



PAPUA NEW GUINEA  
Kapul Champions  
Single Submission to the UN Universal Periodic Review  
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# SUBMISSION

## Introduction

In this submission Kapul Champions aims to highlight 4 key Human Rights Issues which are affecting lesbian, gays, bisexual, transgender and intrasex people (LGBTI) in PNG. These issues are **Deprivation of LGBTI general rights to Freedom of Movement and Expression, deprivation of LGBTI rights to access Health Services; deprivation of LGBTI rights to Education and Employment, and lack of recognition of gender identity among transgender people.** Many of these deprivations of rights relate to the criminalisation of sexual relations between consenting adults of the same-sex in PNG. The experiences of rights violations outlined below are drawn from the experiences of Kapul Champions members.

## Background of LGBTI issues in PNG

1. Sexual relations between consenting adults of the same-sex is currently prohibited under Sections 210 and 212 of the PNG Criminal Code (1974), based on legislation inherited from Queensland, Australia when PNG was under Australian administration. Specifically, the Criminal Code 1974 Section 210 provides for the offence of sexual penetration against the order of nature. Penalty: Imprisonment for a term not exceeding 14 years. Section 212 provides for the offence of gross indecency between males. Penalty: Imprisonment for a term not exceeding 3 years.<sup>1</sup>
2. During the previous UPR round, the issue of decriminalising sexual relations between consenting adults of the same sex was raised to the PNG government by the governments of France, Slovenia and United Kingdom<sup>2</sup>.
3. In 2011, the government informed the United Nations that it will not decriminalise homosexuality<sup>3</sup>.
4. PNG former Member of Parliament Dame Carol Kidu in 2012 described gay Papua New Guineans as being forced to live lives of secrecy, and called unsuccessfully on the government to decriminalise homosexuality<sup>4</sup>.
5. At this time, Prime Minister Peter O'Neill explained that there were "strong feelings" against homosexuality in the country, which was "yet to accept such sexual openness"<sup>5</sup>.
6. In addition, PNG's customary and religious beliefs have strong taboos towards the practice of homosexuality. Individuals engaged in homosexual practices are therefore seen to be not only breaching PNG Law but also religious and local traditional customs<sup>6</sup>.
7. As a consequences of the law combined with the religious and traditional customs, the society is encouraged to abuse, stigmatise and discriminate against of LGBTI particularly transgender (TG) people and men who have sex with men (MSM).

8. The HIV and AIDS Management and Prevention Act (HAMP Act, 2003), while providing protection against discrimination for people living with HIV, and guaranteeing access to HIV testing and treatment services for all, does not contain any specific protections for LGBTI, nor for particularly needs of people living with HIV related to sexual orientation, or gender identity and expression (SOGIE)<sup>7</sup>.
9. The HAMP Act is outdated in terms of availability of new biomedical advances (Treatment as Prevention, PEP, and PrEP).

## **Discrimination against LGBTI and Deprivation of LGBTI Rights to Education and Employment**

### **Issues**

1. Bullying and violence is a problem in Papua New Guinean schools, especially for young LGBTI people.
2. School aged LGBTI are forced to leave school due to high rate of stigma and discrimination they encounter from their peers and parents.
3. Teachers are not sensitised regarding LGBTI issues and there are no protections for the rights of LGBTI people in school.
4. LGBTI people, particularly transgender people, report being discriminated in the workplace, and often find it difficult to get past recruitment stage.
5. As a result of these experiences, many LGBTI people have low educational status, and are unable to secure decent employment, relying on selling sex for their livelihood. In this regard, many LGBTI are also affected by the criminalisation in PNG of sex work. Given the recent resolution from Amnesty International in support of decriminalisation of sex work<sup>8</sup>, and evidence published in the Lancet that decriminalisation of sex work would result in a 40% reduction in transmission of HIV among sex workers, the government should investigate the impact of criminalisation of sex work in PNG. Models of decriminalisation are available from New South Wales and New Zealand for potential adaptation to PNG.

### **Examples presenting lived experiences of LGBTI in PNG:**

#### ***“When I was at school I was discriminated by my teachers”<sup>10</sup>***

*Hamilton is a transgender woman from East New Britain Province. Hamilton left school at grade nine (9) because she could not put up with the rate of bullying and abuse she experienced from her peers and teachers at school on a daily basis. Just like any ordinary child, Hamilton had dreams and career ambitions. However, she was not able to achieve her dreams as she could not pursue her education in the formal education system (Hamilton Issimel, 2015).*

## **Discrimination against LGBTI and Deprivation of LGBTI Rights to access Health Services**

### **Issues**

1. LGBTI are not able to freely seek sexual health services due to high rate of stigma and discrimination encountered at the clinics. Clinicians often stigmatise and discriminate them when they seek health services. This has caused many LGBTI to withdraw from seeking health checks.

2. Kapul Champions is aware of several cases where MSM or transgender people died due to lack of treatment for HIV related illnesses.
3. LGBTI are often deprived of access to basic health service. There are incidences where clinicians knowingly avoid serving them at clinics or health care centres.
4. Due to fear of being stigmatised and discriminated at the clinics. LGBTI are often reluctant to seek health advice and services. Kapul Champions is aware of a significant number of LGBTI who are infected with Sexually Transmitted Infections or HIV but have delayed seeking health advice and treatment. As outlined above, in some of the cases that Kapul Champions is aware of, delayed or disrupted treatment has resulted in avoidable death of LGBTI people.
5. There is a higher rate of HIV and STI among transgender people and MSM in PNG compared to the general population.
6. Kapul Champions has observed a high number of deaths from HIV and OI among transwomen and MSM in PNG, with a low rate of access to ARV among HIV positive transwomen and MSM.
7. Hormone Therapy for transgender people is not available in health settings in Papua New Guinea.
8. Pre Exposure Prophylaxis (PrEP) is not available in PNG for MSM and transgender people.
9. There is a lack of specialized doctors for transgender people.
10. There is a lack of mental health service for LGBTI people.

### **Examples presenting lived experiences of LGBTI in PNG:**

#### **Gay men's lack of access to user-friendly health services.<sup>11</sup>**

*Iru Tau is a gay man from Central Province. He had some health concerns and needed to seek medical advice from a doctor. He went to a government clinic and waited on queue to be served. Whilst waiting, he noticed that the doctor ignored him and served other patients who had arrived after him. When it was finally his turn to see the doctor, the doctor advised him to wait further, whilst he was waiting the doctor left the clinic through the back door without serving Iru. Iru was dismayed minutes later when he learnt the doctor had departed to avoid providing him with a consultation (Iru Tau, 2015)*

### **Lack of recognition of preferred gender identity among transgender people**

#### **Issues**

1. PNG does not currently have any avenue for transgender people to have their sex at birth changed to reflect their preferred gender identity.
2. Following government leadership in this area from around the Asia Pacific region, particularly in Nepal and Bangladesh, the government of PNG should provide means for transgender people to revise their sex at birth on their identity documentation.
3. The inability to revise their identity documentation results in huge challenges in the lives of transgender people, particularly regarding access to employment and education.

### **Examples presenting lived experiences of LGBTI in PNG:**

#### ***Transgender experiences in detention.<sup>12</sup>***

*Transgender women who are arrested and detained in prison, experience challenges in gender based violence and sexual assault if they are placed in the male section of the prison. In one recent case of arrest of a transgender woman in Lae in 2014, local NGO were successful in requesting the woman be placed in the female section of the prison. This instance is a positive case of recognition of the gender identity of transgender people in PNG.*

## **Law and LGBTI Rights in PNG**

### **Issues**

**Criminal Code:** Male same-sex sexual activity is prohibited under Sections 210 and 212 of the Papua New Guinea Criminal Code.

- i. Those caught engaging in anal sex can be punished with up to fourteen years imprisonment
- ii. Other same-sex sexual acts can be punished with up to three years imprisonment

Sections 210 and 212 of the PNG Criminal Code are contradictory to the following sections of the PNG Constitution<sup>13</sup>.

#### **1. The Right to Equality of Citizens**

This law stipulates that all PNG Citizens have the same rights, privileges, obligations and duties regardless of their race, ethnicity, political affiliation creed religion or sex. Thus, LGBTI have equal right as any other PNG citizen and must be treated equally.

#### **2. The Right to Protection of the Law**

This law states that every PNG Citizen has the right to full protection of the Law. The commonly reported practice of police abuse and blackmail against LGBTI is totally in contradiction to this Law. As PNG citizens, regardless of their sexual orientation or identity, LGBTI are constitutionally entitled to the full protection of the Law.

#### **3. The Right to freedom of Expression**

This law provides citizens the right to express themselves in different ways. Under this law LGBTI have the right to express their sexual identity as long as they do not pose risk or harm to other members of the society

#### **4. The right to Freedom from Inhuman Treatment**

Under this law every PNG citizen has the right to be free from any form of inhuman treatment such as physical, verbal and emotional abuse and deprivation of basic services such as health and protection of the Law.

## **Recommendations to the Government of PNG**

It is clear as a result of Sections 210 and 212 of the Criminal Code the rights of LGBTI in PNG are greatly abused, in contradiction to the rights guaranteed to all citizens under the PNG Constitution<sup>14</sup>. Therefore Kapul Champions, on behalf of communities of men who have sex with men and transgender people in PNG, present the following recommendations:

### **General Recommendations**

1. PNG must repeal laws that criminalise sexual relations between consenting adults of the same sex, as these laws violate the rights of PNG citizens, and impede the country's response to HIV;
2. PNG's laws and constitution should be aligned to international standards as well as with all international covenants, conventions, and declarations that PNG has committed to;
3. Ensure implementation of the HAMP Act to ensure access to HIV-prevention, information, education, modalities and services; to HIV treatment among LGBTI people.
4. More vigorously monitor progress towards universal access for all citizens and residents of Papua New Guinea to HIV prevention, treatment, care and support as a part of the right to health and non-discrimination;
5. Investigate human rights abuses perpetrated by government officials such as law enforcement officers on the basis of sexual orientation and gender identity and expression;
6. Investigate the impact of criminalisation, including national level criminal laws on sex workers and other groups and to take action on any and all violations;
7. Ensure the existence and enforcement of laws and regulations that penalise people who discriminate against and assault LGBTI people.
8. Ensure public spaces are safe for LGBTI people to move around freely.

#### **Recommendation to support LGBTI Rights to access of Health Services**

9. Ensure equal access to health care for LGBTI people and their communities.
10. Guarantee that public health systems provide comprehensive quality services that are acceptable and accessible to LGBTI and that appropriate training is provided to health care workers.
11. Ensure the safety of, access to, and quality of comprehensive health care for LGBTI people in detention, and that they are kept in a facility according to their expressed gender identity.
12. Ensure Hormone Therapy and Pre Exposure Prophylaxis are available at private and government clinics for transgender people and MSM.

#### **Recommendation to support LGBTI Rights to Education and Employment**

13. Ensure that LGBTI people have equal rights for employment opportunities in public and private sectors.
14. Ensure that measures are taken to guarantee respect for people of diverse sexual orientation and gender identity and expression, and the integrity of LGBTI minors, in education in order to prevent dropout among LGBTI as a result of homophobia or transphobia.
15. Support the inclusion of gender identity topics in school curricula.
16. Improve the quality of education to provide comprehensive sexuality education which encompasses sex, gender and sexuality diversity, including in government-funded partnership and charter schools.
17. Develop processes and materials for peer education on issues that are relevant to the welfare of LGBTI people, such as self-prescription of hormones, nutrition, and safer sex activities.

#### **Lack of recognition of gender identity among transgender people**

18. Provide a means for transgender people to revise their sex at birth on their identity documentation.