

# A National Response to the HIV Epidemic in Papua New Guinea

By Carol Kidu

In the context of the HIV epidemic in Papua New Guinea, sex workers and males who have sex with males (MSM) engage in potentially risky sexual practices which remain under archaic criminal laws.<sup>1</sup> Those at risk continue to face prejudice, moral condemnation, and violent abuse from some sectors of society, as well as harassment by police and blackmail, which are aimed especially at MSM. Their vulnerability and lack of security impacts on the national response, as it drives them underground and affects their access to treatment and services. However, ongoing educational projects by MSM groups and sex workers appear to be improving police attitudes.

Papua New Guinea is a signatory to the regional and international conventions that uphold human rights and the rights of vulnerable people in HIV prevention, treatment, and care. In addition, the 2009 Report of the Commission on AIDS in the Pacific recommended "legislative reform to repeal legislation that criminalize high-risk behaviour and promotes HIV related discrimination ..."<sup>2</sup>

## The legislative framework and the national response

The legislative framework for the national response to the epidemic is the 2003 HIV and AIDS Management and Prevention Act (HAMP), which supports voluntary and informed HIV testing, as well as measures to encourage and enable individuals to take steps to protect themselves and others from infection. The HAMP Act emphasis on the protection of the rights of people with HIV and those at risk of infection, and the importance of reducing stigma and discrimination, provides the principles that should underpin the national response to HIV/AIDS in Papua New Guinea. In spite of these protections, sex work and MSM remain criminal offences.

## Existing criminal laws on male-to-male sex and sex work

The 1974 Criminal Code Act, sections 210, 212 and 231 and the 1977 Summary Offences Act, sections 55, 56 and 57 contain provisions that deal with and prescribe penalties for male-to-male sex and sex work, respectively.<sup>3</sup> While these legal provisions have empowered police to harass or arrest sex workers<sup>4</sup> and MSM, they also continue to impede progress in the delivery of HIV services, as many sex workers and MSM remain reluctant to access service facilities whose personnel are also sometimes harassed by police.

The inherent contradiction is clear: while the HAMP Act underlines the rights of all citizens to access services, some citizens can be arrested when they do so.

## The initiative for law reform: strategy and process

Earlier efforts in Papua New Guinea to reform aspects of the sexual and reproductive health legislation were influenced by concerns with human rights and the public health law voiced by sectors of the medical profession and the Church. These concerns were presented to me in 2000, as a backbench Parliamentarian championing human rights and human development issues.

My appointment as Minister for Community Development in 2002 provided a stronger platform from which to launch a multi-sectoral effort to seek a review of the relevant sections of the Criminal Code and the Summary Offences Act. The multi-sectoral group refocused in 2009 as a Reference Group to seek the decriminalization of sex work and MSM. This Reference Group is comprised of public and private sector representatives and civil society organizations. It includes sex workers, MSM, people living with HIV/AIDS (PLHIV) and transgender representatives, and is chaired by the Director of the National AIDS Council Secretariat.

Informed by initial research and participatory dialogue in the Reference Group, a multi-pronged strategy of advocacy, and a submission to the National Executive Council (NEC/Cabinet) was agreed upon. Technical legal support for drafting the submission was initially provided through the Australian Federation of AIDS Organizations, and later by AusAID through the PNG-Australia HIV and AIDS Program.

## Advocacy

Targeted advocacy was directed to the Parliamentary Committee on HIV and AIDS and other interested parliamentarians, with presentations by the Chair of the Reference Group on critical issues and the relevance of reforming laws that criminalize sex work and MSM. The positive response to the presentation by the small number of participants indicated support and a good understanding of the issues.

Other advocacy efforts included sex worker, MSM, PLHIV and transgender participation in the formulation of the new National HIV and AIDS Strategy, 2011-2015. The results were encouraging as the strategy, unlike the previous one, noted that “laws that criminalize sex work and same-sex practices create barriers to people accessing services and reinforce vulnerability, stigma, and discrimination”<sup>5</sup> and recommended “legislative reforms to improve the environment for effective HIV and AIDS prevention, treatment and care” as a key strategic objective.

### **The Cabinet submission**

Aware of the prejudices associated with sex work and MSM, the strategy for the National Executive Council (Cabinet) submission was to take a public health approach seeking the “Strengthening of Papua New Guinea’s Response to the HIV and AIDS Epidemic” and proposing “a review of criminal laws on sex work and consensual male-to-male sex from the perspective of social and public health implications.”<sup>6</sup> The submission also noted that “the proposed changes will promote a social environment that supports the inclusion of vulnerable and marginalized groups and give them an enhanced sense of community belonging...”<sup>7</sup> Additionally, the submission requested that the National Executive Council “endorse the Reference Group to progress with its work in the review process and develop a terms of reference to guide the review process and inform the National Executive Council accordingly.”<sup>8</sup>

### **Outcomes**

The National Executive Council declined to make a decision, as requested by the submission, on moral, religious, and customary grounds.<sup>9</sup> However, it directed the Attorney General to refer the issues to the national Constitutional Law Reform Commission (CLRC) and accepted that the CLRC should collaborate with the Reference Group in its work.

Acting on these instructions, the Attorney General facilitated collaboration between the staff of the Attorney General’s office and a core working group of the larger Reference Group to draft the terms of reference for the CLRC. The CLRC is planning its first public seminar in early 2011, while the legal reform Reference Group will conduct a dialogue on HIV and the Law in May 2011.

### **Challenges**

Challenges to the initiative have come from sectors of the religious community, the media, and concerned individuals within the society at large. The essence of these challenges is an opposition to a presumed effort to legalize sex work and MSM. While this represents a misunderstanding of the issues, the Reference Group has accepted that its public advocacy effort to differentiate between decriminalization and legalization has been inadequate. Efforts to better sensitize the public to the public health and human rights issues involved are continuing.

### **Conclusion**

While the Cabinet decision to completely reject that the matter be brought into the political arena constitutes a setback, it has, nevertheless, opened a space through the CLRC’s mechanism to address the issue of law reform and HIV/AIDS in the country. It has also given voice to those most affected by the punitive laws, and to human rights advocates lobbying for the repeal of these laws. Although the moralist negative response has been intense, the silence has been broken and the programme of targeted advocacy based on human rights and public health will continue.

### **Notes**

1 KAP survey on Bougainville Youth, CARE, 2010. Also see ASKIM NA SAVE: People who sell sex or exchange sex in Port Moresby, June-July 2010, Survey report by Angela Kelly, et al., University of New South Wales.

2 Report of the Commission on AIDS in the Pacific, 2009, UNAIDS.

3 The Criminal Code of Papua New Guinea, 1974, Summary Offences Act, 1977.

4 The infamous Three Mile raid by Police of sex workers in 2004. Also see Karen Fletcher and Bomal Gonapa, “Decriminalising Prostitution in Papua New Guinea,” and Vicki Luker and Sinclair Dinnen, eds., *Civic Insecurity: Law, Order and HIV in Papua New Guinea*, (ANU Press, 2011).

5 “Papua New Guinea National HIV and AIDS Strategy 2011-2015,” National AIDS Council of Papua New Guinea (2010): 52.

6 Minister for Community Development, Policy Submission to National Executive Council, April, 2010.

7 *Ibid*, p. 6.

8 *Ibid*.

9 National Executive Council, Decision 127/2010, Special Meeting No: 11/2010.