

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

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Kaleidoscope

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Kaleidoscope is a not-for-profit organisation based in Australia that seeks to advance the human rights of lesbian, gay, bisexual, transgender, and intersex people in the Asia Pacific region



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The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Argentina, and South Africa that work together to advance human rights related to sexuality at the United Nations.

1 EXECUTIVE SUMMARY

- 1.1 This report has been prepared by Kaleidoscope Human Rights Foundation.¹ It highlights instances where Papua New Guinea is failing to adequately protect the rights of lesbian, gay, bisexual, transgender, queer, and intersex (**LGBTQI**) persons.
- 1.2 Since its last Universal Periodic Review in 2016, Papua New Guinea has failed to enact any laws or policies that protect against discrimination on the basis of sexual orientation, gender identity and intersex status. Papua New Guinea continues to criminalise consensual sexual acts between men, which has resulted in widespread social discrimination and stigmatisation, including against gay refugees within detention centres.
- 1.3 Although Papua New Guinea does not have any laws that criminalise relations between, or discriminate against, lesbian, bisexual, transgender, queer and intersex persons, there are also no laws or policies that protect these people and outlaw discrimination based on sexual orientation and gender identity

2 LACK OF PROGRESS IN THE PROTECTION OF LGBTQI RIGHTS

- 2.1 Previous Universal Periodic Reviews in respect of Papua New Guinea, both in 2011 and 2016, recommended that sexual relations between consenting adults of the same sex be decriminalised and national legislation be amended to include sexual orientation and gender as prohibited grounds for discrimination.²
- 2.2 These recommendations were rejected by Papua New Guinea in 2011, on the basis that '*there is ongoing national consultation on this issue and as such no definite answer can be provided at this stage*'. In 2016, these recommendations were "noted", and it was stated that '*LGBT is currently not a priority of the Government*'.³
- 2.3 Since these recommendations were made, no legislative action has been taken to protect the human rights of LGBTQI persons in Papua New Guinea.

3 CRIMINALISATION OF SEXUAL ACTS BETWEEN CONSENTING ADULTS OF THE SAME SEX

- 3.1 Sexual relations between consenting adult men remains a punishable offence under *Criminal Code Act 1974* ('*Criminal Code*'), section 210. This carries a maximum

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, queer, and intersex (**LGBTQI**) persons in the Asia-Pacific Region.

² United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Papua New Guinea*, 18th sess, UN Doc A/HRC/18/18 (11 July 2011) [79.52]—[79.54]; United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Papua New Guinea*, 33rd sess, UN Doc A/GRC/33/10 (16 July 2016) [104.75]—[104.79].

³ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Papua New Guinea, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 33rd sess, UN Doc A/HRC/33/10/Add.1 (22 September 2016) [53].

penalty of 14 years imprisonment.⁴ 'Indecent practices between males' is also an offence under *Criminal Code* section 212, carrying a maximum penalty of 3 years imprisonment.⁵ The *Criminal Code* does not include equivalent sections that criminalise sexual relations between women.

- 3.2 While there have been no reports of prosecutions of men who have sex with men (**MSM**) under the *Criminal Code* since the last Universal Periodic Review, the criminalisation continues to reinforce negative views towards all LGBTQI people and makes them vulnerable to discrimination and societal stigmatisation within the Papua New Guinean community. This was highlighted in 2015, when Mr Joe Sevese was prosecuted for committing indecent acts between males and was sentenced to a suspended sentence of two years imprisonment in order to "*deter [him] and others from indulging in this type of behaviour.*"⁶
- 3.3 This vulnerability has been highlighted by reports of the mistreatment of MSM in detention centres such as Manus Island. Asylum seekers reported that MSM are either sexually abused, assaulted, or shunned by the other men, and are warned upon arrival that any homosexual activity in the camps will be mandatorily reported to police.⁷ Although Manus Island detention centre was closed in 2017, many of the former detainees remain fearful of persecution based on their sexual orientation or gender identity.

3.4 Recommendation:

- (1) Repeal sections 210 and 212 of the *Criminal Code* in order to decriminalise sexual relations between men.

4 LACK OF ANTI-DISCRIMINATION PROTECTIONS FOR LGBTQI PERSONS

- 4.1 Papua New Guinea's Constitution states that all persons are entitled to the fundamental rights and freedoms of the individual, which includes '*life, liberty, security of the person and the protection of the law*' and "*freedom from inhuman treatment*".⁸ It specifically states in the preamble and in article 55 that the same rights

⁴ *Criminal Code Act 1974. Section 210*, titled "Unnatural Offences" provides that a person who sexually penetrates any person against the "order of nature" or permits a male person to sexually penetrate him or her against the "order of nature" is guilty of a crime which is punishable by imprisonment for a maximum of 14 years.

⁵ *Criminal Code Act 1974. Section 212*, titled "Indecent Practices Between Males" provides that a male person, whether in public or private who commits an act of "gross indecency" with another male person or procures another male person to commit an act of "gross indecency" with him or attempts to procure the commission of any such act by a male person with himself or with another male person is guilty of a misdemeanour which is punishable by imprisonment for a maximum of 3 years.

⁶ Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, at 55: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf.

⁷ Human Rights Watch 2017, 'Submission by Human Rights Watch on Australia to the Committee on Economic, Social and Cultural Rights, 2 May 2017, viewed 8 March 2021, <https://www.hrw.org/news/2017/05/02/submission-human-rights-watch-australia-committee-economic-social-and-cultural>; Starcevic, S 2018, 'What now for the gay refugees of Manus Island?', *Adelaide Now*, 23 January 2018, viewed 8 March 2021, <https://www.adelaidenow.com.au/rendezview/what-now-for-the-gay-refugees-of-manus-island/news-story/5f2557ddead4fdbec9e03d3aca87366>.

⁸ *Constitution of the Independent State of Papua New Guinea*, preamble and article 55.

and privileges should be afforded irrespective of race, political opinion, colour, or sex, but does not include sexual orientation or gender identity.

4.2 Recommendations:

- (2) Amend the preamble and article 55 of the Constitution to include sexual orientation and gender identity as grounds which cannot be used to restrict entitlement to fundamental rights and freedoms of the individual.
- (3) Introduce laws and policies to prohibit discrimination on the basis of sexual orientation, gender identity, and intersex status. Protections should be applied across various areas of law, including health care, access to the justice system, housing, education, and employment.⁹

5 ACCESS TO THE JUSTICE SYSTEM

5.1 Since the last Universal Periodic Review in 2016, Papua New Guinea has not taken any action to redress the barriers to justice faced by LGBTIQI people. 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.¹⁰ MSM and transgender persons have reported that when violence or abuse is committed against them, 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.¹¹

5.2 The gay community has also reported distrust when dealing with police after a gay man was allegedly killed by a relative in the resort town of Alotau in 2016, after being accused of not being “proper”. The police’s investigation has stalled, and friends of the accused believe that a lack of investigation and trial by state law could encourage continued violence against the gay community due to the lack of significant consequences.¹² As a result, MSM and transgender people are often unwilling to report to the police. This impedes their access to justice and places them at a significantly greater risk of physical violence and other forms of discrimination.¹³

⁹ For example, in Australia, employment discrimination on the ground of sexual orientation is unlawful in accordance with the *Fair Work Act 2009*, same-sex marriage is legalised, and sex discrimination based on sexual orientation, gender identity and intersex status is prohibited generally under the *Sex Discrimination Act 1984* after the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* was passed.

¹⁰ A qualitative survey conducted between April and May 2011, investigating violence against gay men 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.

¹¹ FHI 360, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities* (April 2013), p. 21.

¹² ABC News 2016, “Papua New Guinea gay community mourns man allegedly killed by relative”, 18 October 2016, viewed 12 March 2021, <https://www.abc.net.au/news/2016-10-18/png-gay-community-mourns-man-allegedly-killed-by-relative/7941300>.

¹³ The National 2019, “Stigma denies homosexuals access to health services”, 20 May 2019, viewed 15 March 2021, <https://www.thenational.com.pg/stigma-denies-homosexuals-access-to-health-services/>; FHI 360, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities* (April 2013), p. 21-22.

5.3 There have also been reports of police selectively enforcing laws in a manner that disproportionately targets MSM and transgender people.¹⁴ An example of this is the selective enforcement of offences under the *HIV/AIDS Management and Prevention Act 2003*, which criminalises intentional transmission of the HIV virus.¹⁵

5.4 Recommendations:

- (4) Develop and implement training for members of the police force in respect of LGBTQI issues;
- (5) Audit police treatment of LGBTQI persons and aim for the elimination of police discrimination and violence towards LGBTQI persons. Establish mechanisms to hold police accountable for harassment and impunity.
- (6) Decriminalise HIV transmission and repeal the relevant section from the *HIV/AIDS Management and Prevention Act 2003*.

6 ACCESS TO HEALTHCARE SERVICES

6.1 MSM and transgender persons continue to face stigma and discrimination in accessing health services.¹⁶ MSM and transgender persons are particularly stigmatised when presenting for check-ups, tests and treatment in relation to possible sexually transmitted infections.¹⁷ These barriers to accessing health care services not only disproportionately affect these vulnerable populations, but generally increase the high prevalence of HIV among LGBTQI people in Papua New Guinea.¹⁸

6.2 Since the last Universal Periodic Review in 2016, Papua New Guinea has not taken any action to redress these barriers to healthcare access. The National Health Plan 2011-2020 does not address the unique health issues affecting LGBTQI persons and an updated National Health Plan is yet to be released. These issues include high rates of HIV infection, increased vulnerability to mental health issues, and a lack of access to services for transgender persons seeking to transition.

6.3 Recommendations:

- (6) Develop and implement training for health care professionals to increase respect for LGBTQI patients;

¹⁴ The Hon Michael Kirby AC CMG, *Papua New Guinea National Consultation on HIV, Human Rights and the Law*, pp. 3-4.

¹⁵ *HIV/AIDS Management and Prevention Act 2003*, section 23.

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 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>.

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

- (7) Recognise the significant health risks facing LGBTQI persons in its National Health Plan and implement policies targeted at reducing these risks.
- (8) Ensure universal access to sexual and reproductive health services.

7 ACCESS TO EMPLOYMENT

7.1 Unemployment disproportionately affects MSM and transgender people in Papua New Guinea.¹⁹ As these groups face significant discrimination in gaining formal employment, many MSM and transgender people turn to sex work. As both sex work and sexual acts between men are criminalised in Papua New Guinea, this significantly increases the risk of violence and exposure to sexually transmitted infections for MSM and transgender sex workers.²⁰

7.2 Since the last Universal Periodic Review, Papua New Guinea has not taken any action to redress the employment barriers facing LGBTQI 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.

7.3 Recommendation:

- (8) Amend the *Employment Act 1978* to prohibit discrimination against LGBTQI persons on the grounds of sexual orientation, gender identity, and intersex status.
- (9) Fully decriminalise sex work and repeal loitering and vagrancy laws. Move towards making sex work a part of the formal economy.

¹⁹ 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), p. 22-23.

²⁰ 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-papue-new-guinea/>.