



“TVI PARTICIPATES IN DCA PUBLIC INFORMATION SESSION”

INFORMATION SHARING SESSION | 23 May 2023 - TVI, along with members of the public, attended the Information Sharing Session on the PNG and USA Defense Cooperation Agreement (“DCA”) held at the Defense Force Headquarters at Murray Barracks. The session was chaired by Major General Mark Goina - Chief of Defence Force and Co-Chaired by Hari John Akipe, Secretary of Defense and Elias Woyengu, Secretary Foreign Affairs.

Whilst the actual text of the DCA was not made available due to confidentiality, the information session was invaluable as it allowed members of the public to engage directly in a Q&A format with PNG Government’s chief advisers who led the negotiations to finalize the DCA.

The DCA is now required to be tabled before Parliament within 15 sitting days of Parliament for the Parliament to deliberate and pass a resolution to either approve or disapprove it.

KEY OUTCOMES OF DISCUSSION

PNGDF NEEDS: The PNG Defence Force is presently operating at below 30%-40% operational capacity readiness. This means it is not in a position to perform its constitutional duty to respond to all threats in defense of the country. As a government institution, the PNG Defence Force continues to be subject to competing priorities of National Government for scarce development funds. As a result, PNG Defence Force is barely able to survive and now in desperate need of significant investment to improve capacity.

JUSTIFICATION FOR JOINT MILITARY PROGRAMS: Engagement with Foreign Governments and their military in joint programs is one way that PNG Defence Force can attract investment to meet its needs. This arrangement is allowed for under Section 206 of the PNG Constitution and this sets the basis for PNG to enter into Defence cooperation arrangements with other countries.

LEGAL BASIS FOR JOINT MILITARY PROGRAMS: On that constitutional basis, PNG has passed various laws since Independence to facilitate engagement of foreign military to enter PNG. The *Defence (Visiting Forces) Act 1975* is one such legislation that enabled USA and PNG militaries to work together in PNG in the past. Under this legislation, PNG is authorized and has signed Status of Force Agreements (SOFAs) with countries around the world, including the USA.

CHANGE OF “SOFA” TO “DCA” From decades of experience around the world, USA and other countries have established that joint military programs undertaken under the SOFA model is now outdated and there is a need to upgrade their arrangements with countries to respond to new threats in today’s world. The DCAs are the new model of engagement which will now supersede the SOFA with the USA.

PROVISIONS ON IMMUNITY The initial text of PNG and USA Draft DCA (which was leaked publicly) had provisions on granting immunity and restricted access to USA personnel and



operational sites in PNG. That position has since been negotiated by PNG Officials and agreed by the USA to be removed. The final signed DCA between the 2 countries now subjects all USA personnel and operational sites to PNG Law. This is relevant in 2 instances:

- (a) all assets & investments given by USA will be owned by PNG; and
- (b) all USA personnel operating in PNG are subject to PNG Law and no immunity has been given

PNG LAWS ON IMMUNITY: Even though the final text of the DCA may have excluded provisions on immunity for foreign military personnel from prosecution in PNG, it is important to note that PNG Laws under the *Defence (Visiting Forces) Act 1975* recognizes as a basic right that all foreign military personnel should be given the opportunity to be subject to the tribunals of their country as dictated by laws of their country.

There is a detailed process under PNG laws that spells out which country's laws, as exercised through tribunals, will have exclusive jurisdiction over certain conduct or where both countries' have con-current jurisdiction and a decision to be taken upon consultation by both Parties.

WHAT ARE THE NEXT STEPS

Now that the DCA has been signed between PNG and USA, that does not mean that is the end of the process. There is still an opportunity for public scrutiny through the following next steps:

1. **Ratification Process:** Section 117 of the Constitution provides for a ratification process which requires that the DCA to now be tabled before Parliament where all MPs will have an opportunity to study and fully debate the agreement prior to voting to approve it;
2. **Pre-Approval:** Once passed, there is a pre-condition that all programs and engagements need to be agreed by both countries, prior to implementation. This gives an opportunity for PNG to control the scope, duration and level of each engagement by USA in the country;
3. **Sunset Clause:** The DCA has a life-span of 15 years, and this gives certainty on an end date when this relationship will end.
4. **Supreme Court Reference:** Any person who has standing, i.e., the Opposition Leader or an MP, etc can commence proceedings at the Supreme Court to challenge the constitutionality of the DCA. The Supreme Court has demonstrated that it can throw out such agreements if it is proved to be unconstitutional, examples include the Enhanced Cooperation Package Agreement with Australia declared illegal in 2005; and the Manus Asylum Agreement declared illegal in 2016.

LEARNING LESSONS

1. Technology (via social media, etc) has influenced the public policy processes in modern times in PNG such that the executive government must look at ways to include public consultation and not be seen to be secretive;



2. At the end of the day, Parliamentarians are the people's constitutionally mandated representatives who are the voice of the people to speak on matters of public policy in Parliament.
3. In this case, the DCA will still go before Parliament for debate before final approval is given, and that's how the people's voice will be represented.
4. PNG has DCAs in place with Australia and Indonesia. DCAs are not a new arrangement and in fact does not preclude PNG to deal exclusively with one country. PNG can sign multiple DCAs with various countries depending on our security interests.

FURTHER CONSULTATION

We take note that the Government's chief negotiators have also offered to several University Chancellors who were in attendance to host similar information sharing sessions at University Venues to address the students' concerns or questions about the DCA.

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