

Criminalisation of Homosexuality

Updated 25 October 2015

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|  | Papua New Guinea | |
| <p>National Law:</p> <p>Papua New Guinea <i>Criminal Code 1974 (amended 2002)</i>¹</p> <ul style="list-style-type: none"> - S210: Unnatural Offences² - S212: Indecent Practice between males³ | <p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 14 years' imprisonment (7 years for attempt) - 3 year's imprisonment | <p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICESCR</p> |
| The law is only applicable to men. | | |
| <p>Enforcement</p> | <ul style="list-style-type: none"> - 2014: The 2014 United States report on Papua New Guinea suggests no recent prosecutions under the country's laws.⁴ | |
| <p>Statements by Public Figures</p> | <ul style="list-style-type: none"> - 23 April 2014: A Papua New Guinea MP (and current Higher Education Minister) called for recognition of gay rights within the country. Malakai Tabar was quoted as saying: <i>'They have the right to be accepted into the society and be productive in their participation within the societies they live in.'</i>⁵ - September 2012: Prime Minister Peter O'Neill stated: <i>'There's very strong feelings about [homosexuality] within the country and I think Papua New Guinea is yet to accept such sexual openness.'</i>⁶ - July 2012: Former opposition leader, Dame Carol Kidu, s called upon the country's government to decriminalize homosexuality.⁷ The Catholic Bishops' Conference for Solomon Islands and Papua New Guinea, which runs HIV support services, has offered qualified support for Dame Carol Kidu's stance. Speaking with Radio Australia's Pacific Beat program, the general secretary of the Catholic Bishops' Conference, Father Victor Roach, stated that he cannot support her outright, but he explained: <i>'If [a homosexuality allegation] is brought to the court and it has to be tried, I think the church is against it [the trial].'</i> - Church leaders have strongly resisted any attempt to decriminalise homosexuality. Mendi MP and Southern Highlands Deputy Governor, Pastor Isaac Joseph, in response to a submission before the National Executive Council to legalise prostitution and homosexuality, said: <i>the Bill will contribute to moral decay in the very fabric of a nation of Christians. I challenge the [former] Minister for Community Development Dame Carol Kidu to</i> | |

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| | <p><i>have a closer look, a morally closer look at this bill. It is morally wrong even to think it up and to make it law is unthinkable. Such laws will cause social unrest.</i></p> <p>He called on all civil society groups, churches, Christians, unions and NGOs to stand up and vigorously oppose the bill. He commented that the proposed law to legalise prostitution and homosexuality was to validate HIV/AIDS: <i>'We have to ensure homosexuality is illegal.'</i> He also proposed that public consultation be carried out before introducing and passing laws which would have wider social and cultural implications.</p> |
| <p>Persecution and Discrimination</p> | <ul style="list-style-type: none"> - 2014: The 2014 United States report found no instances of discrimination or violence, but suggested that this may be due to underreporting due to societal attitudes.⁸ - November 2014: Homosexual male asylum seekers arriving in Australia are being sent to be detained and processed at detention centres on Manus Island in Papua New Guinea, despite the criminalisation of same-sex sexual conduct in that country.⁹ It has been reported that gay asylum seekers in the detention centres have been regularly sexually harassed and assaulted, but they fear going to the police because homosexual sexual conduct is illegal in PNG and have been told by camp authorities that they will be jailed.¹⁰ - October 2014: A documentary that tells the story of Hanuabada village, a haven for gay and transgender people living in PNG, is hoping to change attitudes about homosexuality.¹¹ In other areas of PNG, such as in Port Moresby, gay men are reportedly often targeted by local men, particularly those who hail from PNG's highland provinces, and have been raped, beaten and even murdered.¹² |
| <p>Legislative News</p> | <ul style="list-style-type: none"> - July 2014: Papua New Guinea Health Minister Michael Malabag has committed to introducing legislation to decriminalise sex work as a key reform to tackling HIV/AIDS in his nation.¹³ At the UNAIDS-AFPPD forum at the 20th International AIDS Conference in Melbourne, Minister Malabag stated <i>'I will bring in the legislation. We must remove the stigma. We are all equal.'</i> - 2011: (UPR) Papua New Guinea rejected recommendations to decriminalise sexual relations between consenting adults of the same-sex, but stated that: <i>'There is ongoing national consultation on this issue and as such no definite answer can be provided at this stage.'</i>¹⁴ According to a statement given by one MP, plans to decriminalise prostitution and allow same-sex marriage have <i>'been shelved between the Government.'</i>¹⁵ |

¹ The law is available at: www.paclii.org/pg/legis/consol_act/cca1974115/

² Papua New Guinea Criminal Code 1974, s.210: '(1) A person who— (a) sexually penetrates any person against the order of nature; or (b) sexually penetrates an animal; or (c) permits a male person to sexually penetrates 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.'

³ Papua New Guinea Criminal Code 1974, s.212: '(1) A male person who, whether in public or private— (a) commits an act of gross indecency with another male person; or (b) procures another male person to commit an act of gross indecency with him; 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.'

⁴ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Papua New Guinea*, 2014, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236468>> accessed on 19 August 2015

⁵ Nius, N., 'PNG MP wants gay, lesbian rights', *One Papua New Guinea*, 23 April 2014 <<http://www.onepng.com/2014/04/png-mp-wants-gay-lesbian-rights.html>> accessed on 19 July 2014

⁶ Lee, S., 'Bleak Outlook for PNG Gay Rights', *Same Same AU*, 13 September 2012 <<http://www.samesame.com.au/news/8898/Bleak-outlook-for-PNG-gay-rights>> accessed on 19 July 2014

⁷ Littauer, D., 'Papua New Guinea told to make gay sex legal', *Gay Star News*, 26 July 2012, <<http://www.gaystarnews.com/article/papua-new-guinea-told-make-gay-sex-legal260712/>> accessed on 21 September 2015

⁸ Ibid n 2.

⁹ ILGA, *State-Sponsored Homophobia: A World Survey of Laws*, (10th Ed.), May 2015, p. 126, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf

¹⁰ Doherty, B., 'Manus Island detainee fears jail for homosexuality if rape reported to police', *The Guardian*, 27 November 2014, <<http://www.theguardian.com/australia-news/2014/nov/28/manus-island-detainee-fears-jail-homosexuality-rape>> accessed on 21 September 2015

¹¹ Radio Australia, *Film helping change attitudes about homosexuality in PNG*, 6 October 2014, <<http://www.radioaustralia.net.au/international/radio/program/pacific-beat/film-helping-change-attitudes-about-homosexuality-in-png/1375989>> accessed on 21 September 2015

¹² Tencic, N., 'Papua New Guinea's gay and transgender community finds safety in Hanuabada village', *ABC News*, 8 October 2014, <<http://www.abc.net.au/news/2014-10-08/living-gay-in-papua-new-guinea/5796236>> accessed on 21 September 2015

¹³ Asian Forum of Parliamentarians on Population and Development, *MPs commit to rights-based reform to tackle AIDS*, 24 July 2014 <<https://www.facebook.com/afppd/posts/768096593247263>> accessed on 21 September 2015

¹⁴ 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

¹⁵ Ibid 5.