

Report on Papua New Guinea regarding the human rights of LGBTI persons

25th session of the Universal Periodic Review
April – May 2016

Executive Summary

1. This report has been prepared by Kaleidoscope Human Rights Foundation,¹ in conjunction with the Sexual Rights Initiative² and local members of the LGBTI communities of Papua New Guinea. It highlights some instances where Papua New Guinea is failing to adequately protect the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons.
2. Papua New Guinea continues to enforce laws criminalising consensual sex between men. Moreover, it has not enacted any laws or policies that protect against discrimination on the basis of sexual orientation, gender identity and intersex status. This has resulted in widespread social discrimination, including difficulties accessing police protection from violence, health services and employment.
3. **Key words:** sexual orientation, gender identity, intersex status, criminalisation, discrimination, access to health care.

Lack of progress in the protection of LGBTI rights

4. In the previous Universal Periodic Review undertaken in respect of Papua New Guinea, two recommendations were made with respect to discrimination against LGBTI persons. These were: (a) to decriminalize sexual relations between consenting adults of the same sex and; (b) to amend national legislation to include “sexual orientation” and “gender” as prohibited grounds for discrimination.³
5. We note that these recommendations were rejected by Papua New Guinea on the basis that “*there is ongoing national consultation on this issue and as such no definite answer can be provided at this stage*”.⁴ At present, Papua New Guinea has not taken any concrete action to implement these recommendations.
6. There have been proposals since the last Universal Periodic Review to introduce legislation that would decriminalise sexual activities between adult men. In 2012, the then-outgoing Minister for Community Development called on the incoming government to decriminalise homosexuality.⁵ Further, in April 2014, the Minister for Higher Education was reported as supporting proposals to protect the rights of

¹ **Kaleidoscope Australia Human Rights Foundation (Kaleidoscope)** is a non-governmental organisation that works with local activists to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons in the Asia-Pacific Region.

² **The Sexual Rights Initiative** is a coalition including Akahata – a Latin American team working on sexualities and genders, Action Canada for Population and Development, Creating Resources for Empowerment and Action – India, the Polish Federation for Women and Family Planning, and others.

³ United Nations Human Rights Council, *Report of the Working Group on the Universal Period Review: Papua New Guinea*, 18th sess, UN Doc A/HRC/18/18 (11 July 2011) [79.52]–[79.54].

⁴ United Nations Human Rights Council, *Report of the Working Group on the Universal Period Review: Papua New Guinea: Addendum*, 18th sess, UN Doc A/HRC/18/18/Add.1 (30 September 2011) [79.52]–[79.54].

⁵ Australian Broadcasting Network, “Push to decriminalise homosexuality in PNG” (26 July 2012) <<http://www.abc.net.au/news/2012-07-26/an-png-homosexuality/4155890>>.

persons with various sexual orientations.⁶ Attempts to amend these laws have been strongly resisted by the current Prime Minister as well as church leaders.⁷

Criminalisation of sex between consenting adults of the same sex

7. The *Criminal Code Act 1974* provides for the criminalisation of consensual sexual intercourse and sexual conduct between two adult men.⁸ There do not appear to be any reports of prosecutions for contraventions of these provisions between 2011 and 2014.⁹ However, in March 2015, one person was given a suspended sentence of two years' imprisonment for committing an "indecent act between males", demonstrating that these provisions continue to be enforced and subject to significant penalties.¹⁰
8. Aside from the fact that these provisions continue to target individuals, the continued criminalisation of sex between consenting adults of the same sex serves to reinforce negative views towards LGBTI people in the Papua New Guinean community, particularly men who have sex with men (**MSM**) and transgender persons. The criminalisation of consensual sexual activity between adult men also acts as a mechanism to limit LGBTI activism. It prevents full participation of LGBTI people in the broader community and has contributed to the HIV epidemic in Papua New Guinea by tending "to drive affected persons underground and to impede their access to services because of discrimination or unprofessionalism and harassment".¹¹

Recommendations

The Independent State of Papua New Guinea should:

9. Decriminalise sexual relations between consenting adult men by repealing sections 210 and 212 of the *Criminal Code Act*.

Discrimination against LGBTI persons

10. Papua New Guinea's Constitution prohibits discrimination on a number of bases, including race, tribe, place of origin, political opinion, colour, creed, religion or sex.

⁶ One Papua New Guinea, "PNG MP wants gay, lesbian rights" (23 April 2014) <<http://www.onepng.com/2014/04/png-mp-wants-gay-lesbian-rights.html>>.

⁷ Human Dignity Trust, *Criminalisation of Homosexuality: Papua New Guinea* <http://www.humandignitytrust.org/uploaded/Map/Commonwealth_Country_Reports/Papua_New_Guinea.pdf>.

⁸ *Criminal Code Act 1974*. **Section 210**, titled "Unnatural Offences", provides that a person who sexually penetrates another person "against the order of nature" or allows a male person to sexually penetrate him is guilty of a crime punishable by up to 14 years imprisonment. **Section 212**, titled "Indecent Practices between Males", provides that a male person who "commits an act of gross indecency" with another male person is guilty of a misdemeanour punishable by up to 3 years imprisonment.

⁹ United States Department of State, Bureau of Democracy, Human Rights and Labor, "Papua New Guinea 2014 Human Rights Report", *Country Reports on Human Rights Practices for 2014*, p. 19; United States Department of State, Bureau of Democracy, Human Rights and Labor, "Papua New Guinea 2013 Human Rights Report", *Country Reports on Human Rights Practices for 2013*, p. 18; United States Department of State, Bureau of Democracy, Human Rights and Labor, "Papua New Guinea 2012 Human Rights Report", *Country Reports on Human Rights Practices for 2012*, pp. 16–17; United States Department of State, Bureau of Democracy, Human Rights and Labor, "Papua New Guinea 2011 Human Rights Report", *Country Reports on Human Rights Practices for 2011*, pp. 15–16.

¹⁰ In March 2015, Malalaua district resident Mr Joe Sevese was prosecuted for, and pleaded guilty to, one count of indecent act between males: *State v Sevese* [2015] PGNC 42; N5961 (5 March 2015) at [2]. In that matter, the sentencing judge found that "*homosexual acts or this type of behaviour is quite prevalent in society*" despite the lack of reported cases, and sentenced the accused to a suspended sentence of 2 years imprisonment in order to "*deter [him] and others from indulging in this type of behaviour*": *Ibid* at [12], [16].

¹¹ The Hon Michael Kirby AC CMG, *Papua New Guinea National Consultation on HIV, Human Rights and the Law*, p. 4.

However, it does not prohibit discrimination on the basis of sexual orientation, gender identity or intersex status.¹²

11. The omission of sexual orientation, gender identity and intersex status from the Constitution's equality provisions is a contributing factor to the discrimination experienced by LGBTI persons in all areas of public life in Papua New Guinea, particularly in accessing the justice system, health care and employment.
12. The equality provisions of the Constitution only govern the relationship between the State and its citizens.¹³ Accordingly, even if amended to include sexual orientation, gender identity and intersex status, Constitutional provisions would only apply to the public sector and not to private entities.
13. Aside from failing to protect LGBTI persons from discrimination by the State (via the Constitution), Papua New Guinea lacks any laws that would protect LGBTI people from discrimination by private entities and citizens. Such laws need to be accompanied by a mechanism that provides effective remedies to victims of discrimination, such as a human rights or equal opportunity body. Papua New Guinea does not yet have a working National Human Rights Institution (**NHRI**), despite agreeing to establish one as early as 1997.¹⁴

Recommendations

The Independent State of Papua New Guinea should:

14. Introduce legislation prohibiting for discrimination on the grounds of sexual orientation, gender identity and intersex status in all areas of public life, including employment, education, housing, healthcare and access to goods and services, and provide remedies for breaches;
15. Introduce a human rights or equal opportunity body operating in line with the Paris Principles to investigate and address discrimination, including against LGBTI persons;
16. Amend its Constitution so as to prohibit discrimination on the grounds of sexual orientation, gender identity and intersex status;

Introduce public education and awareness campaigns to reduce stigma and discrimination.

Access to the justice system

17. MSM and transgender people experience significant levels of discrimination and violence when dealing with police in Papua New Guinea, including physical and sexual abuse and blackmail.¹⁵ MSM and transgender persons have reported that when violence or abuse is committed against them by other members of the

¹² *Constitution of the Independent State of Papua New Guinea 1975*, Section 55.

¹³ P. Imrana Jalal, "Legal Protection against Discrimination in Pacific Island Countries", *The Equal Rights Review* (Vol 2, 2008), p. 35 <<http://www.equalrightstrust.org/ertdocumentbank/Jalal%20article.pdf>>.

¹⁴ United Nations Human Rights Council, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Papua New Guinea*, 18th sess, UN Doc A/HRC/WG.6/11/PNG/1 (9 May 2011) [36].

¹⁵ A qualitative survey conducted between April and May 2011, investigating violence against MSM and transgender people in Papua New Guinea, found that police are one of main perpetrators of violence and discrimination against these populations: FHI 360, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities* (April 2013), p. 21 <http://www.fhi360.org/sites/default/files/media/documents/GBV%20Study%20report_Final.pdf>.

community, they are reluctant to report this to police because of fear of further violence and stigmatisation, as well as lack of action by police in investigating the matter.¹⁶

18. As a result, MSM and transgender people are often unwilling to seek protection from police. This impedes their access to justice and places them at a significantly greater risk of physical violence and other forms of discrimination from the community.¹⁷
19. There have also been reports of police selectively enforcing laws in a manner that disproportionately targets MSM and transgender people.¹⁸ This is particularly the case with offences under the *HIV/AIDS Management and Prevention Act 2003*, which criminalises intentional transmission of the HIV virus.¹⁹

Recommendations

The Independent State of Papua New Guinea should:

20. Introduce training for members of the police force in respect of LGBTI issues;
21. Audit police treatment of LGBTI persons and aim for the elimination of police discrimination and violence towards LGBTI persons.

Access to health services

22. MSM and transgender persons are more likely than other groups to face stigma and discrimination in accessing health services.²⁰ MSM and transgender persons are particularly stigmatised when presenting for check-ups, tests and treatment in relation to possible sexually transmitted diseases.²¹ These impediments to accessing health care services not only disproportionately affect these vulnerable populations, but generally increase the high prevalence of the HIV epidemic among LGBTI people in Papua New Guinea.²²
23. The National Health Plan 2011-2020²³ does not make any mention of MSM, transgender persons and other members of the LGBTI communities. As a result, the National Health Plan does not address the specific risks and vulnerabilities facing LGBTI persons. The risks include high rates of HIV infection as a result of the criminalisation of same-sex relations,²⁴ as well as mental and physical health issues

¹⁶ FHI 360, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities* (April 2013), p. 21.

¹⁷ FHI 360, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities* (April 2013), p. 21–22.

¹⁸ The Hon Michael Kirby AC CMG, *Papua New Guinea National Consultation on HIV, Human Rights and the Law*, pp. 3–4.

¹⁹ *HIV/AIDS Management and Prevention Act 2003*, section 23.

²⁰ FHI 360, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities* (April 2013), p. 21.

²¹ For instance, Friends Frangipani (Papua New Guinea's sex work support coalition) has reported high levels of stigma and mistreatment of transgender sex workers when trying to access services at health clinics: Australian Broadcasting Network, "Reduce sex work stigma in PNG to bring down numbers of AIDS deaths, says Port Moresby governor", 6 December 2014 <<http://www.abc.net.au/news/2014-12-06/aids-hiv-png-moves-to-reduce-sex-worker-discrimination/5948820>>.

²² The Hon. Michael Kirby AC CMG, *Papua New Guinea National Consultation on HIV, Human Rights and the Law*, p 3.

²³ Government of Papua New Guinea, *National Health Plan 2011-2020*, June 2010 <www.health.gov.pg/publications/PNGNHP%20Vol1_2014.pdf>.

²⁴ Dame Carol Kidu, "A National Response to the HIV Epidemic in Papua New Guinea", *UN Chronicle*, May 2011 <<http://unchronicle.un.org/article/national-response-hiv-epidemic-papua-new-guinea/>>.

arising from disproportionate rates of discrimination and physical and sexual violence.²⁵

Recommendations

The Independent State of Papua New Guinea should:

24. Conduct training of health care professions to increase sensitivity towards LGBTI issues;
25. Recognise the significant health risks facing LGBTI persons in its National Health Plan and implement policies targeted at reducing these risks.

Access to employment

26. A very significant proportion of MSM and transgender people in Papua New Guinea are unemployed.²⁶ The discrimination and stigma that these populations face in accessing the formal job market result in many MSM and transgender people engaging in sex work for their livelihood. The fact that both sex work and consenting sex between adult males is criminalised in Papua New Guinea²⁷ significantly increases the risks of violence and exposure to sexually transmitted infections for MSM and transgender sex workers.²⁸
27. The State of Papua New Guinea has not taken any action to redress the employment barriers facing LGBTI people. In particular, there are no legislative provisions, whether within the *Employment Act 1978* or more broadly, that prohibit discrimination in employment on the grounds of sexual orientation, gender identity or intersex status.

Recommendations

The Independent State of Papua New Guinea should:

28. Amend the *Employment Act 1978* to prohibit discrimination against LGBTI persons on the grounds of sexual orientation, gender identity and intersex status.

²⁵ In a qualitative study conducted between April and May 2011, 19 out of 23 (83%) surveyed MSM and transgender persons reporting having experienced physical violence and 15 out of 23 (65%) reported having experienced sexual violence. FHI 360, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities* (April 2013), pp. 19–22. The study also notes the well-established link between gender-based harassment and violence (including against LGBTI persons) and “physical and mental health issues such as suicidal behaviors, depression and social isolation”: Ibid, p. 6.

²⁶ A qualitative survey into gender-based violence against MSM and transgender people in Papua New Guinea, conducted between April and May 2011, found that almost half of participants were unemployed: FHI 360, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities* (April 2013), pp. 22-23.

²⁷ *Summary Offences Act 1977* Part VII (criminalisation of sex work); *Criminal Code Act 1974* ss 210 and 212 (criminalisation of consensual sex between adult males).

²⁸ FHI 360, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities* (April 2013), pp. 22-23; Dame Carol Kidu, “A National Response to the HIV Epidemic in Papua New Guinea”, *UN Chronicle*, May 2011 <<http://unchronicle.un.org/article/national-response-hiv-epidemic-papua-new-guinea/>>.