https://www.hrw.org/news/2019/07/11/papua-new-guinea-massacre-doesnt-justify-death-penalty>>.
- ⁴¹ Amnesty International (2019), 'Death Sentences and Executions Report 2019,' (2019) 29 <<https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>>.
- ⁴² Moses Sakai, 'PNG and the politics of the death penalty,' 11 Dec 2020, <<https://www.lowyinstitute.org/the-interpret/png-and-politics-death-penalty>>.

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- ⁴³ Miriam Zarriga, 'Minister reviews death penalty,' *The National* (19 January 2021) <<https://www.thenational.com.pg/minister-reviews-death-penalty/>>.
- ⁴⁴ Amnesty International, 'Papua New Guinea: The state as killer?' (April 2004) 3 <<https://www.amnesty.org/download/Documents/96000/asa340012004en.pdf>>.
- ⁴⁵ Stephanie McLennan, 'Papua New Guinea Massacre Doesn't Justify Death Penalty', *Human Rights Watch*, 11 July 2019, <<https://www.hrw.org/news/2019/07/11/papua-new-guinea-massacre-doesnt-justify-death-penalty>>
- ⁴⁶ The National, 2020, <<https://www.thenational.com.pg/criminals-to-be-executed>>.
- ⁴⁷ Helen Tarawa, 'Survey on death penalty,' 2020, The National, <<https://www.thenational.com.pg/survey-on-death-penalty>>.
- ⁴⁸ Papua New Guinea Human Rights Report (n 42).
- ⁴⁹ Ibid.
- ⁵⁰ *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/172, 70th sess, UN Doc A/RES 70/75 (8 January 2016) ('Mandela Rules').
- ⁵¹ Ibid rule 1.
- ⁵² Ibid.
- ⁵³ Ibid.
- ⁵⁴ Mandela Rules (n 58) rule 13.
- ⁵⁵ Papua New Guinea Human Rights Report (n 42).
- ⁵⁶ Ibid.
- ⁵⁷ Ibid.
- ⁵⁸ Ibid.
- ⁵⁹ Ibid.
- ⁶⁰ Ibid.
- ⁶¹ Ibid.
- ⁶² Ibid.
- ⁶³ United Nations Aids, *HIV Data Check in Papua New Guinea's National Capital District* (March 2020) <https://www.unaids.org/en/resources/presscentre/featurestories/2020/march/20200306_png#:~:text=Papua%20New%20Guinea%20has%20the,65%25%20are%20on%20antiretroviral%20therapy>.
- ⁶⁴ Ibid.
- ⁶⁵ Ibid.
- ⁶⁶ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 37.
- ⁶⁷ Department of Justice & Attorney General, *Juvenile Justice* (<<https://www.justice.gov.pg/index.php/2015-04-26-07-32-15/juvenile-justice?> 3).
- ⁶⁷ Ibid .
- ⁶⁸ Ibid.
- ⁶⁹ *Criminal Code Act 1974* (Papua New Guinea) s 210.