

**Universal Periodic Review of Papua New Guinea
39th Working Group Session**

Joint Stakeholder Submission

Report submitted by:

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Hetura NCD (National Capital District) is a LGBT group working in NCD and Central Province in Papua New Guinea that aims to work in collaboration with transgender communities, to foster community participation, mobilisation and empowerment, and to take ownership and expand the role of our transgender individuals to defend their rights and LGBTI communities in Papua New Guinea.

The KP Partnership Network Advocacy Consortium PNG is a newly formed umbrella body for key population groups and organisations in PNG composed of Igat Hope, Friend Frangipani and Kapul Champions, and has been working closely with Hetura to address issues concerning trans people.

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Asia Pacific Transgender Network (APTN) is a regional organisation that is working towards the advancement of human rights and bodily autonomy of transgender and gender diverse people in the Asia Pacific region.

This report has been prepared by Hetura NCD LGBT Group, KP Advocacy Consortium and Asia Pacific Transgender Network (APTN). This report draws data from a peer-led study on the rights and social experiences of trans and gender diverse communities, led by APTN and its country partners in Papua New Guinea (PNG).¹ The peer-led study interviewed a total of fifty-two (52) respondents in PNG, the majority of the respondents came from the nation's Capital, Port Moresby, while a few respondents came from neighbouring Central Province. The youngest person in the research sample was 19 and the oldest was 52, with a mean age of 30.48. Of the 52 survey respondents, 49 identified as Christian, and of the few who specified beyond this, one was Bahai, one United Church, and two Seventh Day Adventists. In terms of gender identity, majority of the respondents identified as trans woman/trans feminine (28.8% or 15 individuals), Palopa (28.8%), as well as identifying as both as transgender woman/Palopa (23.1% or 12 individuals). Three identified as transgender man/trans masculine, three as transsexual man, one as fa'afafine, one gender fluid, and one provided an 'other' response of 'Male'.

This joint civil society stakeholder submission highlights the discrimination faced by the transgender and gender diverse populations in the healthcare settings. Further, we outlined the legal and administrative barriers experienced by trans and gender diverse people in relation to gender recognition. Finally, we present the situation vis-a-vis criminalisation of same sex relationships and its impact on trans and gender diverse people in Papua New Guinea. The submission also provides key recommendations to accelerate progress on the implementation of constitutional and international human rights obligations with respect to legal gender recognition, right to health, and right to non-discrimination and equality.

Key words: legal gender recognition; access to health for transgender and gender diverse people; non-discrimination and equality for transgender and gender diverse people; decriminalisation of same sex relationships; transgender rights

¹ Asia Pacific Transgender Network and Hetura NCD LGBT Group. Peer-led study on the rights and social experiences of trans and gender diverse people in Papua New Guinea. Bangkok: APTN, 2020.

General Context

1. Papua New Guinea (PNG) is culturally diverse and one of the world's most linguistically diverse countries with more than 800 native languages. The country has a population of 7.06 million, majority of which (87.5%) living in rural areas. The average life expectancy is 63.2 years while nearly forty percent of the population is aged under 15 years. The country is divided into 22 provinces, 89 districts and four regions. Main spoken languages are English (official) and Tok Pisin (an English-based Creole).
2. Identifying as Lesbian, Gay, Bisexual, and Transgender (LGBT) carries heavy stigma in PNG as same sexual consensual relationships between two adults still remain criminalised.² As a result, trans and gender diverse communities in PNG face major obstacles in being able to live their lives free of discrimination, and the LGB population overall continue to experience harassment and abuse from the police.³
3. The country's constitution provides for equality under the law for all people in PNG regardless of their gender identity. Although no laws criminalise trans or gender diverse identities in PNG, they are noticeably absent in important legislative and policy frameworks. In PNG, much like elsewhere in the Pacific, there is no provision for the legal change of name or gender marker which are particularly important for the transgender community to live as their authentic selves.⁴ Passport regulations currently only provide options for change of name.⁵
4. Stigma and discrimination is a huge barrier to receiving health services. Many of our survey respondents reported having had negative experiences with police, including harassment, with 30.8% (n=16) having experienced this at least once. Examples given included many instances of being harassed for their gender identity and/or expression. Our study reveals that at least 15.4% have been fined at least once because of their gender identity/expression. Many examples of fines or arrests are police using the pretext of suspicion of engaging in sex work. Further, there were number of reported instances of rape and sexual abuse by police, often in the context of blackmail and extortion, as reported by our study participants.
5. Transgender and gender diverse communities are reported to experience high socio-economic vulnerabilities and lack of employment. According to a report published by the PNG Institute of Medical Research (PNG IMR) and Kirby Institute at the University of New South Wales in Sydney, Transgender populations in Port Moresby and Lae had a literacy rate of 80.5-86.7% (being able

² <https://www.hrw.org/world-report/2020/country-chapters/papua-new-guinea#e81181>

³ Ibid.

⁴ Asia Pacific Transgender Network and Hetura NCD LGBT Group. Peer-led study on the rights and social experiences of trans and gender diverse people in Papua New Guinea. Bangkok: APTN, 2020.

⁵ Ibid.

⁶ Kelly, A. et al. (2011) Askim na save (Ask and understand): People Who Sell And/Or Exchange Sex in Port Moresby. Key Quantitative Findings. Papua New Guinea Institute of Medical Research and the University of New South Wales: Sydney, Australia. Retrieved from: https://sphcm.med.unsw.edu.au/sites/default/files/sphcm/Centres_and_Units/Askim_na_Save.pdf

to read and write)⁶, which is far above the national literacy average of around 62%.⁷ Yet, respondents in our research survey demonstrated a high unemployment rate of 45.8-55.6%. This disparity is important to note as the national unemployment average for PNG is estimated to be 2.36% by the World Bank.⁸ The report also highlighted that transgender populations in Papua New Guinea were earning less than 500 Kina per month⁹ which equates to 3.125 Kina per hour over a 40 hour week, below the legally mandated minimum wage of 3.50 Kina per hour.¹⁰ These income disparities are despite transgender respondents being more literate in relation to the rest of the PNG population. At the same time, there are no legislative provisions, whether within the Employment Act 1978 or more broadly, that prohibits discrimination in employment on the grounds of sexual orientation, gender identity or intersex status in PNG.¹¹

6. Socio-economic marginalisation and overall social and cultural environments that promote stigma and discrimination contribute to increased gender-based violence against trans and gender diverse people. It also reported the type of gender-based violence (GBV) against transgender persons most commonly experienced by participants in this study was what has been categorised as “other types of GBV,” including stigma, discrimination, stealing from transgender people, social exclusion, police refusing to file cases for transgender people, clinic staff refusing services, and familial rejection.¹² Alarming, trans people also reported a reluctance to report GBV to police because of fear of further violence and harassment by the police, lack of action by police or even being charged by police for violating laws against same-sex relations.¹³

Barriers to Legal Gender Recognition

7. There are no laws or policies that provide clarity on legal gender recognition processes, nor does the government offer any such possibilities through any programmatic measures. In the absence of a legal gender recognition provision, the trans communities remain on the margins and experience discriminations and social exclusion.
8. Our peer-led study indicated that 90.4% (47) did not have documents with their preferred gender identity on them as there are no guidelines and protocols available with regards to legal change of gender identity.

⁶ Kelly, A. et al. (2011) Askim na save (Ask and understand): People Who Sell And/Or Exchange Sex in Port Moresby. Key Quantitative Findings. Papua New Guinea Institute of Medical Research and the University of New South Wales: Sydney, Australia. Retrieved from: https://sphcm.med.unsw.edu.au/sites/default/files/sphcm/Centres_and_Units/Askim_na_Save.pdf

⁷ UNESCO (n.d.) *Papua New Guinea Education and Literacy: Literacy Rate*. Online. Retrieved from: <http://uis.unesco.org/en/country/pg>

⁸ World Bank (2020) *Unemployment, Total (% Total Labor Force) (Modeled ILO Estimates) – Papua New Guinea*. Online. Retrieved from: <https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=PG>

⁹ 500 Kina=144USD (as per xe currency converter Aug 2020)

¹⁰ Wage Indicator.Org. (2020) Minimum Wage – Papua New Guinea. Online. Retrieved from: <https://wageindicator.org/salary/minimum-wage/papua-new-guinea>

¹¹ *Report on Papua New Guinea Regarding The Human Rights Of LGBTI Persons 25th Session Of The Universal Periodic Review April – May 2016*. Retrieved from: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2689&file=EnglishTranslationInternational>

¹² FHI 360, (2013) *Exploring Gender-Based Violence Among Men Who Have Sex with Men, Male Sex Worker and Transgender Communities in Bangladesh and Papua New Guinea*. p22-23 Retrieved from: https://www.fhi360.org/sites/default/files/media/documents/GBV%20Study%20report_Final.pdf

¹³ Ibid.

Lack of Access to Healthcare

9. Trans and gender diverse people remain invisible in the National Health Plan that guides health provision and strategy in PNG from 2011-2020.¹⁴ Moreover, there is no provision in PNG's health services framework for hormone therapy and gender reassignment surgery.¹⁵ There are several policy documents recognising the importance of gender - all focussing on women and not specifically for trans women. Sex work is also criminalised regardless of the sex of the person,¹⁶ that further deters trans sex workers to access formal healthcare systems.
10. The HIV and AIDS Management and Prevention (HAMP) Act does encourage HIV prevention treatment and care to be provided to all citizens and uses gender neutral language and therefore provides an entry point for trans people to access HIV and AIDS prevention and treatment services.¹⁷ However, specific services that cater to trans communities' unique needs are still absent. Further, transgender people are included as a key population under the National HIV Strategy, unfortunately they remain subsumed under the men who have sex with men (MSM) category.
11. The absence of a focus on the trans community in the country's health plan is indicative of the high burden of STI and HIV infection in transgender populations in PNG. It is estimated that roughly 47,795 people live with HIV in PNG, the highest rate of prevalence in the Pacific.¹⁸ Studies have demonstrated that transgender people, especially those engaged in sex work are at higher risk of HIV. HIV prevalence among MSM and transgender individuals in Port Moresby and Lae are 8.5% and currently the population average is 1.4%.¹⁹ In terms of other STIs, the prevalence of hepatitis B, syphilis, chlamydia, and gonorrhoea was high with 34.0% of MSM and transgender populations in Port Moresby and 42.0% in Lae diagnosed with one or more STI (excluding HIV). One study highlighted that trans sex workers were more likely to be HIV positive than non-trans sex workers.²⁰
12. Broader societal stigma and discrimination affects trans and gender diverse persons' access to healthcare. Of the 52 respondents of our peer-led study, 26.9% said that their gender identity had affected how they were treated in getting public health services, with four saying they had been refused health services often, eight said sometimes, and five said never. In terms of experiences of discrimination, many reported having to wait longer than others: '*being a trans woman they tell me to wait while they serve the rest*'. Some report outright refusal of treatment:

¹⁴ Government of Papua New Guinea, (2010). *National Health Plan 2011-2020*. Retrieved from: www.health.gov.pg/publications/PNGNHP%20Vol1_2014.pdf

¹⁵ Transrespect v Transphobia Worldwide (n.d.) *Legal Situation: Papua New Guinea*. Transgender Europe Online Tool. Accessible at: <https://transrespect.org/en/map/legal-gender-recognition-change-of-name/>

¹⁶ <https://press-files.anu.edu.au/downloads/press/p94091/html/ch05.xhtml?referer=&page=15>

¹⁷ https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_113271.pdf

¹⁸ Kora, A. (2017, October 18). *PNG Tops Pacific's HIV Prevalence List*. Loop. Retrieved from: <http://www.looppng.com/lifestyle/%E2%80%8Bpng-tops-pacifics-hiv-prevalence-list-68139>

¹⁹ Kelly-Hanku, A., et al (2018) *Kauntim mi tu : Multi-Site Summary Report from the Key Population Integrated Bio-Behavioural Survey, Papua New Guinea*. Papua New Guinea Institute of Medical Research and Kirby Institute, UNSW Sydney: Goroka, Papua New Guinea. Retrieved from: https://www.aidsdatahub.org/sites/default/files/publication/PNG_Kauntim_mi_tu_Multi-Site_Summary_Report_from_the_Key_Population_IBBS_2018.pdf

²⁰ Kelly, A. et al. (2011) *Askim na save (Ask and understand): People Who Sell And/Or Exchange Sex in Port Moresby*. Key Quantitative Findings. Papua New Guinea Institute of Medical Research and the University of New South Wales: Sydney, Australia. Retrieved from: https://sphcm.med.unsw.edu.au/sites/default/files/sphcm/Centres_and_Units/Askim_na_Save.pdf

'a male doctor refused to attend to me for treatment because I am a transgender', one of our survey respondents shared. Multiple responses mentioned barriers with receiving treatment for sexual health-related problems specifically, or in one case, *'when I was bringing a fellow transgender sex worker to the hospital'*.²¹

13. The absence of transgender health needs from broader national health policy is reflected in some concerning indicators in terms of access to healthcare, with nearly one-third of our survey respondents having been adversely treated while seeking or receiving general healthcare, including delays and refusal of service. This is dangerous for the trans and gender diverse people of PNG, not just in the moment of being refused or delayed essential healthcare, but in the impact this may have on future healthcare-seeking behaviour, which may be delayed or avoided due to previous negative treatment.
14. Few of our survey respondents had sought gender-affirming transition-related health services (13.5% at least once and 5.8% often), with the most common reason being the lack of service availability. Our survey respondents indicated that barriers to accessing gender-affirming care interventions include general unavailability, but for those who had access, there is a lack of counseling prior to receiving the service.
15. Few of our study respondents have sought mental health care, with only five reporting any experience at all, and the majority of these experiences (3) being neutral or bad.
16. Papua New Guinea has signed and ratified core international human rights treaties and committed to fulfill, respect and protect the right to health for all people. PNG has committed to the 2016 United Nations Political Declaration on Ending AIDS. Under the Sustainable Development Goals, Member States including Papua New Guinea committed to leave no one behind and to end the HIV, tuberculosis and malaria epidemics by 2030. In addition, Papua New Guinea has committed itself to "Strategic result 4.3: A supportive legal and policy environment for STI and HIV program" under its 'National STI and HIV Strategy 2018-2022'.²² Yet very few concrete policy and programmatic actions have been taken to ensure trans and gender diverse people have equitable access to sexual health services without discrimination and stigma.

Criminalisation of same-sex relationships

17. The PNG Criminal Code, Section 210 criminalises sexual penetration described as carnal knowledge "against the order of nature". If found guilty this carries a maximum sentence of 14 years.²³ Only such acts between men are criminalised by this law. In addition, Section 212 prohibits acts of "gross indecency" between men, or the procurement or attempted procurement thereof, with a penalty of up to three years imprisonment. For example, Section 212 was most recently used in 2015 to charge a man from Malalaua District.²⁴ The judge noted that homosexual acts were common, despite the lack of reported cases and while his sentence

²¹ Asia Pacific Transgender Network and Hetura NCD LGBT Group. Peer-led study on the rights and social experiences of trans and gender diverse people in Papua New Guinea. Bangkok: APTN, 2020.

²² National AIDS Council, 'Papua New Guinea: National STI and HIV Strategy 2018-2022', p. 30.

²³ Criminal Code 1974 of Papua New Guinea. *Section 210*. Retrieved from: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/04c49944817d24c8c12576fd00438671/\\$FILE/Papua%20New%20Guinea-%20Criminal%20Code.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/04c49944817d24c8c12576fd00438671/$FILE/Papua%20New%20Guinea-%20Criminal%20Code.pdf)

²⁴ State v Sevese, (2015) PGNC 42; N5961 (5 March 2015, ILGA Survey of State-Sponsored Homophobia (2016) Digest.

was suspended the case was prosecuted, ‘to deter [the defendant] and others from indulging in this type of behaviour.’²⁵

18. Previous attempts to reform the law have been made, with a focus on human rights and public health. In 2009, the Reference Group was constituted, comprising of public and private sector representatives and civil society organisations, including sex workers, MSM, people living with HIV and AIDS (PLHIV) and transgender representatives, and was chaired by the Director of the National AIDS Council Secretariat. The Reference Group made a submission to the National Executive Council (NEC/Cabinet). Technical legal support for drafting the submission was initially provided through the Australian Federation of AIDS Organizations (AFAO), and later by AusAID through the PNG-Australia HIV and AIDS Program. The strategy of the National Executive Council submission was to take a public health approach.²⁶ The National Executive Council declined to make a decision on moral, religious and customary grounds. The National Executive Council directed the Attorney General to refer the issues to the Constitutional Law Reform Commission.²⁷
19. There is a strong degree of resistance in Papua New Guinea to the decriminalisation of same-sex relationships. In 2011 under UPR review, Papua New Guinea noted recommendations to decriminalise sexual relations between consenting adults of the same-sex. Although the delegation stated that “[t]here is an ongoing consultation on this issue and as such no definite answer can be provided at this stage”.²⁸ A Member of Parliament also gave a statement, stating that plans to decriminalise prostitution and allow same-sex marriage have “been shelved between the Government”.²⁹ In 2012, Prime Minister of that time Peter O’Neill stated “[t]here’s very strong feelings about [same-sex intimacy] within the country and I think Papua New Guinea is yet to accept such sexual openness”.³⁰

Review of progress on previous UPR recommendations

20. In its second UPR cycle, Papua New Guinea noted the [recommendations](#) that it received concerning the decriminalisation of consensual same-sex relations between adults and to protect and not discriminate against persons on the basis of their sexual orientation and gender identity. No concrete actions have been taken by the PNG government to implement the recommendations. As outlined in the earlier sections, there is a hostile socio-cultural and political climate for the decriminalisation of same sex relationships.
21. The main program that the government continues to support in PNG is HIV prevention, treatment and care and support. The PNG government in partnership with the Global Fund is

²⁵ Ibid.

²⁶ Minister of Community Development, Policy Submission to National Executive Council, April 2010.

²⁷ Though at a very early stage, in December 2019, the Attorney General recorded that the CLRC was working with the National AIDS Council in the reform of the HAMP Act.

²⁸ UNHRC, ‘Report of the Working Group on the Universal Periodic Review’, (30 September 2011), UN Doc A/HRC/18/18/Add.1, at 75.92.

²⁹ UNHRC, ‘Report of the Working Group on the Universal Periodic Review’, (30 September 2011), UN Doc A/HRC/18/18/Add.1, at 75.92.

³⁰ <https://www.humandignitytrust.org/country-profile/papua-new-guinea/>

implementing a comprehensive TB/HIV prevention programme primarily targeting MSM/Transgender and Sex Workers. The government initiated a health data system capturing MSM and transgender which is a breakthrough as recognising transgender people as a key population could lead to investment of further resources and funding to support transgender people's access to HIV prevention and treatment services.

22. Further, the Key Population Advocacy Consortium was formed in 2019 which comprises members of Igat Hope (HIV positive communities), Kapul Champions (MSM and transgender – together with Hetura NCD) and Friends Frangipani (sex workers) which is a network of communities advocating for issues affecting key populations. The PNG government through the Department of Health has recognised this advocacy group and works in partnership to support a very weak health system in PNG, which is a positive step towards ensuring trans people's access to healthcare.

Recommendations for the 3rd cycle of UPR

Legal Gender Recognition For Transgender Communities

23. Develop legislations/policies and implement comprehensive guidelines that allow legal gender recognition and the ability to self-identify in all official and administrative documents, including the option of identifying as male, female or an alternative option.
24. Ensure that proposed legal gender recognition processes are quick, transparent, affordable and accessible, and respect free and informed choice, bodily autonomy, personal integrity and right to privacy.
25. Implement awareness and sensitisation programs for public officials, local representatives and other state actors on sexual orientation, gender identity and expression (SOGIE) and human rights issues to address stigma among trans and gender diverse people.

Universal Access to Healthcare for Transgender Persons

26. Ensure an enabling legal and policy environment that prioritises the health needs of trans persons as part of health service provision, including for HIV and STIs prevention and treatment and includes strengthening capacities of health care providers to ensure confidentiality, non-discrimination, and respect in healthcare settings.
27. Fully recognise transgender people as a unique and distinct vulnerable population group not to be subsumed under or combined with other key population categories, and clearly define and operationalise transgender people in national health strategic plans and in strategic information data systems.
28. Implement formal training sessions to sensitise health care workers and medical professionals, including auxiliary staff in health facilities, on trans-competent and trans-sensitive healthcare, including gender-affirming healthcare.
29. Adopt policies that integrate rights-based and trans-competent service provision into the health service provider training curricula and in school curricula for medical courses/degrees.

30. Adequately resource and allocate specific health budgets for trans-competent and trans-sensitive healthcare services including STI and HIV services, gender-affirming care and mental health care.

Decriminalisation of Consensual Same-sex Relationships and Sex Work

31. Amend/repeal harmful laws and policies such as the criminalisation of sodomy and same-sex sexual activity, especially for males assigned at birth, in the Criminal Code.
32. Repeal laws and policies that criminalise sex work or prostitution that aggravates police abuse, extortion and harassment against transgender people involved in some form of sex work.
33. Collaborate with the Institute of Human Rights to document human rights violations and utilise the judicial system to prosecute perpetrators of rights violations against trans and gender diverse people.
34. Implement sensitisation trainings for law enforcement authorities, police, correction services including prosecution, legal aid, and the judiciary on rights-based responses for trans and gender diverse people.

Ensuring Non-discrimination and Equal Treatment and Protection for Transgender Persons

35. Amend the non-discrimination clause in the Article 55 (Equality of Citizens) to include sexual orientation, gender identity and expression as a prohibited ground.
36. Amend the Employment Act to include prohibitions on discrimination in employment on the grounds of one's sexual orientation, gender identity and expression.
37. Develop/implement monitoring and redress mechanisms to address and effectively remedy various forms of discrimination faced by trans and gender diverse people in formal and informal workplaces.
38. Adopt policies that ensure that social protection mechanisms are inclusive of trans and gender diverse people and expanded to cover those in informal employment sectors and sex work.
39. Implement formal sensitisation sessions for teachers/educators and people in education settings to better respond to the needs of trans and gender diverse children and young people in schools.
40. Expand the definition of domestic violence in the Family Protection Act to include gender-based violence among people with diverse SOGIE, and revisit the traditional definition of family.
41. Adopt legislation on hate crimes and hate speech that define homophobia, misogyny, biphobia and transphobia.