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REPORT



# Stakeholder views on the relationship between human rights and the law in addressing the HIV epidemic in Papua New Guinea

Benjamin Hegarty<sup>a</sup>, Ruthy Boli-Neo<sup>b</sup>, Herick Aeno<sup>b</sup>, Jamee Newland<sup>a</sup>, Paula Jops<sup>a</sup>, John Pukali<sup>c</sup> and Angela Kelly-Hanku<sup>a,b</sup>

<sup>a</sup>Kirby Institute, UNSW Sydney, Sydney, Australia; <sup>b</sup>Papua New Guinea Institute of Medical Research, Goroka, Papua New Guinea; <sup>c</sup>Hetura & Kapul Champions, Port Moresby, Papua New Guinea

## ABSTRACT

Community activists, policymakers and researchers have long identified human rights as central to addressing the HIV epidemic. Over the past 10 years, efforts to incorporate human rights into the HIV response have focused on reforming laws which criminalise sex work and male-to-male sex. Laws criminalising sex work and male-to-male sex drive communities underground, making HIV prevention, testing, and treatment efforts more difficult. This article draws on a qualitative study conducted in Papua New Guinea (PNG) which examined stakeholder views on prospects for law reform, the impact of criminal laws on communities, and the role of law reform in addressing the HIV epidemic. While efforts to reform criminal laws related to sex work and male-to-male sex have taken place in PNG, these have been unsuccessful. Stakeholders identified that strategies for addressing criminal laws and the impacts of law reform must be grounded in the PNG context, that there must be material support for community members to engage with criminal laws and human rights, and that dignity rather than HIV should be the justification for law reform.

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## Introduction

As an epidemic exacerbated by social inequity, researchers, policy makers and affected communities, including people living with HIV, have long argued that promoting human rights and removing punitive laws is critical to addressing the HIV epidemic (Mann, 1995). As the landmark Global Commission on HIV and the Law (2012) concluded, ‘punitive laws, discriminatory and brutal policing and denial of access to justice ... promote risky behaviour, hinder people from accessing prevention tools and treatment, and exacerbate the stigma and social inequalities that make people more vulnerable to HIV infection and illness’ (p. 7). Despite consistent calls to centre human rights in the global HIV response, however, developing consistent approaches and forms of measurement to track progress towards addressing the social factors that contribute to the HIV epidemic have remained challenging (Beyrer et al., 2024).

**CONTACT** Benjamin Hegarty  [bhegarty@kirby.unsw.edu.au](mailto:bhegarty@kirby.unsw.edu.au)  Kirby Institute, UNSW Sydney, Level 6, Wallace Wurth Building, Sydney 2052, Australia

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One area of concerted focus has been to address the criminal laws that make individuals living with or at greater risk of HIV more vulnerable to human rights violations and contribute to discrimination which creates barriers to accessing HIV prevention, testing and treatment (Kavanagh et al., 2021). In 2021, the United Nations Political Declaration on HIV and AIDS included new commitments that less than 10% of countries should have legal and policy environments that deny or limit access to HIV services by 2025 (United Nations General Assembly, 2021). This target reflects an acknowledgement of the pernicious impact of criminal laws on people living with HIV and key populations, including female sex workers, men who have sex with men, transgender women, people who inject drugs, and their sexual partners (United Nations, 2022).

Building on the longstanding advocacy of sex workers, gay, bisexual, and other men who have sex with men, and transgender women, increasing attention has been paid to documenting the impact of laws criminalising sex work and male-to-male sex on the HIV epidemic (El Feki et al., 2014; Global Network of Sex Work Projects, 2017; The Lancet HIV, 2022). While there has been progress in reforming laws in this area as of 2023, 168 countries criminalise sex work in some form, and despite an overall reduction since 2021, 67 countries criminalise same-sex intercourse, mostly between men (UNAIDS, 2023). However, these fragile gains are threatened by ongoing attacks on sexual and reproductive health and rights, particularly for key populations at greater risk of HIV (Beyrer et al., 2024). This has included increasing attacks on lesbian, gay, bisexual, transgender, and LGBTQ+ rights around the world, which in some cases have been emboldened by the introduction of new or expanded criminal laws which restrict sexual and reproductive rights (Baruch-Dominguez et al., 2023). Efforts to decriminalise sex work and expand human rights protections for sex workers have also slowed in recent years, with little progress in key areas (The Lancet Public Health, 2023; Murray et al., 2022).

This article presents stakeholder opinions about the role of law reform, legal and justice services, and human rights in addressing the HIV epidemic in Papua New Guinea (PNG). PNG is one of many countries around the world that inherited colonial laws originating in Britain which criminalised aspects of sex work and male-to-male sex, which the United Nations Human Rights Commissioner recently referred to as a cause of ongoing violence and discrimination (Madrigal-Borloz, 2023). PNG also has one of the fastest growing HIV epidemics in the Asia and Pacific region, which in some parts of the country is concentrated among key populations of female sex workers, men who have sex with men, and transgender women (Hakim et al., 2020; Kelly-Hanku, Weikum, et al., 2020). Although several subsequent PNG National STI & HIV Strategies have recommended addressing laws, policies and practices through law reform and other measures (National AIDS Council of Papua New Guinea, 2011, 2018, 2024), progress towards the decriminalisation of laws criminalising same-sex sexuality and sex work has been slow and difficult (Stewart, 2014).

In PNG, international human rights organisations such as Amnesty International have documented high levels of violence towards cisgender female sex workers, transgender women, and 'men with diverse sexualities' (Amnesty International, 2016). 'Men with diverse sexualities' is a phrase which community organisations in PNG have requested that researchers use rather than 'men who have sex with men' (Leach, 2021). Although terms for gender and sexual identity in PNG are diverse and have changed over time, 'men with diverse sexualities' is one term that refers to people assigned male at birth who have sex with men, used to capture the distinctive cultural practices that influence gender and sexuality in the country (Leach, 2021; Peni & Leach, 2023). Against a backdrop of attacks on the rights of people who identify as lesbian, gay, bisexual, transgender, queer and other identities (LGBTQ+) globally (The Lancet HIV, 2022), and in a national setting where Christianity is an important source of political and social authority (Eves, 2012; Shih et al., 2017), efforts to reform laws related to sex work and male-to-male sex have faced entrenched opposition (Leach, 2021; Stewart, 2014). Given the significant challenges to reforming laws related to sex work and male-to-male sex in PNG and globally, it is crucial to understand the local context for and sensitivities surrounding efforts to address legal and policy environments that deny or limit access to HIV services. Efforts to reform criminal laws and human rights

violations related to the criminalisation of male-to-male sex and sex work will be most effective where they centre the aspirations of local communities within distinctive national legal and policy settings (Peni & Leach, 2023).

This study, based on interviews conducted in 2019, evaluated the opinions of key stakeholders regarding PNG's progress towards the removal of discriminatory laws to strengthen the human rights of key populations, the methods and strategies for working with law enforcement agencies, and the potential of additional human rights interventions to support existing community-based interventions. Conditions have shifted since the moment that the data for this study was collected, and it has arguably become more difficult to pursue the reform of laws which criminalise various aspects of male-to-male sex and sex work in PNG. Nevertheless, the stakeholder views presented in this article provide important insights for guiding strategies in PNG and other contexts where there is little political and social support for reforming criminal laws that negatively impact the human rights of key populations.

## Background

The stakeholder accounts in this article are drawn from a study of the human rights and HIV-related impacts of criminal laws related to male-to-male sex and sex work, and the protections available under the 2003 HIV/AIDS Management and Prevention (HAMP) Act (Appendix, *Table of relevant PNG criminal laws*) (Stewart, 2014). Several laws criminalise various aspects of male-to-male sex and sex work in PNG. Sections of the 1974 Criminal Code criminalising male-to-male sex in public and private, and living off the earnings of sex work as per the 1977 Summary Offences Act, are derived from those introduced in the early twentieth century when the area that now forms PNG was a colonial territory administered by Australia (Stewart, 2014). Community organisations, scholars, and human rights NGOs have documented how the criminalisation of sex work and male-to-male sex drives significant physical, sexual, and structural violence towards cisgender female sex workers, transgender women, and men with diverse sexualities (Leach, 2021; Stewart, 2014).

While reported prosecutions for sex work and male-to-male sex are rare in PNG, they do take place: in 2015, for example, one man in Oro Province (a coastal province in the Southern Region) was charged with 'gross indecency' for performing oral sex on another man and given a two-year suspended sentence (Kama, 2022). Beyond the risk of prosecution, of particular concern is also the way that laws criminalising male-to-male sex and sex work have been used to justify and enact violence towards cisgender female sex workers, transgender women, and men with diverse sexualities. These risks were highlighted in spectacular fashion during the widely reported Three Mile Raid in 2004, when the police committed acts of sexual and physical violence to publicly humiliate cisgender female sex workers, including through acts of physical and sexual violence (Stewart, 2014). Although the case garnered widespread attention in PNG and internationally, the police never issued a public apology, and nor were there any repercussions for the police officers responsible for the violence (Fletcher & Gonapa, 2010).

It is important to note that laws that criminalise sex work and male-to-male sex also contradict human rights protections contained in PNG law. The criminalisation of male-to-male sex in both private and public settings appears to contradict the protections of privacy under the 1975 PNG Constitution (Constitution of the Independent State of Papua New Guinea, 1975). Moreover, the 2003 HIV/AIDS Management and Prevention (HAMP) Act contains anti-discrimination measures for people living with HIV and affected populations (Stewart, 2010). Under the Act, individuals who experience discrimination can either file a case through civil or criminal courts or participate in disciplinary hearings to claim compensation (Stewart, 2010). In a setting where encounters with the police are often characterised by sexual and physical violence, community-based human rights education and advocacy for cisgender female sex workers, transgender women, and men with diverse sexualities have been important strategies (Boli-Neo et al., 2023; Leach, 2021). An overall lack of trust in the law and law enforcement, and limited scope to provide effective human rights protections, has led some scholars to argue for strategies based on pragmatic interventions that go beyond

legal frameworks, including those which incorporate a focus on political, economic, and social justice (Kelly-Hanku, Aggleton, et al., 2020).

In this article, we introduce stakeholder opinions on laws criminalising both sex work and male-to-male sex together. This is because the stakeholders interviewed often discussed these issues together and saw them as constituting a similar problem, and because of their cross-cutting impact on key populations both in PNG and other parts of the world. The article draws on interviews with key stakeholders which were conducted as part of a larger study of the human rights impact of laws criminalising male-to-male sex and sex workers in PNG, which aimed to identify the priorities for creating a supportive legal environment to improve access to HIV services for cisgender female sex workers, transgender women, and men with diverse sexualities.

## Methods

This article is based on interviews with stakeholders who were involved in funding, designing, and implementing HIV prevention, treatment and care programmes targeting cisgender female sex workers, transgender women, and men with diverse sexualities, and advocating for and/or designing HIV-related law reform in PNG. Participants from each group were selected purposively through the research group's networks in PNG, which were established through previous studies. The interviews were conducted between March and May 2019.

Key stakeholders from relevant fields were invited to participate, including health (both medicine and public health), law, international and local non-governmental organisations (NGOs), faith-based organisations (churches), key population organisations, parliament, and the police (Table 1). The final group of key stakeholders recruited for interview included country managers and programme administrators of international and national non-governmental organisations, as well as parliamentarians, healthcare workers including doctors and nurses, and the pastor of a church. Although members of the research team contacted police representatives in Lae and Port Moresby directly to seek an interview, these representatives were unavailable or failed to attend scheduled appointments. Human ethics approval was obtained from ethics review boards at the Papua New Guinea Institute for Medical Research and the Faculty of Medicine and Health at UNSW Sydney. In line with the ethics permission granted, data have been deidentified, with stakeholders identified only by their group, to preserve the anonymity of participants.

## Data collection

A total of 19 stakeholders participated in a semi-structured interview. After selecting individuals who were currently working or who had previously worked for relevant organisations in the fields of HIV, key populations, law, policing, and other individuals, we invited stakeholders for interview. Prospective stakeholders were contacted directly via email or telephone, with permission sought from community organisations to interview their volunteers or employees. Stakeholder interviews aimed to (a) discuss and create priority areas for key populations to be able to access

**Table 1.** Key stakeholder group and sex of interview participants.

Stakeholder group	Male	Female	Total
<i>Health</i>	3	0	3
<i>Legal profession</i>	3	1	4
<i>International NGO</i>	3	1	4
<i>National NGO</i>	1	1	2
<i>Church</i>	1	1	2
<i>Community organisation</i>	1	2	3
<i>Lawmaker</i>	0	1	1
<b>Total</b>	12	7	19

legal services, (b) to discuss prospects for law reform, (c) to understand the ways that laws do or do not impact key populations, (d) discuss opinions on how the law can be improved.

Interviews were conducted by a team of researchers with long-term relationships and working experience with key populations and the HIV sector in PNG (RBN, HA and AKH). 16 Interviews were conducted in Port Moresby National Capital District, and two in Lae, Morobe province. The main objectives of interviews emerged within the context of the broader study, which aimed to understand the human rights impacts of laws criminalising male-to-male sex and sex work. Participants were first asked an open-ended question to invite them to describe their professional involvement with key populations, HIV and/or HIV-related law reform in PNG. Interviews took place in either English or Tok Pisin (two of PNG's three national languages), were audio-recorded and lasted between 60 and 90 minutes each.

### **Data analysis**

Audio-recorded interviews were transcribed and, where they had been conducted in Tok Pisin, translated into English for analysis and writing by the research team. Transcripts were reviewed in detail by BH in discussion with the original research team, who undertook data collection. The transcripts were imported into NVivo version 14 (QSR International Pty Ltd) for further processing through thematic analysis (Braun & Clarke, 2012). This involved the creation of codes through deductive methods by BH, who read the transcripts and created a list of preliminary codes guided by the conceptual framework and research questions of the study. Further analysis was conducted with colleagues at the PNG Institute for Medical Research who conducted the original study for feedback and input. After revising the coding framework to incorporate the input of PNG team members, BH coded the transcripts for themes in NVivo through deductive methods, grouping data into three major themes (a) opinions on law reform and human rights protections, (b) opinions on the impact of laws criminalising male-to-male sex and sex work, and, (c) opinions on strategies for communities to respond to criminalisation.

## **Results**

### ***Opinions on law reform and human rights protections***

#### ***The impact of Christianity on law reform***

Key stakeholders from all groups expressed that the increasing politicisation of issues related to both LGBTQ and sex worker rights, and opposition due to conservative Christian morality, made reforming laws related to sex work and male-to-male sex a challenging prospect. Stakeholders had several views on strategies for achieving law reform due to the important role of Christianity in PNG politics and society. Given that members of parliament incurred significant political risks if they supported the decriminalisation of sex work and male-to-male sex, the first viewpoint, expressed by the majority of participants, was that law reform would prove challenging if pursued through a parliamentary process. As one stakeholder from the health group explained:

Prostitution and male-to-male sex are big taboos ... our Constitution is based on the Bible, on Christian principles. So Parliamentarians who are in power and work to make amendments to such bills, will have to be brave enough to do such things, because they will also think twice whether they are making the right choice or the wrong choice because ... being a leader of the country and having come from a strong Christian background and principles, and amending a law that will allow it [sex work and male-to-male sex], is a big, big challenge. (Health group)

In the second viewpoint, some participants believed that law reform was possible, but doing so would require 'buy-in' from Christian churches. There was an acknowledgement of diversity between churches as well as recognition of the role that some churches had played in supporting key populations during the HIV epidemic. Participants suggested that any effort to reform laws

related to male-to-male sex and sex work would require churches and Christian organisations to first be ‘sensitised’ to relevant issues related to HIV and human rights. Describing lessons learned from earlier efforts to encourage churches to engage with the topic, one participant stated:

A lot of church leaders were coming from different angles. At that time, my understanding of the issue was also limited, and we were all at the phase of learning about HIV, and the law, and decriminalisation, related to the laws in this country. The Church leaders were not sensitised ... some of the key issues that I think raised discussion from church leaders were condom use and the LGBT community. (International NGO group)

Some participants described the most likely avenue for successful law reform as a High Court challenge with respect to the human rights protections which are contained in the PNG Constitution. One participant, referring to the most recent legislative effort to remove laws criminalising sex work in 2016, described how public attention in the media led to concerted opposition by conservative Christian groups. They thought that part of the reason why earlier law reform efforts had failed was due to opposition from some women’s groups. As one international agency staff member stated:

Sex work law reform probably failed the first time around because it was too public and there was a lot of noise about it ... The opposition came from housewives who had been cheated on by their husbands with sex workers, who were doing very well, thank you very much, under [existing] civil law. (International NGO group)

This reflection highlights some of the complexities in debates about the removal of laws related to sex work in PNG. The opposition referred to by this participant relates to provisions in the Adultery and Enticement Act 1988, which allows individuals to claim compensation through the District Court. Those who claim compensation are usually women, who use a range of forums to seek justice, often in contexts related to a divorce stemming from their husband’s adultery (Neuhaus, 2024). Women’s groups in PNG have opposed sex work-related law reform due to the perception that it would grant legitimacy to sex work as a profession, and hence limit opportunities to claim compensation.

### *Strengthening existing human rights protections for key populations*

All stakeholders, apart from one from the international NGO group, conveyed that one preferred strategy for improving human rights protections was to draw on the legal remedies that were already available under PNG law, rather than focus on decriminalisation. Participants from the legal profession, national and international NGOs, and parliamentarians, referred specifically to the 2003 HIV/AIDS Management and Prevention (HAMP) Act, which provides anti-discrimination provisions for people living with and communities who are affected by HIV (Stewart, 2014), as an important if underutilised legal protection. This same participant nevertheless identified the 2003 HIV/AIDS Management and Prevention (HAMP) Act as a useful starting point and entry for further advocacy on the topic of law reform.

Despite the human rights protections available under the 2003 HIV/AIDS Management and Prevention (HAMP) Act, the consensus among participants was that the human rights protections contained in the Act were difficult to access in practice. One stakeholder from the legal profession identified the reason for this in effectiveness as a lack of ownership over the Act and an absence of funded legal services. The PNG Development Law Association, with funding from the Australian government development agency AusAID, had provided legal services between 2010 and 2016, but was no longer in operation at the time interviews were conducted in 2019. Reflecting on their experiences of previous law and justice initiatives, participants from key population organisations identified further steps that could support more effective interventions. This included training lawyers, and support for individuals willing to pursue criminal cases through a potentially expensive and risky legal process. As one participant working for a community organisation explained:

We have a good document [in the 2003 HIV/AIDS Management and Prevention (HAMP) Act] but haven't put it into practice. The National AIDS Council said that they were going to review the Act. But I haven't seen the final document because they did consultations around it ... the message was to put it into practice. We will start taking cases out and challenge it in court. If we have a document that is written beautifully ... and it's just stacked on the shelf with no action, then what's the use. (Community organisation group)

One participant, who worked for a civil society organisation representing men with diverse sexualities, suggested that focusing on equipping communities to advocate for existing human rights protections offered by the HAMP Act could also serve as a strategy to advance law reform efforts:

I've noticed that, if we put the idea of the HAMP Act and the decriminalisation of sex work together and try to implement them, it will work. It's going to work but [a barrier is] that we see the HAMP Act separately to decriminalisation ... So, peer educators and people can take the HAMP Act to the villages, but what will be the real [impact] of decriminalisation or the repeal of sex work? We really need to know the full definition of the law so that we can start to talk ... then we can go to parliament and ask for the repeal of the law. (Community organisation)

Participants from legal organisations also suggested that provisions of the Act could be strengthened to cover the human rights of specific key population groups:

So ... this HAMP Act itself, maybe they should start ... from the policing side of it, developing that law, they should look at how best it will cover the whole population ... Then there are smaller target groups such as the men who have sex with men, male sex workers, and the prostitutes and the others that you mentioned. (Legal profession group)

Other participants shared the view that law reform should be accompanied with improvements in access to institutions that can address human rights violations, starting with the identification of a clear responsibility by a relevant government agency. Notably, not all participants agreed that the best place for the ownership of the 2003 HIV/AIDS Management and Prevention (HAMP) Act lay with non-governmental or community organisations. Previous efforts to offer legal services or to advocate for law reform had generally placed the responsibility to respond to human rights violations on under-resourced NGOs, and the onus on individuals who had experienced discrimination to pursue civil or criminal action. These participants suggested that this diluted the responsibility of the state to protect human rights and made the path to action less clear.

## ***Opinions on the impact of laws criminalising male-to-male sex and sex work***

### ***Increased risk of police violence***

There were a variety of views on the impacts of laws criminalising sex work and male-to-male sex on cisgender female sex workers, transgender women, and men with diverse sexualities. Some participants suggested that laws were rarely used and that cases were difficult to prosecute, and thus were almost irrelevant to the risk of prosecution. The impact of laws on the human rights of key populations was described as complex, contextual, and largely indirect, making it difficult to measure on quantitative terms. A majority of participants from all groups explained that the greatest impact of laws criminalising sex work was the increased risk of violence, because it provided authority to police officers and community members to harass and extort money from sex workers:

I alluded to this earlier ... law enforcement agencies ... are themselves perpetrators, [so] those laws allow [them] to harass and abuse our key populations ... Our law enforcement agencies use those laws to criminalise or prosecute. Because the law, and sex work is one example, [it] prohibits people from earning or living off the earnings of this kind of work, while the law doesn't at the same time recognise any illegality in a person who approaches sex workers and engages them as a customer. (Legal profession group)

Bringing to mind the emphasis in the previous section on strengthening the existing human rights protections in the 2003 HIV/AIDS Management and Prevention (HAMP) Act, this participant from the legal profession group highlighted that laws criminalising sex work and male-to-male sex were contradicted existing human rights protections included in the 1975 PNG Constitution:



The legislation allows PNG citizens to be subjected to torture, subjected to harassment, which torture and harassment are supposed to be protected by other parts of the law, for example as contained in the Constitution itself. But they do not [seek protections under these provisions] because the Summary Offences Act and the Criminal Code has provisions that allow police officers and other members of communities to attack, if you like, to harass or abuse our own people that are affected by HIV or gender-based violence. (Legal profession group)

In such a setting, where laws were used as a justification for the police to perpetuate violence, participants from key population and legal profession groups in particular reiterated that the most pressing need was to equip key populations with knowledge about the law so that they would be in a better position to be able to negotiate with law enforcement agencies. One particular concern expressed was that, even where people had knowledge of rights enshrined in laws, they did not possess the material or social means to access them. As one participant who worked for a government agency stated:

The point is that she [a female sex worker] does not know that she has right to do that [seek human rights protections through the law]. It is the same if there is intimate partner violence, that's the thing. Unless people can understand and access their rights, it is pointless to talk about rights. Because you can only have a right if you can access it. (Government agency group)

### ***Impact on the HIV epidemic***

Two main viewpoints were expressed regarding the impact of laws related to male-to-male sex, sex work, and the HIV epidemic. The first – a view that is aligned with evidence presented in international HIV policy and programmes – emphasised that laws criminalising sex work and male-to-male sex resulted in greater discrimination at HIV clinics. The main reason why, several participants contended, was because it resulted in stigma experienced by key population groups. One participant from the government agency group described the interplay between criminal laws and stigma as a ‘contributing factor’ to the HIV epidemic:

I mean, [it is a] contributing factor to the rise of HIV because people are afraid to come out to the clinics or to the public to you know, to say that they are these sorts of people. So, they only come out when they are very sick and they are bed-ridden and then we bring them to the hospitals. So there are still high levels of stigma and discrimination around that. (Government agency group)

In contrast to this view, stakeholders from the health group offered a different opinion, reflecting that criminal laws in fact had little impact on HIV prevention and treatment. One stakeholder, a healthcare worker in a clinic, explained that the law had little to no impact on access to HIV testing and treatment. Yet this was in part because of the additional efforts that health workers made to ensure that the clinic was ‘friendly’ for sex workers and men who have sex with men:

From what I've been told in PNG if you're a female sex worker, [or] any kind of sex worker, you can get fined for it. However, there's a lot of corruption in the law so [sex workers] don't really get [charged] ... I know there's been talk of changing those laws but directly at the clinic it doesn't affect us. Many patients [who are sex workers and men with diverse sexualities] come and we try to make the clinic really friendly, so they are able to disclose their sexual orientation and practices. (Health profession group)

### ***Opinions on strategies for communities to respond to criminalisation***

#### ***Need to respond to police violence as a distinct issue***

Across each participant group, police violence was stated as a significant issue. Within all participant groups, stakeholders suggested that strengthening community voices should form one response to police violence. However, there was a range of views in terms of how communities could be best supported to respond to the use of criminal laws as a pretext for police violence. Participants who worked for organisations representing key populations emphasised that communities needed services and support to access existing human rights protections. One participant from this

group discussed human rights training as a ‘tool’ which could be used by communities to defend against human rights violations by the police:

One strength that I saw was, particularly in Lae with sex workers, here and in Port Moresby, they were trained [in human rights] ... and they used that as a tool to go into court as they felt comfortable going and getting a lawyer to represent them, because we all know that sex work here is illegal and homosexuality is illegal, but they [the police] used it ... to cover up other [human rights abuses]. (Community organisation group)

Over time, this participant suggested, human rights training could provide a platform for key population leadership and in turn increase positive forms of visibility and state recognition. In Lae, for example, one community leader had established a close relationship with the police, which in their view was crucial to preventing violence towards female sex workers:

It’s very effective, as in Lae; I’m really impressed with [name removed] because there are very high rates of gender-based violence on the streets for sex workers, and [name removed] is very strategic in educating police leaders so that they don’t harass sex worker carrying condoms, for example. Or they build a relationship so that when sex workers are seen on the street, the police respect them. (Community organisation group)

### ***Developing pathways to access existing human rights protections***

As introduced earlier, the 2003 HIV/AIDS Management and Prevention (HAMP) Act provides extensive human rights protections for key population groups. Several participants highlighted that the human rights protections in the Act lacked an effective means of enforcement (Leach, 2021). Nevertheless, some participants suggested that the HAMP Act had the potential to be effective, if participants had the knowledge and material means to access the protections that it offered. One participant who worked for a non-governmental organisation described a case in which a person was able to draw on the HAMP Act to challenge the use of discriminatory language:

There was a case in Lae, two of the women from key populations, they were walking down the street and there was a woman who was having an argument with her husband ... she said something to the two women, the female sex workers. She called them ‘*pamuk* (prostitute).’ So, the two girls went to the office – we had a community organisation back in Lae that time – and they were able to go to the police ... and press charges against that couple, the woman and the husband, and so they successfully charged them for defamation. (National NGO group)

However, not all participants shared the view that legal services and training for community members could lead to greater use of the anti-discrimination provisions available under the HAMP Act. Participants from national NGOs emphasised that human rights were difficult to uphold in a setting of significant economic and social disadvantage. One participant from this group explained that, for legal services to be useful, community members would require some understanding of the law and of their rights in relation to it. For this participant, human rights education and training for key populations was crucial:

It depends on the level of understanding among key populations, some of them are illiterate, I mean the majority of them are illiterate. And for those who are literate, they can understand what the HAMP Act is, and even if they don’t receive training for a long time, they can still remember what the HAMP Act is. But the illiterate ones, they can go through the training, but they don’t even understand what the HAMP Act is ... How can they get these key messages [about human rights and the law] when they are illiterate? (National NGO group)

### ***Providing free legal services and paralegal training***

Beyond the HAMP Act, other participants referred to the significant barriers faced by key populations to negotiate the PNG criminal justice system. One participant from the legal profession group explained the challenges faced by community members after they sought legal assistance to pursue court cases. This participant stressed that part of the challenge faced was the way that

the programme focused narrowly on access to legal services, rather than providing a connection to a broader array of social, psychological, and health services:

The difficulty is people's willingness to negotiate the legal system ... Because when a customer or when a client comes in to see a lawyer, they want to know what their legal rights are and what their legal avenues are ... Once the advice is given, in our view, there needs to be a holistic approach from the counsellors and even family members and those that help this individual navigate the justice system because it can be a quite a dirty experience, even for lawyers. And what we found at the [organisation name] is that when we would give advice and we are encouraging clients to walk through the process, for whatever reason they would often withdraw their case. (Legal profession group)

This same participant suggested that a key barrier was a lack of consistent funding for law reform. When asked what was needed, one participant emphasised the need to equip cisgender female sex workers, transgender women, and men with diverse sexualities with the legal support that they needed to challenge laws in court:

Funding, because ... some lawyers would insist on funding ... but there are state legal agencies that are empowered, and indeed, it is their constitutional obligation to provide access to justice. The Ombudsman Commission is one example, and the Public Solicitor is another example. I'm confident that those two offices would be willing to provide meaningful support to support legal challenges. But they will need resources and they will need funding and that's where the external support [is needed], the lawyers overseas, and research. (Legal profession group)

These programmes focused on extending support to address specific, discrete legal cases. Yet, as this participant highlighted, a single court case could also provide a potential avenue towards law reform. For example, one participant from the legal profession group suggested that one way to achieve law reform was through the courts to appeal a criminal prosecution for sex work and/or male-to-male sex, on the grounds that it is contrary to the human rights guarantees contained in the PNG Constitution. This stakeholder speculated that a case and subsequent appeals in lower courts could lead to a challenge to relevant provisions under the Summary Offences Act and Criminal Code in the Supreme Court.

## Discussion

This study investigated the opinions of stakeholders on the impact of the law on the human rights of key populations, and potential for law reform related to sex work and male-to-male sex in PNG. Stakeholders recruited in this study shared a wide variety of views on the relevance of law reform as a tool to address the HIV epidemic and advance the human rights of key populations. These ranged from those who thought that removing laws criminalising sex work and male-to-male sex would have a significant impact on the course of the HIV epidemic, through to those who thought that it would have little bearing and need not be a priority. The interviews took place in 2019, before the 2021 Political Declaration on HIV and AIDS and introduction of related targets to address HIV-related criminalisation and discrimination. Evaluating these opinions nevertheless remains relevant in light of the objectives set of the recently released 2024–2028 PNG National STI & HIV Strategy, which has committed to a baseline assessment of human rights related barriers to health service and funded 5-year plan to address these barriers (National AIDS Council of Papua New Guinea, 2024).

The majority of stakeholders interviewed in this study believed that the reform of criminal laws related to sex work and/or male-to-male sex ought to take place. However, a general consensus among stakeholders was that, for law reform to be possible in PNG, it would have to be framed cautiously so as to align with conservative forms of Christian morality. For example, some stakeholders suggested that churches and sources of Christian authority with less conservative views could be enrolled to support law reform on the basis of a compassionate need to protect human rights of cisgender female sex workers, transgender women, and men with diverse sexualities. Many emphasised the importance of wording law reform in terms of the 'removal of laws' rather

than ‘decriminalisation’ or ‘legalisation’. Stakeholders suggested that the ‘removal of laws’ had a more neutral connotation and would avoid accusations that such efforts would lead to the promotion of sex work and same-sex behaviour. While a majority of stakeholders agreed that any effort to achieve law reform would need to align with the cultural and political context in PNG, opinions differed on how best to advance it. Stakeholders – particularly from national NGO, key population organisation, and legal profession groups – were aware of, and drew on, lessons learned from several previous unsuccessful attempts at law reform as described by Stewart (2014).

Proposed interventions with the broadest support were strategies that avoided public scrutiny through the parliamentary process, which was likely to be politicised, and potentially result in further harms in the current environment. Participants supported either shifting or expanding engagement with institutions such as the police and particularly Churches, with the aim of convincing them of the necessity of law reform before any attempt was made. There was strong support across all participant groups for strengthening existing human rights provisions through revisions to the HAMP Act among all stakeholder groups, and particularly among legal organisations. A different view was offered by non-governmental organisations that worked closely with communities. While several participants described the HAMP Act as useful, others contested this view, stating that there were many barriers to it becoming an effective legal instrument. To establish human rights protections in practice, these participants noted, communities would also need to be equipped with knowledge of what protections were available and concrete access to the institutions that they needed to access them.

Participants involved in organisations for cisgender female sex workers, transgender women, and men with diverse sexualities did not oppose law reform. However, they also held a view that, on its own, reforming or removing laws related to sex work and male-to-male sex was unlikely to facilitate greater protection of the human rights of key populations. The top priority for stakeholders from community organisations was increased funding to build awareness of human rights and access to legal services. Some stakeholders suggested that doing so would have a flow-on effect which would support communities to voice their own aspirations to key decision-makers to inform the allocation of resources and priorities. Members of different groups shared the view that community organisations were not equipped at present to be able to either challenge criminalisation or to pursue their rights according to available human rights. Existing funding was identified as inadequate and inconsistent, resulting in a loss of personnel and momentum, which was difficult to rebuild.

Where stakeholders did support prioritising law reform, a majority were of the view that a necessary first step was to strengthen existing human rights protections for key populations. Several stakeholders from the international agency group stressed the impacts of individualised forms of stigma (including the impact of an inability to ‘come out’), while those working with local NGOs and community organisations placed a greater emphasis on the interplay of criminalisation and economic and other structural impediments to justice similar to those described by Farmer (2004). In addition to law reform efforts, participants stressed the need to consider the centrality of law enforcement and particularly the role of the police as a distinct problem separate to law reform, echoing the need to address violence identified in previous studies (Kelly-Hanku et al., 2018; Kelly-Hanku et al., 2015).

There was a general agreement of the need to fund legal and paralegal services as one component of human rights-based HIV prevention for key populations in PNG, an emphasis which echoes the findings of the International Commission on HIV and the Law (Global Commission on HIV and the Law, 2012). Legal services – including expanded access to community paralegals – have been identified as one strategy to end AIDS by 2030 (Hinman et al., 2023), and in other studies, community members in PNG have strongly voiced the value of programmes and information campaigns related to human rights (Boli-Neo et al., 2023). The benefits of legal services in strengthening access to human rights protections for key populations have been demonstrated elsewhere (Csete & Cohen, 2010; Ganju & Saggurti, 2017). In the PNG context, however, the most significant effort

to provide free legal services to key populations was discontinued after several years, with participants from a range of groups sharing mixed views on its effectiveness. In one participant's evaluation, this previous effort to provide legal services to key populations had limited success because it was disconnected from other support (including social, economic, and familial support) that would be needed by individuals who pursued or defended criminal cases in a hostile legal system.

One unresolved tension in the opinions voiced by participants in this study was the potential impact of law reform on the course of the HIV epidemic, which was one focus of this study. While some participants suggested that law reform might be an effective HIV prevention strategy, a majority noted that they had little faith in existing laws, or the processes in place to enable citizens to benefit from human rights protections. Participants from NGOs and international agencies stressed the hope that decriminalisation would transform the behaviour of individual sex workers and men who have sex with men in ways that would decrease their risk of acquiring HIV. However, stakeholders working for PNG community, legal advocacy, and health organisations did not identify stigma as a barrier to HIV services. Rather, a majority of participants from these groups identified the need to increase funding for community programmes to address police impunity to commit violence as the most important area for human rights interventions. This highlights the limitation of policies that rely on law reform to improve access to HIV services, instead, highlighting the need to maintain a focus on interventions to improve the human rights of economically marginalised transgender and cisgender female sex workers in particular.

## Conclusion

The 2021 United Nations Political Declaration on HIV and AIDS placed a renewed emphasis on addressing restrictive legal and policy frameworks, including through the introduction of targets designed to encourage states to reform laws criminalising male-to-male sex and sex work (United Nations General Assembly, 2021). In PNG, as in many parts of the world, law reform has proven challenging as a result of growing hostility towards LGBTQ+ and sex worker rights. Interviews with key stakeholders in PNG highlighted the continued importance of engaging in advocacy for law reform under such conditions, but that strategies to do so should be aligned with local political and social realities. Stakeholders suggested that community organisations were seen as the most important group to support in efforts to address human rights violations. However, such efforts were limited by a lack of accessible legal institutions and consistent funding to support community participation. Finally, stakeholders suggested that influential national bodies, including religious organisations and lawmaking bodies, needed to participate in the process of strengthening available human rights provisions, to develop a consensus on the need to protect the dignity of all PNG citizens.

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## Appendix

Law/Act and relevant sections	Description of relevant law and penalties	Potential impact on key populations	Conflict with human rights protections in the laws of PNG
Criminal Code 1974 §210 (Unnatural offences)	Section (1) states that '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 penetrate him or her against the order of nature, is guilty of a crime. Maximum penalty: 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. Maximum penalty: 7 years	Subsection (1), 'sexually penetrates any person against the order of nature' – interpreted to mean as anal sex between men. Note that section C) extends this to any anal sex (male or female). Subsection (2) refers to 'attempts to commit an offence' – which provides greater scope for police to charge men or transgender women who they believe have attempted to have sex, lowering the burden of proof compared to subsection (1).	The PNG Constitution protects the right to privacy (Section 49) and the equality of all citizens (Section 55). Section 49 (right to privacy): '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 (general qualifications on qualified rights). Section 55 (equality of citizens): Subject to this Constitution, all citizens have the same rights, privileges, obligations and duties irrespective of race,

<p>§212 (Indecent practices between males)</p>	<p>(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. Maximum penalty: Imprisonment for a term not exceeding 3 years.</p>	<p>Indecent practices between males has been interpreted as referring to oral sex and other forms of intimacy between men, as well as attempts to procure it (as is the case for Section 210).</p>	<p>tribe, place of origin, political opinion, colour, creed, religion or sex.’ PNG Constitution, Section 49 (right to privacy) and Section 55 (equality of all citizens). HIV Management and Prevention (HAMP) Act 2003, provisions for protecting people affected by HIV (key populations): Section 6 (discrimination): ‘Subject to Subsections (2) and (3) and Section 8, it is unlawful to discriminate against a person to the detriment of that person on the grounds that the person is infected or affected by HIV/AIDS.’ Section 10 (stigma): ‘it is unlawful to stigmatise a person on the ground that the person is infected or affected by HIV/AIDS.’</p>
<p>§243 (Definition of assault)</p>	<p>Subsection (3) states that ‘A male person under the age of 17 years shall be deemed not to be capable of consenting to any act by any other male person that but for such consent would be an indecent assault.’</p>	<p>Differential age of consent to between men and women/heterosexual sex (which is lower, 16 for girls, 14 for boys, and nevertheless widely considered to be too low).</p>	<p>PNG Constitution, Section 49 (right to privacy) and Section 55 (equality of all citizens).</p>
<p>§336 (Assault with intent to commit unnatural offence)</p>	<p>Section 336 states that ‘A person who assaults another person with intent to have carnal knowledge of him against the order of nature is guilty of a crime.’ Maximum penalty: 14 years</p>	<p>The law does not distinguish between consensual and non-consensual anal sex between men.</p>	<p>PNG Constitution, Section 49 (right to privacy); and Section 55 (equality of all citizens).</p>
<p>§337 (Indecent assault on males)</p>	<p>Section 337 states ‘A person who unlawfully and indecently assaults a male person is guilty of a misdemeanour.’ Maximum penalty: 3 years</p>	<p>Applies a misdemeanour category to indecent assault (interpreted as oral sex and other forms of sexual intimacy between men).</p>	<p>PNG Constitution, Section 49 (right to privacy); and Section 55 (equality of all citizens).</p>
<p>Summary Offences Act 1977</p>			
<p>§55 (Persons living on the earnings of prostitution)</p>	<p>(1) A person who knowingly lives wholly or in part on the earnings of prostitution is guilty of an offence. Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year. (2) The fact that – (a) a person lives with, or is constantly in the company of a prostitute; or (b) a person has exercised some degree of control or influence over the movements of a prostitute in such a manner as to show that that person is assisting her to commit prostitution, is prima facie evidence that that person is knowingly living on the earnings of prostitution.</p>	<p>While intended (along with the original colonial law) to address the exploitation of women by men, this law has been used to prosecute female sex workers on the grounds that they are living off the earnings of prostitution. In PNG, given that there is a broad variation of sex work, living off the earnings has been evaluated according to the amount of money earned through sex work (smaller amounts appear to not satisfy the meaning of living off the earnings of prostitution).</p>	<p>The PNG Constitution protects the right to privacy (Section 49) and right to ‘freedom of choice of employment’ (48): (1) Every person has the right to freedom of choice of employment in any calling for which he has the qualifications (if any) lawfully required, except to the extent that that freedom is regulated or restricted voluntarily or by a law that complies with Section 38 (general qualifications on qualified rights), or a law that imposes restrictions on non-citizens. The HAMP Act provides protections for ‘persons infected or affected by HIV/AIDS,’ where affected by HIV/AIDS is defined as ‘is, or is presumed to be, a member of or associated with a group, activity or occupation, or living in an environment, which is</p>



commonly associated with, or presumed to be associated with, infection by, or transmission of, HIV.' This can be interpreted as referring to key population groups. HAMP Act Section 8 (Unlawful discrimination): (1) Subject to Subsections (2) and (3) and Section 8, it is unlawful to discriminate against a person to the detriment of that person on the grounds that the person is infected or affected by HIV/AIDS. Section 10 (Unlawful stigmatisation): (1) Subject to Subsection (2), it is unlawful to stigmatise a person on the ground that the person is infected or affected by HIV/AIDS.

Matrimonial Causes Act 1963

§17 (Grounds for the dissolution of marriage) Section (e) states as grounds for the dissolution of marriage: 'that, since the marriage, the other party to the marriage has committed rape, sodomy or bestiality;'

Inclusion of sodomy as grounds for the dissolution of marriage alongside rape and bestiality both generates stigma towards men with diverse sexualities and makes them vulnerable to facing additional criminal charges if a spouse if states that this is the grounds for filing for divorce.

PNG Constitution, Section 49 (right to privacy); Section 55 (equality of all citizens).

Adultery and Enticement Act 1988

§2, §3 (Definitions of Adultery and Enticement) Sections 1 and 2 state: 'Act of Adultery. An act of adultery is committed where a spouse engages in voluntary sexual intercourse with a person other than his spouse. Enticement. A person commits enticement when he persuades or attempts to persuade the spouse of another person to commit an act of adultery whether or not the contemplated act of adultery is committed.'

Criminalises adultery as well as enticement. Sex workers may be prosecuted for enticement or attempted persuaded enticement where they have sex with a married man. Note that the use of male pronouns (he/his) suggests that enticement laws would not generally be used for female sex workers; but it may be used for male sex workers and transgender women (who retain the legal sex marker 'male' on identity documents).

PNG Constitution, Section 49 (right to privacy); Section 55 (equality of all citizens).