

## 1. Summary

- 1.1 Kapul Champions is an organisation for people with diverse sexualities and trans people based in Papua New Guinea ("**PNG**"). This submission is based on research, news reports and drawn from the experiences of Kapul Champions members.
- 1.2 We have included narratives of first-hand experiences told to us by people we have interviewed in preparing this submission (indicated by (\*\*\*)), but those narratives are unattributed and anonymised for fear of persecution. Whilst 'LGBT' is not a term widely used in PNG, we have adopted it in this submission due to its common international use.
- 1.3 PNG criminalises same-sex sexual activity and discriminates against LGBT people. The criminalisation of same-sex sexual activity results in abuse towards LGBT people, marginalises them and is shown to negatively impact public health, particularly in relation to HIV.
- 1.4 Kapul Champions submit PNG should legislate to repeal ss 210 and 212 of Criminal Code Act of 1974 and adopt measures to end discrimination against LGBT people.

## 2. Follow up to the final review

- 2.1 Various submissions by NGOs at PNG's 2016 UPR raised issues regarding LGBT human rights. We, Kapul Champions ("**KC**"), submitted that LGBT people had been victims of abuse, stigmatisation and discrimination. We recommended that PNG investigate human rights abuses perpetrated on the basis of sexual orientation and gender identity and ensure equal access to health care and employment for LGBT people. Kaleidoscope Australia Human Rights Foundation and Human Rights Watch expressed similar concerns and recommendations.
- 2.2 In the 2016 Report of the Working Group on the 2016 UPR (the "**2016 Final Report**") five states – New Zealand, Chile, France, Slovenia and Sweden – recommended that PNG repeal the provisions which criminalise sexual relations between consenting same-sex adults and/or prevent discrimination against people on the basis of their sexual orientation.
- 2.3 Those recommendations were not accepted by PNG. It commented:

*"On the issue of the same-sex issue raised by the delegation of Slovenia, I'd like to note here that this is an evolving issue in PNG. **It would require wider national consultation** to be able to come up with a firm national position that the government can take. **Unless and until that happens this issue will not be progressed** but we have noted the number of delegations that have made mention of this particular issue and **we are interested to share with our government on a way forward on this issue**" (emphasis added)*
- 2.4 LGBT issues have been in no way addressed by PNG since the last cycle, and no national consultation has been implemented. Consensual same-sex sexual conduct between two men is still a crime and LGBT people are still widely discriminated against.

### 3. Criminalising Provisions

- 3.1 PNG's Criminal Code Act of 1974 criminalises consensual same-sex relations between men through the following provisions:

*210. Unnatural offences*

*(1) A person who-*

*(a) sexually penetrates any person against the order of nature; or*

*(b) sexually penetrates any animal; or*

*(c) permits a male person to sexually penetrate him or her against the order of nature is guilty of a crime.*

*Penalty: imprisonment for a term not exceeding 14 years.*

*(2) A person who attempts to commit an offence against subsection (1) is guilty of a crime.*

*Penalty: imprisonment for a term not exceeding seven years.*

*212. Indecent Practices Between Males*

*(1) A male person who, whether in public or private –*

*(a) commits an act of gross indecency with another males person; or*

*(b) procures another males person to commit an act of gross indecency with another male person; or*

*(c) 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.*

*Penalty: imprisonment for a term not exceeding three years.*

- 3.2 These provisions are remnants of PNG's time as a British Colony, later administered by Australia, which make same-sex sexual activity unlawful. They are contrary to PNG's constitution<sup>1</sup> and to their international human rights obligations and have no place in a modern PNG.

- 3.3 The criminalising provisions are vague. Phrases such as 'against the order of nature' and 'gross indecency' are open to interpretation and therefore abuse by authorities and those who seek to rely upon them. While same-sex sexual conduct between women is not formally criminalised, this vagueness contributes to stigma against LGBT people in general and lesbian and bisexual women are discriminated against.

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<sup>1</sup> PNG's constitution affords citizens basic rights to "(a) life, liberty, security of the person and the protection of the law; (b) freedom of conscience, of expression, of information and of assembly and association; (c) protection for the privacy of their homes and other property and from unjust deprivation of property". By section 36, citizens have the fundamental right that "No person shall be submitted to torture (whether physical or mental), or to treatment or punishment that is cruel or otherwise inhuman, or is inconsistent with respect for the inherent dignity of the human person". Section 49 sets out the qualified right "Every person has the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects, except to the extent that the exercise of that right is regulated or restricted by a law that complies with Section 38"

## 4. Enforcement

- 4.1 There are relatively few prosecutions relying on the criminalising provisions.
- 4.2 There was in 2015 a prosecution under section 212 (*The State v Sevese*; the defendant pleaded guilty). The defendant was alleged to have received oral sex from another man in a public place, for which he was sentenced to 2 years' imprisonment, suspended.
- 4.3 The court in that case described the offence as being "*against morals and Christian principles [and] specifically against the cultural norms and principles of Oro society*" and that it was "*reflective of the moral decay that is creeping into our society*". The judge also reported that an "*aggravating factor is that while not reported widely this type of behaviour is prevalent*".
- 4.4 The criminalising provisions and comments such as those from the judge reinforce homophobic views. In May 2020, the staff of Australian High Commission in PNG posed with rainbow flags in support of LGBT rights. In response, the Catholic Professionals Society in PNG released a press statement which said<sup>i</sup>:

*"We know that sexual union (sex and marriage) between or among persons of the same sex orientation are illegal in PNG. We also know that same sex activities are against PNG culture and Christian beliefs. It is argued that PNG is built on Christian principles and traditional cultures adopted under our national Constitution."<sup>ii</sup>*

- 4.5 When the leader of the opposition spoke out against the gang rape and assault of a sex worker, someone left a comment in an online news article which read<sup>iii</sup>:

*"You are contradicting the Law of this Land and I wonder why you just don't [sic] get it do you? [...] human beings who practice such activities including gays, bi-sexuals, homo-sexuals and lesbians are categorically not human beings [...] these groups of people are more or less just "Things or Objects".*

This type of comment on public fora is common.

## 5. Overview of conditions for LGBT people in PNG

- 5.1 LGBT people in PNG face threat of prosecution, violence and are unable to enjoy the same freedoms as non-LGBT citizens.

### Victimisation

- 5.2 LGBT people face life threatening violence and widespread stigma<sup>iv,v</sup>. Blackmail<sup>vi</sup>, beatings and sexual violence are commonly endured by the LGBT community in PNG.
- 5.3 Survivors of violence have reported being "*pelted [...] with stones and bottles*"<sup>vii</sup> and "*beaten up and deliberately burned*"<sup>viii</sup>. An incident in 2016 was reported in the Australian press of an openly gay man who was killed by his relative allegedly because he was gay. The report suggested that the police did not properly investigate the murder.<sup>ix</sup>
- 5.4 When members of the LGBT community face violence, that violence is rarely reported to the police for fear of prosecution or mistreatment at the hands of the

police.

\*\*\*\**"I was disturbed by a group of drunkards who arrived at my house to attack me. They yelled out my name saying "hey poofter" [...] and said if I refused to open the door they would get the policemen and show the police the nude photos of us. I gave in and opened the door feeling too scared [...] He kicked [me and] I had blood all over my body and cuts on my face [...] I fell unconscious. [...] I was too afraid to report this incident to the police".*

- 5.5 There are few protections afforded to LGBT people. A 2019 report by Amnesty International stated LGBT people in PNG face a "*high risk of extortion by the security forces*", particularly in the main cities of Port Moresby and Lae<sup>x</sup>. There are also reports of violence towards the LGBT community by the police.<sup>xi</sup> There is no competent independent body to which complaints about the police can be made. Complaints must be made in person to the police's Internal Affairs Directorate ("**IAD**"). Whilst there is an independent Ombudsman Commission which oversees complaints, reports state it is inept and often does not receive police co-operation<sup>xii</sup>.

\*\*\*\**[following an attempted mugging] I ran passed [sic] the police station thinking the police will help me. The police knew I was gay because the boys were shouting and calling me [...] Ass [expletive] [...] two police men followed me so I stopped thinking they will help me. They started searching my pockets for things of value, they got my wallet with some cash inside and they also got my mobile phone. I was standing there helplessly. They threatened me saying that if I report them they will put me in jail because I was gay. They were abusive and calling me gay".*

- 5.6 There are few news articles in PNG written about violence towards LGBT people. In a discourse analysis of newspapers in PNG<sup>xiii</sup>, the authors found *The National* (a prominent newspaper in PNG) in fact regularly published articles condemning homosexuality, often using provocative and stigmatising language with titles such as "*No place for gays*". In September 2020, *The National* did publish one short article concerning LGBT issues, in which it interviewed a gay man<sup>xiv</sup>:

*"I was beaten up by a group of drunken men at the street where I used to live after they found out I was gay. I went to the police station and reported the incident but, instead, was ridiculed and further harassed by the officers at the counter. We are human but no one sees us as human. [...] We are not killing or raping anyone, why are we being condemned simply for choosing to love"*

#### Social isolation, education and employment

- 5.7 LGBT people in PNG face a high risk of rejection by family on the basis of their sexuality. It is understood that over 83.2% of gay men and 88.4% of trans women in PNG kept their sexual identity hidden from their families<sup>xv</sup>.

\*\*\*\**"My father also stood on my side but eventually didn't like the way things were as I was growing up. He disowned me and neglected me as his son. He would say "take him to the village and lock him up". "He's just a waste in our family. I was disowned by the only people that I thought would be my support of strength and that is my own family. I ran away from home because I was said to have brought shame and disgrace to the family name."*

- 5.8 These conditions experienced by the LGBT community have significant ramifications for the mental health of its members: one study suggested that 54.5% of gay men and trans women in the city of Lae suffer from depression<sup>xvi</sup>.

\*\*\*"I started to have suicidal thoughts of harming myself when doing grade 8 [...] I would sit there in my own thoughts going through the many ways I could just end my life as I felt like an outcast and didn't think that life had any worth anymore but the thought of leaving my mother and my siblings was too painful so I silently endured the torment."

- 5.9 Bullying and violence is a problem in PNG schools for young LGBT people. After people grow out of early childhood (where they are traditionally under the protection of their mothers and aunts) acts promoting gender conformity are heightened<sup>xvii</sup>. Young people and they are often forced to leave school as a result of the discrimination they face. As a result, many young LGBT people leave school without qualifications and are less likely to be able to secure employment. If employed, sexuality is hidden for fear of further persecution.

\*\*\*"The verbal abuses from the boys consisted of name calling like "hey girlie girlie, poofter, cock sucker". I was also physically hit by students in the school. Many students wrote derogative names describing me at certain walls of the buildings and in toilet doors and walls. I hated going to school [...]"

\*\*\*"I made that personal decision to resign from my work due to fear from the police who would arrest me due to my sexual activities".

- 5.10 Lesbian women are particularly isolated and hidden. In a recent newspaper report concerning the rights of LGBT people, the reporter asked a lesbian couple about their issues<sup>xviii</sup>:

"If people can't accept prostitution and gay men who do this, then how can they ever accept a woman living with another woman" one partner said. "So I'm not going to waste my time commenting"

#### Public health

- 5.11 PNG has the highest HIV incidence and prevalence in the Pacific region; 95% of the reported HIV cases in the region are in PNG. There are approximately 52,000 people living with HIV in the country<sup>xix</sup>.
- 5.12 The negative correlation between the criminalisation of homosexuality and the effectiveness of HIV/AIDS prevention is well established. The Indian Supreme Court found in 2018 that the sections of its own criminal code which criminalised homosexuality was unconstitutional<sup>xx</sup>. Justice Dr Dhananjaya Y Chandrachud said (page 362, para 83):

**"Laws that criminalize same-sex intercourse create social barriers to accessing healthcare and curb the effective prevention and treatment of HIV/AIDS. Criminal laws are the strongest expression of the State's power to punish certain acts and behaviour, and it is therefore incumbent upon the State to ensure full protection for all persons, including the specific needs of sexual minorities."** (emphasis added)

- 5.13 PNG's national AIDS prevention legislation (The HIV and AIDs Management Act 2003) contains no specific provision or protection for people living with HIV. It does not contain any specific protections for LGBT people.

5.14 UNAIDs reports:

*"marginalized groups, such as sex workers and other women who exchange sex for money, goods and protection, gay men and other men who have sex with men and transgender women, most affected. However, less than half of the people who belong to those vulnerable groups have ever taken a test to know their HIV status"<sup>xxi</sup>.*

5.15 LGBT individuals often feel the need to hide their sexual practices and/or gender identity when accessing sexual health services<sup>xxii</sup>. Stigma and discrimination can occur including in health care institutions. There have also been instances of devastating breaches of confidentiality in outreach centres where, without approval, HIV status and/or sexuality has been disclosed to relatives or community members.

*\*\*\*"Another factor making me scared [is] most of my peers have died from AIDS [...] simply because of fear of stigma and discrimination when accessing services like health care and reporting a rape or sodomy case to the police. We are further abused when trying to access services to support or help us recover from the abuses."*

*\*\*\*"[I] had never had an HIV test. Should [I] get one now? No, a positive result would not be treated with confidence by hospital or clinic staff. [I] was well-aware of the problems gays in PNG experience in locating user-friendly and genuinely confidential health services."*

## 6. Recommendations

6.1 PNG should legislate to repeal the sections 210 and 212 of the Criminal Code Act of 1974.

6.2 PNG should additionally:

- (a) engage an independent third party to collect and analyse statistical data in a systematic and disaggregated manner regarding prejudice against LGBT people, in particular in relation to (i) the prevalence of discrimination (ii) the nature and extent of violence; and (iii) the effect on public health;
- (b) by 1 December 2022, the independent third party should produce a publicly available objective report with its findings from 6.2(a) (the "**Report**");
- (c) by 1 March 2022, PNG should set out its proposed legislative agenda for addressing any issues identified in the Report legislation with a view to prohibiting and punishing all forms of discrimination based on sexual orientation or gender;
- (d) conduct periodic and sustained training activities for PNG public officials, particularly for judges, police officers, prosecutors and in the education, employment and health sectors, on sexual orientation, gender identity and gender expression; and
- (e) ensure PNG's educational programs are designed to enable the deconstruction of stereotypes and prejudices and based on a model promoting the autonomy and fair-treatment of LGBT people.

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- <sup>i</sup> "Aussies take down gay flag" PNG Report, 28 March 2020  
<https://www.pngreport.com/community/news/1387715/aussies-take-down-gay-flag>
- <sup>ii</sup> "Namah supports call to protect sex workers", The National, 10 September 2020  
<https://www.thenational.com.pg/namah-supports-call-to-protect-sex-workers/>
- <sup>iii</sup> "Namah supports call to protect sex workers" The National, 10 September 2020  
<https://www.thenational.com.pg/namah-supports-call-to-protect-sex-workers/>
- <sup>iv</sup> "Papua New Guinea's 'gay village' offers sanctuary, hope", Rappler, 1 December 2018  
<https://www.rappler.com/world/regions/asia-pacific/217944-papua-new-guinea-gay-village>
- <sup>v</sup> "Portrait of an activist: Emmanuel Peni", Amnesty International, 30 May 2019  
<https://www.amnesty.org/en/latest/news/2019/05/portrait-of-an-activist-emmanuel-peni/>
- <sup>vi</sup> "Kauntim Mi Tu Multi-Site Summary Report 2018: Key findings from the Key Population Integrated Bio-Behavioural Survey Papua New Guinea", Kelly-Hanku, A, et al (2018)  
[https://www.aidsdatahub.org/sites/default/files/publication/PNG\\_Kauntim\\_mi\\_tu\\_Multi-Site\\_Summary\\_Report\\_from\\_the\\_Key\\_Population\\_IBBS\\_2018.pdf](https://www.aidsdatahub.org/sites/default/files/publication/PNG_Kauntim_mi_tu_Multi-Site_Summary_Report_from_the_Key_Population_IBBS_2018.pdf)
- <sup>vii</sup> "Hate Crimes against the LGBT Community in the Commonwealth: A Situational Analysis", Human Dignity Tr [https://www.humandignitytrust.org/wp-content/uploads/resources/2020-Hate-Crimes-against-the-LGBT-Community-in-the-Commonwealth\\_A-Situational-Analysis.pdf](https://www.humandignitytrust.org/wp-content/uploads/resources/2020-Hate-Crimes-against-the-LGBT-Community-in-the-Commonwealth_A-Situational-Analysis.pdf)
- <sup>viii</sup> "Papua New Guinea's 'gay village' offers sanctuary, hope", Rappler, 1 December 2018  
<https://www.rappler.com/world/regions/asia-pacific/217944-papua-new-guinea-gay-village>
- <sup>ix</sup> "Papua New Guinea gay community mourns man allegedly killed by relative" Australian Broadcasting Corporation, 18 October 2016  
<https://www.abc.net.au/news/2016-10-18/png-gay-community-mourns-man-allegedly-killed-by-relative/7941300>
- <sup>x</sup> "Portrait of an activist: Emmanuel Peni", Amnesty International, 30 May 2019  
<https://www.amnesty.org/en/latest/news/2019/05/portrait-of-an-activist-emmanuel-peni/>
- <sup>xi</sup> "Papua New Guinea's gay and transgender community finds safety in Hanuabada village" Australian Broadcasting Corporation, 8 October 2014  
<https://www.abc.net.au/news/2014-10-08/living-gay-in-papua-new-guinea/5796236>
- <sup>xii</sup> Section D, "2018 Country Reports on Human Rights Practices: Papua New Guinea", US Department of State <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/papua-new-guinea/>
- <sup>xiii</sup> "Sex, Violence, HIV and Moral Panics. Discourse Analysis HIV, gender based violence and key populations in Papua New Guinea's leading newspapers" Angela Kelly-Hank January 2015.
- <sup>xiv</sup> "LGBTQ community calls for protection, equal rights", The National, 14 September 2020  
<https://www.thenational.com.pg/lgbtq-community-calls-for-protection-equal-rights/>
- <sup>xv</sup> Kauntim Mi Tu Multi-Site Summary Report 2018: Key findings from the Key Population Integrated Bio-Behavioural Survey Papua New Guinea", Kelly-Hanku, A, et al (2018)  
[https://www.aidsdatahub.org/sites/default/files/publication/PNG\\_Kauntim\\_mi\\_tu\\_Multi-Site\\_Summary\\_Report\\_from\\_the\\_Key\\_Population\\_IBBS\\_2018.pdf](https://www.aidsdatahub.org/sites/default/files/publication/PNG_Kauntim_mi_tu_Multi-Site_Summary_Report_from_the_Key_Population_IBBS_2018.pdf)
- <sup>xvi</sup> Ibid
- <sup>xvii</sup> "Gender diversity among 'boys' in Papua New Guinea: memories of sameness and difference in early childhood" Kelly-Hanku et al, *Children & Society*. 2020;00:1-15
- <sup>xviii</sup> "LGBTQ community calls for protection, equal rights", The National, 14 September 2020  
<https://www.thenational.com.pg/lgbtq-community-calls-for-protection-equal-rights/>
- <sup>xix</sup> <https://www.unaids.org/en/regionscountries/countries/papuanewguinea>
- <sup>xx</sup> *Navtej Singh Johar v Union of India* (2018) Supreme Court
- <sup>xxi</sup> "Getting HIV services to marginalized groups in Papua New Guinea", UNAIDS, 11 March 2020  
[https://www.unaids.org/en/resources/presscentre/featurestories/2020/march/20200311\\_papua-new-guinea](https://www.unaids.org/en/resources/presscentre/featurestories/2020/march/20200311_papua-new-guinea)
- <sup>xxii</sup> Kauntim Mi Tu Multi-Site Summary Report 2018: Key findings from the Key Population Integrated Bio-Behavioural Survey Papua New Guinea", Kelly-Hanku, A, et al (2018)  
[https://www.aidsdatahub.org/sites/default/files/publication/PNG\\_Kauntim\\_mi\\_tu\\_Multi-Site\\_Summary\\_Report\\_from\\_the\\_Key\\_Population\\_IBBS\\_2018.pdf](https://www.aidsdatahub.org/sites/default/files/publication/PNG_Kauntim_mi_tu_Multi-Site_Summary_Report_from_the_Key_Population_IBBS_2018.pdf)