



# OUTLAWED AND ABUSED

CRIMINALIZING SEX WORK IN PAPUA NEW GUINEA

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First published in 2016

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

**Index: ASA 34/4030/2016**

**Original language: English**

**[amnesty.org](http://amnesty.org)**



**Cover photo:** A transgender sex worker in Port Moresby applies make up in a nightclub dressing room, 2013.

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# 1. GLOSSARY

## ENGLISH

### CISGENDER PERSON

Individuals whose gender expression and/or gender identity accords with conventional expectations based on the physical sex they were assigned at birth. In broad terms, “cisgender” is the opposite of “transgender”.

### CRIMINALIZATION OF SEX WORK

The process of prohibiting sex work and attaching punishment or penalties through criminal laws. This includes laws that punish the selling or buying of sex and the organization of sex work (for example laws against keeping a brothel; promotion of ‘prostitution’; renting premises for the purposes of ‘prostitution’; living off the proceeds of sex work; and facilitating sex work through the provision of information or assistance). It also refers to other laws not specific to sex work which are either applied in a discriminatory way against people involved in sex work, and/or have a disproportionate impact on sex workers which can in practice work as a *de facto* prohibition. Such laws could include those on vagrancy and loitering. Similarly immigration laws can be applied in a discriminatory way against sex workers as a *de facto* prohibition on sex work by migrants and the criminalization of irregular (sometimes called “illegal”) entry or residence may give rise to – or exacerbate – the penalization of sex work by migrants, as engaging in this type of work may make them more visible and liable to being targeted by state authorities.

### DECRIMINALIZATION OF SEX WORK

The removal or repeal of the above-mentioned criminalization measures. It does not refer to the decriminalization of human trafficking, forced labour or any other exploitative practices; violence against sex workers; rape and sexual abuse; or the sexual exploitation and abuse of children.

### GENDER IDENTITY

Refers to a person’s deeply felt internal and individual experience of gender, which may or may not correspond with the

sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerism. (See definition of “transgender” below.)

**GENDER EXPRESSION**

Refers to the means by which individuals express their gender identity. This may or may not include dress, make-up, speech, mannerisms and surgical or hormonal treatment.

**SEX WORK**

The exchange of sexual services between consenting adults for some form of remuneration – money or goods – with the terms agreed between the seller and the buyer.

**SEX WORKERS**

Adults (persons who are 18 years of age and older) of all genders who receive money or goods in exchange for the consensual provision of sexual services, either regularly or occasionally. For the purposes of this report, it includes those who sell sex but may not necessarily identify as “sex workers”.

**THIRD PARTIES**

Individuals who assist with facilitating the sale and purchase of sex. Distinctions are often made between exploitative third parties and those who provide support services to sex workers (for example, security guards, secretaries, advertisers) at their request.

**TRANSGENDER OR TRANS PEOPLE**

Individuals whose gender expression and/or gender identity differs from conventional expectations based on the physical sex they were assigned at birth. A transgender woman is a woman who was assigned the male sex at birth but has a female gender identity; a transgender man is a man who was assigned the female sex at birth but has a male gender identity. Not all transgender individuals identify as male or female; transgender is a term that includes members of third genders, as well as individuals who identify as more than one gender or no gender at all. Transgender individuals may or may not choose to undergo gender reassignment treatment.

**PENALIZATION**

The use of other laws, policies and administrative regulations that have the same intent or effect as criminal laws in punishing, controlling and undermining the autonomy of people who sell sex, because of their involvement in sex work. These measures include, but are not limited to, the imposition of fines, detention for the purposes of “rehabilitation”, deportation, loss of child custody, disentanglement from social benefits, and infringement on rights to privacy and autonomy.

**LEGALIZATION**

In this context, the introduction of laws, policies or administrative regulations to specifically regulate sex work, as distinct from other employment sectors.

**HUMAN TRAFFICKING**

The Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime (also known as the UN Trafficking Protocol) provides the internationally accepted definition of trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.” Human trafficking, including in to the sex sector, is not the same as sex work.

**CUSTOMER, CLIENT OR SEX PARTNER**

Person who buys sexual services from a sex worker.

**MEN WHO HAVE SEX WITH MEN (MSM)**

MSM is an abbreviation for men who have sex with men that is used to describe men who engage in same sex sexual acts regardless of whether or not they have sex with women or have a personal or social gay or bisexual identity.

# 2. EXECUTIVE SUMMARY

Roselyn is a 35 year old woman. She told Amnesty International that she began sex work as an occupation around 1998 when she was around 19 years old. Her parents divorced and with her and her siblings left without any financial support she began living at Waigani Market – a squatter settlement – in Port Moresby. Her other sisters, four of them, also turned to sex work whilst her brothers turned to crime. She married and has two young children and was widowed in 2008. Roselyn’s story is not uncommon in Papua New Guinea. Sex workers that we spoke to, and sex worker organizations, told us that women, transgender people and men often enter sex work as a means of ‘survival’ or to support their families. Once they do, they are likely to:

- Be at an extremely high risk of rape, murder, and other forms of violence;
- Be unlawfully detained, and once in custody or subjected frequent torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) by police , including women being beaten and forced to chew and swallow condoms as ‘punishment’. In some cases, sex workers have been raped by police while in custody;
- Be stigmatized by the media and in the community as “spreaders” of HIV – discouraging them from seeking health information and services; and
- Be shamed and isolated from their families and communities.

This in turn, affects sex workers’ ability to enjoy other human rights, including their ability to seek justice for crimes committed against them.

While there are no laws directly criminalising sex work Papua New Guinea retains colonial-era laws which criminalize “living off the earnings of prostitution”, “owning or operating a brothel” as well as same-sex sexual activity – forcing sex workers to work in the shadows. The outlawed nature of sex work makes it difficult for sex workers to report crimes that are committed against them and to seek police protection. In many cases, police officers are themselves the perpetrators of abuses against sex workers.

## HOW WE DID OUR RESEARCH

This report forms part of the research conducted to develop Amnesty International’s policy on protecting the human rights of sex workers. In addition to desk based research on studies from around the world, further in-country research was conducted in Papua New Guinea, Argentina, Hong Kong, and Norway. While this report focuses on the legal and policy frameworks that affect the human rights of sex workers, a number of human rights abuses featured prominently in the testimonies of sex workers – including high levels of violence and abuse from police and clients.



Amnesty International spoke with 29 sex workers in January 2015, as well as people from five non-governmental organizations, health care service providers from one hospital and three medical clinics, ten police officials (in both Mount Hagen and Port Moresby), three lawyers, the UNAIDS Country Office, the Ombudsman's office and the Public Solicitor's office.

## POLICE ABUSES AGAINST SEX WORKERS



### CASE STUDY: MONA

Mona, a sex worker, described how she was gang raped by six police officers in Jack Perry Park in 2012 after she was caught having sex with a client.

**“Six police officers did sex to me one by one. They were armed with guns, so I had to do it... It was so painful to me, but then I let it go. If I go to the law, they cannot help me as sex work is against the law in PNG. The Police have the law to do that.”**

One sex worker, Elizabeth, told us that police officers tried to force her and a client to have sex while the officers watched. When she refused, she was kicked hard in the back, leaving her needing medical care. Tuki said six policemen raped a sex worker who had been taken to a police station with her. Sakuri also described how she and others were beaten with a stick by a police officer, and some of the sex workers arrested with her were subjected to sexual abuse in detention. In March 2012, following a visit to Papua New Guinea the former UN Special Rapporteur on violence against women Rashida Manjoo said:

**“Reports of police brutality and misconduct were widely reported in all parts of the country. Complaints indicated that violence and sexual abuse of women, including sex workers, while in police detention was a systemic issue.”**

Sex workers also reported to Amnesty International arbitrary arrest and detention – often without legal basis or on dubious evidence, such as possession of condoms. In some cases they are subjected to extortion for money or sex from police officers. Laws criminalizing sex work are rarely enforced through prosecutions before a court of law. Rather, sex workers and sex worker advocates that we spoke to, told us that police officers use criminal laws as a means to abuse their authority, arbitrarily detaining or extorting money and sex from sex workers, with the threat of prosecution if they fail to meet these demands.

Sex workers told us that possession of condoms is used by police as a justification to harass and arbitrarily detain sex workers, with police officers confirming that condoms would be used as evidence in sex work related offences. In some cases, sex workers have been forced to chew or swallow condoms as a means of degrading punishment meted out by police officers.

While the Ombudsman's Office and Police Commissioner have carried out some investigations into abuses by the police force in recent years, police officers in the Internal Affairs Unit confirmed that officers are very rarely dismissed, disciplined or prosecuted for criminal acts, including for assault on sex workers. The Ombudsman's Office and the Internal Affairs Unit of the Police told Amnesty that the lack of resources and the restricted mandate for the Office, mean the few efforts to hold wayward police officers in check have been thwarted.

## CRIMES AND OTHER ABUSES AGAINST SEX WORKERS

“Some [clients], they kill them for sex.”

Liviko, a sex worker, interviewed on 23 January 2015.

Sex workers face a range of abuses from clients, family and others, including rape, sexual or physical assault and sometimes murder. Several sex workers, including Liviko, reported the rape and killing of a sex worker in a settlement in Port Moresby in January 2015, just days before Amnesty International's visit.

In 2010, a study of 593 sex workers (441 women, 96 men and 56 transgender) in PNG's capital Port Moresby found that over a period of six months, 46% of sex workers surveyed had been subjected to experienced physical violence in the course of their work and 50% had been subjected to rape (by clients or police). These figures underscore the high risk of physical and sexual violence for sex workers, who are predominantly women. In a country where an estimated two thirds of all women report sexual violence or rape in their life time and there are little or no support services for women who endured violence, sex workers are at extraordinarily high risk of violence because of the additional stigma and discrimination they face and the criminal status of their work.

Sex workers we spoke to feel unable to seek protection of the law when crimes are committed against them. Many feared reporting crimes would be futile or expose them to further violence from the police or perpetrators.

### STIGMA AND DISCRIMINATION

Sex workers reported to Amnesty International that they face discrimination in accessing other rights, such as the right to health, through breaches of privacy, verbal harassment and being forced to wait extended periods for medical treatment. Rural areas in general have more limited access to health care than urban centres, and this has a disproportionate impact on sex workers because of the stigma and discrimination they face. Often this means sex workers travel long distances to seek adequate sexual and reproductive health care, or attend private clinics, in order to ensure their health care needs are met and that their right to privacy is respected.

Differential treatment by health services has undermined efforts to address the HIV epidemic in PNG. The HIV prevalence rate in Papua New Guinea is estimated to be around 0.7 – 0.8% (the highest in the Pacific) and growing rapidly due to high levels of gender based violence, low levels of condom use and many having multiple sexual partners. Sex workers are identified as a key at risk population because of the violence and discrimination they face.

### ISOLATED FROM FAMILIES AND COMMUNITIES

Independent studies, confirmed by Amnesty International's interviews with sex workers and NGOs, suggest that people who do not conform to established norms of gender or sexuality in Papua New Guinea, for example by engaging in sex work, are often ostracized from their communities and families. There is no official social welfare provided by the government of Papua New Guinea, meaning that those who are thus ostracized face significant barriers to accessing other human rights, such as when seeking housing and employment.

### MALE AND TRANSGENDER SEX WORKERS

Male and transgender sex workers experience multiple forms of intersecting discrimination on the grounds of their sexual orientation and gender identity, and because they are involved in sex work.

Independent academic studies and non-governmental organizations suggest that male and transgender sex workers report higher levels of physical violence from police, clients and their families than women sex workers.

Amnesty International spoke with one male sex worker (who identified as gay) and three transgender women sex workers, all of whom said they experienced violence because of their actual or perceived sexual orientation, or gender identity. Two transgender sex workers explained how they had been tortured or ill-treated by the police and another received death threats after speaking at a public event.

Moana, a transgender sex worker, explained how transgender sex workers are treated after she was arrested in January 2015:

**“Sometimes [police] force us to do oral sex, sex without a condom or to expose ourselves publicly, suck cock publicly, bash us up. They tell us to run, after everything has been done.”**

Moana also said the police made her remove her bra and mocked her. Same sex sexual activity remains criminalized in PNG, and is the primary means by which male and transgender sex workers are prosecuted, even when such transactions occur in private settings. Such laws are discriminatory, violate international human rights law, and are inherently harmful. The Papua New Guinean government must immediately repeal laws criminalizing same sex sexual activity.

## **CONCLUSION**

Sex workers in Papua New Guinea face extraordinarily high levels of violence, including rape and killings. If arrested by the police, they are often detained arbitrarily and subjected to various forms of torture and other ill treatment, including rape and sexual assault, beating, and being forced to chew and swallow condoms. In addition, the social stigma and discrimination experienced by sex workers in the community leave them isolated from families and communities, and less able to support themselves through other means, should they choose to do so.

There must be a fundamental shift in Papua New Guinea’s government laws and policies away from violating the human rights of sex workers and inaction in the face of abuses from clients and others, towards promoting and protecting the rights of sex workers. This must include as crucial first steps the full decriminalization of sex work and urgent measures to end police abuse against sex workers. Priority must be given to ensuring that all people fully enjoy their economic and social rights whether they wish to stay in sex work or seek employment outside it. Such steps must address the discrimination and inequality based on gender, sexual orientation or gender identity. Furthermore, government authorities must invest in and improve services, including psycho-social support for all survivors of sexual and other violence, which disproportionately affects female, male and transgender sex workers.

# 3. METHODOLOGY

Amnesty International undertook desk-based research including telephone interviews from July to December 2014. From 18 to 28 January 2015, two Amnesty International researchers travelled to Papua New Guinea (PNG) for interviews with sex workers, civil society organizations, health care providers and government officials.

Amnesty International researchers travelled to Mount Hagen and Port Moresby. Mount Hagen is Papua New Guinea's third largest city, with a population of around 46,000 people and is situated in the Western Highlands Province; Port Moresby is the national capital. These locations were selected because of different factors influencing the way people sell sex and divergent attitudes towards gender and sexuality.

Amnesty International conducted in depth interviews with 29 sex workers in Papua New Guinea, including three transgender women and one male sex worker. The names of all sex workers have been changed to protect their identity. Amnesty International also spoke with health care providers in Mount Hagen and Port Moresby that specifically work with key populations for HIV prevention, testing and treatment. Amnesty International is grateful to the individuals interviewed for their time and for sharing their experiences of working as or with sex workers in PNG.

The organizations with which Amnesty International met in country included Kapul Champions (an organization of lesbian, gay and transgender people), Igat Hope ('I have hope', an organization for people living with HIV), Friends Frangipani (a sex workers' organization), and the Development Law Association, which provides pro bono legal advice and representation on a range of issues. Amnesty International is grateful for the time and information given by these organizations. Without their support this report would not have been possible.

Additional telephone meetings were conducted with Tingim Laip ('Thinking life', an organization working with people living with HIV), which at the time of writing was concluding its programme of outreach and advocacy on HIV and related issues.

Amnesty International spoke with the Assistant Police Commissioner of Public Safety, 10 police officers including officers in the Internal Affairs Unit (IAU) in both Port Moresby and Mount Hagen.

The IAU is a part of the Royal Papua New Guinea Police Constabulary (RPNGC), which investigates complaints against police officers and determines disciplinary action to be taken against them. Researchers also spoke with the Ombudsman's Commission in Port Moresby. The Ombudsman's Commission receives complaints and has an investigative function and works in collaboration with the IAU in relation to complaints about police misconduct.

Amnesty International spoke to the Family and Sexual Violence Action Committee (FSVAC), a multi-sector committee which addresses family and sexual violence and has representatives from government, donors, faith based organizations, non-governmental organizations (NGOs) and the private sector. FSVAC works closely with the government to develop and implement policies to address family and sexual violence.

Amnesty International requested in writing meetings with the Minister for Health, the Minister for Justice and the Minister for Foreign Affairs, but nobody was able to speak to us during our research mission, possibly due to annual leave.

This work forms part of the research conducted to develop Amnesty International's policy and recommendations on protecting the human rights of sex workers. In addition to desk based research including studies from around the world, further research was also conducted in Argentina, Hong Kong and Norway. As a result of the serious human rights violations and abuses disclosed, and at the request of advocates working in this area, each of these reports has been published. While this report focuses on sex workers, additional information was received on violence and discrimination against gay and transgender people and people living with HIV. These additional areas have been incorporated into this report for the sake of completeness.

# 4. SEX WORK IN PNG



## 4.1 BACKGROUND

Papua New Guinea is a Pacific Island nation, with a population of approximately 7.4 million people, situated just north of Australia and east of Indonesia. The country is culturally and ethnically diverse, comprising of around 800 linguistic groups, with Tok Pisin, Hiri Motu and English being the official languages.

PNG became an independent and self-governing nation in 1973. It is a democratic government based on the British parliamentary system, and Peter Charles Paire O'Neill is the current Prime Minister. The Head of State is Queen Elizabeth II, represented by Governor General Michael Ogio.

The dual legal system allows customary laws (these laws are not prescribed in writing but based on customary knowledge of the indigenous community) to be administered by Village Courts alongside the formal legal system.

PNG faces a range of challenges as a developing island nation, including high levels of poverty and subsistence living, rapid urbanisation and population growth, poor infrastructure development and a struggling health care system. Malaria, other mosquito-borne illnesses, multi-drug resistant Tuberculosis, HIV and other sexually transmitted diseases, high rates of maternal and infant mortality, and injuries as a result of the high levels violence place a significant strain on the health care system which is ill-equipped and under-resourced. These factors, in addition to weak law enforcement and the slow pace of reforms, has contributed to the extraordinarily high levels of family and sexual violence in the country.

Australia is the biggest aid donor to the country. The four key priorities for Australian aid money directed to Papua New Guinea are law and order (including training and capacity building programmes with the police), health, education, and transport infrastructure.

**“In Papua New Guinea, women and children endure shockingly high levels of family and sexual violence, with rates of abuse estimated to be some of the highest in the world outside a conflict zone.”**

Medicins Sans Frontiers, *Return to Abuser: Gaps in service and a failure to protect survivors of family and sexual violence in Papua New Guinea*, March 2016.

## 4.2 SEX WORK IN PNG

It is difficult to measure the exact number of sex workers in PNG, as few comprehensive studies have been conducted in this area. However, the sex workers' organization, Friends Frangipani, estimates that at least 900 sex workers are currently working in Port Moresby.<sup>1</sup> Another academic social mapping exercise in 2010 estimated that there were approximately 2,000 female sex workers in Port Moresby.<sup>2</sup> Given the high levels of violence, stigma and discrimination against those who sell sex, and the criminalization of sex work in Papua New Guinea, the actual number of sex workers could be much higher as people may be fearful of discussing their work.

As in other parts of the world, the majority of sex workers in Papua New Guinea are women, although transgender women and men also sell sex to both men and women.<sup>3</sup> A 2010 academic study, surveyed 441 women, 96 men and 56 transgender people<sup>4</sup> from Port Moresby – highlighted that while most sex workers are women, men and transgender people are highly over-represented in sex work.

Amnesty International spoke with sex workers who described a variety of ways in which they conduct their work. Some have only a few regular clients whom they refer to as “sex partners” and only contact them when they need money. Others go to night clubs to find clients, work in guesthouses or on the streets. Sex workers told Amnesty International they often feel safer and more secure when working together with other sex workers.

Some sex workers that spoke to Amnesty International live and work on the streets, while others live with family members who may or may not know about their sex work. Two sex workers that Amnesty International interviewed worked at a guesthouse in a brothel-type arrangement. Some described themselves as “hidden sex workers”,<sup>5</sup> or turned to sex work at times when they need additional income to support themselves and their families.

The vast range of terminology for “sex worker” in local languages was derogatory, highlighting the disdain with which sex workers are often treated by society. Sex workers who spoke to Amnesty International were often engaged in sex work in order to support their children and other family members due to a lack of opportunities for alternative and viable employment. An academic in this area noted that the criminalization

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<sup>1</sup> Interview with Rossa, transgender sex worker, 20 January 2015.

<sup>2</sup> E.A.K. Bruce, 'Studies of Female Sex Workers in Port Moresby, Papua New Guinea', PhD Thesis, University of Melbourne, 2010, p. 107.

<sup>3</sup> A. Kelly, M. Kupul, et al, 'Askim na save (ask and understand): People who sell sex and exchange sex in Port Moresby', Papua New Guinea Institute of Medical Research and the University of New South Wales, 2011, p. 11. [Hereinafter: A. Kelly, M. Kupul, et al, 'Askim na save'.]

<sup>4</sup> A. Kelly, M. Kupul, et al, 'Askim na save' at p7.

<sup>5</sup> Interview with Nikinu, woman sex worker, 21 January 2015.

of sex work serves to legitimize society's condemnation of sex workers and results in support for police violence and other violence against sex workers.<sup>6</sup>

## 4.3 REASONS FOR ENGAGING IN SEX WORK

### Women rely on sex work as a means of supporting themselves and their families

"It's hard, but we can't stay without having money to support us. If we do not do sex work, where will we get money for our food?" asks Mary, a female sex worker. Mary lives in one of Port Moresby's many informal settlements and has been a sex worker since she was 16 years old; she is now 42. Mary does not have any family support and raised a child without any financial support from the father. She says she found it difficult to find other work.<sup>7</sup>

Monica, who lives with her 10-year-old daughter and widowed mother, says: "I do this because there is no way to support my child and my mother and I need to earn a living too. It's survival."<sup>8</sup> Monica was forced into an illegal "marriage" at 11 years of age by her uncle, who owed a debt to the man who became her husband. She described her husband as abusive and is now separated from him. He does not provide any financial support for his daughter.

Marriage for girls under 16 years of age is illegal in Papua New Guinea, as is forced marriage and marriage as part of customary compensation arrangements. However, forced marriage and early marriage is still practised and is widely tolerated as being a part of the culture.<sup>9</sup>

Sex workers Amnesty International spoke with offered a variety of reasons for why they do sex work. Some said that circumstances, including poverty, unemployment and supporting other family members, led them to engage in sex work.<sup>10</sup> Some described experiencing violence and sexual abuse before leaving home and taking up sex work as a means of securing a livelihood.<sup>11</sup> Not all sex workers Amnesty International spoke to experienced violence. The reasons for engaging in sex work are not mutually exclusive and in practice often overlap, with some sex workers having multiple reasons for engaging in sex work. Personal circumstances, such as poverty and hardship, does not on its own negate the ability of people to make decisions regarding their own bodily autonomy.<sup>12</sup>

States must address the social and economic factors which lead people to take up sex work and ensure that people can leave sex work if and when they choose. However, criminalizing sex work also does nothing to assist people in such circumstances, other than to further punish sex workers, further marginalizing them and increasing the risks of violence they face.

The experiences of sex workers in Papua New Guinea should be understood within the context of a country which has high levels of violence against women and significant gender inequality. Some reports suggest that as many as 97% of women in the Highlands have experienced physical or sexual violence.<sup>13</sup> Sexual and

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<sup>6</sup> C. Stewart, *Name, Shame and Blame: Criminalising Consensual Sex in Papua New Guinea*, 2014, p. 270. [Hereinafter: C. Stewart, *Name, Shame and Blame*.]

<sup>7</sup> Interview with Mary, woman sex worker, 24 January 2015.

<sup>8</sup> Interview with Monica, woman sex worker, 26 January 2015.

<sup>9</sup> In Papua New Guinea, the Marriage Act 1963 provides that the legal age for girls to marry is 16 years of age, or in exceptional circumstances a Judge or Magistrate may authorize a marriage in which a girl has reached 14 years of age (see section 7). In practice, girls are sometimes forced into customary marriages at younger ages. Marriage is sometimes part of customary compensation even though the Papua New Guinea National Court declared such arrangements to be unlawful in *Application by ICRAF Re Willingal* [1997] PNGLR 119.

<sup>10</sup> Interviews with Mona, Mary and Mere, Port Moresby, 21 January 2015 and Sarah, Port Moresby, 23 January 2015.

<sup>11</sup> For example, interview with Mere, Port Moresby, 24 January 2015.

<sup>12</sup> See Amnesty International, *Policy on Protecting the human rights of sex workers*, May 2016.

<sup>13</sup> As cited in Amnesty International, *Papua New Guinea: Violence against women: Not inevitable, never acceptable!* (Index: ASA 36/002/2006) p. 6. There are few studies of gender-based violence in Papua New Guinea and as a result it is difficult to quantify the extent of gender-based violence in the country. A more recent study, conducted by the UN, surveyed 10,000 men in Asia and the Pacific on their use and experiences of violence, gendered attitudes and practices, childhood, sexuality, family life and health. The Papua New Guinea



gender-based violence, including violence against sex workers, is a human rights abuse and the authorities must take measures to end it. Criminalization of sex work can compound the challenges faced by sex workers, by exposing them to further violence and discrimination.

In highlighting the link between gender stereotypes and stigma against sex work, one expert noted that:

**“male violence, abuse and neglect... are factors which feature widely in research, but are often overlooked in public discourse, while the woman or girl who exercises agency in the face of adversity is condemned.”<sup>14</sup>**

Sex work is not the only, or even the main source of income for sex workers. Some sex workers who spoke to Amnesty International said that they also obtain an income from gardening (small scale farming)<sup>15</sup> and housekeeping for others,<sup>16</sup> or work or volunteer with organizations doing community outreach on sexual and reproductive health.<sup>17</sup> Around three-quarters of those surveyed in a study of nearly 600 sex workers in Port Moresby had other forms of primary work apart from selling sex.<sup>18</sup> Research also found that women who sell sex are often “clerks, betel-nut sellers, housewives, collectors of firewood, struggling widows, girls doing Grade 8, job applicants, and women seeking to marry expatriate boyfriends”.<sup>19</sup>

A study by Tingim Laip, an NGO working with people living with HIV, found that many women sex workers had engaged in sex work due to limited schooling, which in turn limited opportunities to seek gainful employment which did not require a supplementary income. These women regularly performed “transactional sex” in exchange for small amounts of money or goods, for extra assistance to obtain daily necessities, rather than being a primary source of income.<sup>20</sup>

Some sex workers leave home at a young age because of family problems, broken marriages, or abusive relationships. Others turn to sex work after the break-down of their own marriage or the death of a spouse. In some cases they see sex work as their only option; for others, it is a choice.

Sakuri told Amnesty International that she has engaged in sex work since leaving home at the age of 15. She fled her home after experiencing sexual abuse from her step-father, and went to live with a group of women at Three Mile, an informal settlement in Port Moresby. Sakuri said she had experienced peer pressure to begin sex work herself.<sup>21</sup>

Helen has four adult children. Her husband died in 2007. Helen said she began sex work around the time her mother passed away, when she was 14 or 15 years old. Helen’s step-father was abusive. She left home and had to care for her younger siblings from her earnings.<sup>22</sup>

Koke, a female sex worker from Central province, spoke of the combined circumstances that influenced her taking up sex work:

**“I have problems with my family, poverty and unemployment that brings me to do sex work. I am an orphan, I was placed in care with relatives. Both parents died when I was 10, so I had no one to look after me. I started doing sex (work) from there. There is no proper shelter, so I live on the streets and do sex work just to have something**

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research site for the report was Bougainville and the report’s results therefore do not reflect the whole country. In addition, the report did not explore all forms of violence against women, and focused instead on intimate partner violence and non-partner rape. Nonetheless, it found that the proportion of men who reported having perpetrated violence against an intimate partner in their lifetime was 80% in Bougainville. It also found that 68% of women reported experiencing at least one act of physical and/or sexual violence by an intimate partner. For the full report see UNDP, UN Women, UNFPA Multi-country Report, *Why do some men use violence against women and how can we prevent it?*, 2013.

<sup>14</sup> C. Stewart, *Name, Shame and Blame*, p. 154.

<sup>15</sup> Interview with Alexi, transgender sex worker, Mount Hagen, 20 January 2015.

<sup>16</sup> Interview with Yerema, woman sex worker, Mount Hagen, 23 January 2015.

<sup>17</sup> Interview with Rossa, 19 January 2015; Alexi, 20 January 2015; Raikos, gay sex worker, 21 January 2015; Stella, transgender sex worker, 22 January 2015; Philma, woman sex worker, 23 January 2015.

<sup>18</sup> A. Kelly, M. Kupul, et al, ‘Askim na save’, p. 25.

<sup>19</sup> C. Stewart, *Name, Shame and Blame*, pp. 21, 156.

<sup>20</sup> Tingim Laip, ‘Social Mapping Report: Highlands Highway’, 2011/2012, p. 39. This study surveyed women and men sex workers.

<sup>21</sup> Interview with Sakuri, woman sex worker, 24 January 2015.

<sup>22</sup> Interview with Helen, woman sex worker, 24 January 2015.

**for tomorrow. When there are good clients, there is affordable and good rooms to do sex, but when there is no good client, I go to nearest house, public toilet, public drain, in the bushes.”<sup>23</sup>**

Elizabeth lives in Port Moresby and has five children. She said that engaging in sex work was her choice. She began performing sex work when her husband died in 2002.<sup>24</sup>

Ailyne is a mother of two adult children. She began sex work when her marriage ended more than 30 years ago. She said her ex-husband was “money abusive” – he attempted to control her with money. Ailyne said she does not want a normal life, as a “housewife”. Instead, she said, “I like to stay close to my friends. We go party, or maybe drink, or gather money and cook a pot of food and eat together and sleep together.”<sup>25</sup>

Alexi, a transgender woman, said that while many transgender people often turn to sex work because of discrimination in other forms of employment, she did so as a matter of choice:

“All the TGs are sex workers. I am a transgender woman and I do sex work. I started sex work at 13 years. I find [that other] work is hard. My family is okay with it. I feel it is my choice. I have regular clients, I go to hotels. I am scared of being on the streets.”

Alexi said that she also does some gardening and marketing (sells her produce at the markets).<sup>26</sup>

## 4.4 VIOLENCE AGAINST SEX WORKERS

A study published in 2011 conducted on a group of sex workers in Port Moresby found that family members and police were the two most common perpetrators of physical abuse, while clients and police officers were the most common sexual abusers.<sup>27</sup> A health care provider and sex worker advocates who spoke to Amnesty International also supported the study’s findings and explained that sex workers most commonly face violence from police, their clients, members of the public and family members.<sup>28</sup> According to the study, male sex workers were less likely to experience sexual abuse than women and transgender sex workers. Transgender sex workers (21% of those surveyed) were likely to experience sexual abuse from police officers, whereas women were equally likely to experience sexual abuse from a client, police officer or a non-paying regular partner (around 15% for each). More than half of all sex workers surveyed had experienced physical abuse or rape in the previous six months. In addition to this, sex workers who work on the streets or in night clubs report higher risk of violence from clients. Many claimed that negotiating payment and use of condoms with clients can be particularly risky. Some sex workers reported being forced to engage in unprotected sex with clients, while rape of sex workers was rarely reported to police, and many sex workers felt that reporting rape was unlikely to result in any redress.

Consistent with Amnesty International’s findings in this report, a range of reports by UN mechanisms have documented the high levels of violence, intimidation and abuse against sex workers in Papua New Guinea. The former UN Special Rapporteur on violence against women reported that sex workers were at a greater risk of a range of human rights abuses, including harassment and sexual abuse by the police, compared to other women.<sup>29</sup>

In 2008, the UN Committee on the Elimination of Discrimination against Women found that sex workers in Papua New Guinea were being arrested, detained, intimidated and abused and that women sex workers were particularly victimized. The Committee also found that there was little protection for adults who are forced into sex work, little protection against the high levels of sexual violence experienced by sex workers,

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<sup>23</sup> Interview with Koke, woman sex worker, 23 January 2015.

<sup>24</sup> Interview with Elizabeth, woman sex worker, 24 January 2015.

<sup>25</sup> Interview with Ailyne, sex worker, 23 January 2015.

<sup>26</sup> Interview with Alexi, transgender sex worker, 20 January 2015.

<sup>27</sup> A. Kelly, M. Kupul et al, ‘Askim na save’, p. 25.

<sup>28</sup> Interview with health care provider, Mount Hagen, 19 January 2015; Interview with sex worker advocates, Port Moresby, 18 January 2015.

<sup>29</sup> Report of UN Special Rapporteur on violence against women its causes and consequences, Raahida Manjoo: Mission to Papua New Guinea, UN Doc. A/HRC/23/49/Add.2 (2013) para. 46.

and no employment protections applying to sex workers in the country. The Committee called on the government to protect sex workers from exploitation, whilst affording them the same rights and protections as other workers.<sup>30</sup>

## 4.5 CRIMINALIZING CONSENSUAL ADULT SEX

Papua New Guinea's justice system and criminal laws are a reflection of its colonial past. The legal framework is a dual system of customary laws and common laws – that are a combination of legislation passed by parliament and precedent established by court decisions. While culture and religion are often given as basis for laws criminalizing consensual adult sex, including sex work, it overlooks the colonial history in the development of such laws. The responsibilities of the Papua New Guinean government to comply with International human rights laws are outlined in Chapter 9 on International Laws and Standards below.

Early colonial laws not only criminalized a range of sexual behaviours, but also restricted freedom of movement of local people and regulated the way people dress. The Criminal Code Act 1974 was adopted one year before PNG gained independence and was modelled on the Criminal Code of the State of Queensland, Australia. It retained the provisions that criminalized same-sex sexual activity and sex work. Queensland has since repealed criminal provisions relating to the criminalization of same-sex relationships and legalized sex work in certain circumstances.<sup>31</sup>

In addition, a range of other laws are used in Papua New Guinea to justify unlawfully detaining or harassing individuals engaging in consensual adult sex in private. These laws, and relevant cases, are outlined below.

While a number of sex workers claimed they had been detained by police on the allegation that they were intentionally infecting people with HIV/AIDS under the HIV/AIDS Management and Prevention Act (HAMP) Act 2003, there are no reported cases of people being charged with criminal offences under this law in Papua New Guinea.<sup>32</sup>

### LAWS AGAINST 'PROSTITUTION' AND 'BROTHEL-KEEPING'

Papua New Guinean laws prohibit various acts related to the sale of sex. This includes living on the earnings of 'prostitution', living with or associating with a 'prostitute', assisting a person to commit 'prostitution' and 'keeping or owning a brothel' (see relevant provisions of the Criminal Code below).

Section 231 of the Criminal Code Act 1974 prohibits brothels and imposes a penalty of up to three years' imprisonment for keeping or owning a brothel.

The Summary Offences Act 1977 (sections 55 and 56) makes it an offence to live on the earnings of prostitution (punishable with a 400PGK fine [US\$130] and imprisonment for up to one year) and to keep a brothel (punishable with an 800PGK fine [US\$260] and imprisonment for up to two years). Relevant sections of the Summary Offences Act are outlined below:

*PART VII. – PROSTITUTION.*

*55. PERSONS LIVING ON THE EARNINGS OF PROSTITUTION.*

*(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.*

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<sup>30</sup> UN Committee on the Elimination of Discrimination against Women, PNG initial, second and third reports under CEDAW, <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.PNG.3.pdf>

<sup>31</sup> [Criminal Code and Another Act Amendment Act 1990](#) (Queensland), which was passed by the parliament on 29 November 1990 removed provisions that criminalized homosexuality. In 1999, Queensland moved to a model which legalizes licensed brothels and single sex workers working from home under the Prostitution Act 1999 (Queensland). Other forms of sex work remain illegal in Queensland.

<sup>32</sup> Interview with an NGO activist and sex worker, Port Moresby, 21 and 24 January 2015; and search of reported Papuan New Guinean court cases on [www.paclii.org](http://www.paclii.org)

#### 56. KEEPING A BROTHEL.

(1) A person who—

(a) keeps, manages or acts or assists in the management of a brothel; or

(b) knowingly supplies, or assists in the supply of money for the maintenance and support of a brothel, is guilty of an offence,

Penalty: A fine not exceeding K800.00 or imprisonment for a term not exceeding two years.

(2) For the purposes of this section, a person who acts or behaves in such a manner as would lead a reasonable person to believe that he is the person in charge of, or having the care or management of, a brothel, shall be deemed to keep the brothel.

#### 57. SUPPRESSION OF BROTHELS.

A person who—

(a) being the owner, lessee, tenant, occupier or person in charge of any premises – uses the premises or knowingly permits the premises to be used as a brothel or for any purposes connected with prostitution; or

(b) being the owner or lessee of any premises or the agent of any such owner or lessee – lets or sublets the premises knowing that the premises are to be used as a brothel or for any purpose connected with prostitution,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

There are two reported cases relating to ‘prostitution’ charges under these provisions of the Summary Offences Act.<sup>33</sup> In the case of *Wemay v Tumdual* it was held that the fact of a sex worker being paid money for services rendered by her as a sex worker was evidence of the fact that she was living, at least in part, on the earnings of ‘prostitution’, within the meaning of the section.<sup>34</sup>

In a later case, the Court took a different approach without expressly overturning the decision in *Wemay v Tumdual*.<sup>35</sup> In this case, it was held that more than a single transaction is required for conviction under this provision. The court found that occasional transactional sex for small amounts of money was insufficient to warrant a conviction under section 55. The judge noted:

**“Giving §55 its ordinary and grammatical meaning, I find that §55 envisages an offence for those who make it a habit or a regular practice of living either wholly or in part on the earnings of prostitution. Receiving money for an isolated prostitution association, in my view, cannot fall under §55, unless it is for a substantial sum of money or goods which the accused could be said to live on wholly or in part, in the course of his or her week to week or day to day sojourn on this earth.”**

Under section 59(b) of the Child Welfare Act, maintenance payments need not be made for an illegitimate child if it is found that the mother is a “common prostitute”. Most reported cases found under the term ‘prostitution’ deal with the issue of child maintenance payments.<sup>36</sup>

The only reported cases under these provisions, cited above, involve criminal prosecutions of women sex workers.<sup>37</sup> Male sex workers tend to be prosecuted under laws that criminalize same sex activity, as described below.

## LAWS CRIMINALIZING SAME-SEX SEXUAL ACTIVITY

Male sex workers may be also prosecuted under provisions of the Criminal Code Act, which prohibit men having or procuring sex with men under sections 210 and 212. Consent is not a defence to either of these provisions.<sup>38</sup> There are no reported cases against transgender sex workers,<sup>39</sup> although this may mean that their transgender identity has not been recognized by the courts.

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<sup>33</sup> Court decisions are not always reported in Papua New Guinea. There may be unreported cases of prosecutions under these provisions of the Criminal Code.

<sup>34</sup> *Wemay v Tumdual*; *Hosea v Tumdual*; *Joyce v Tumdual*; *Iamey v Tumdual* [1978] PGNC 54; [1978] PNGLR 173.

<sup>35</sup> *Jon v Kuman*; *Bima v Mohin*; *Ku v Michael* [1980] PGNC 26; N253.

<sup>36</sup> *Yaling v Koloba* [1999] PGNC 78, *Raukisa v Leahy* [1967-68] PNGLR 153.

<sup>37</sup> *Wemay v Tumdual*; *Hosea v Tumdual*; *Joyce v Tumdual*; *Iamey v Tumdual* [1978] PGNC 54; [1978] PNGLR 173; *Jon v Kuman*; *Bima v Mohin*; *Ku v Michael* [1980] PGNC 26; N253.

<sup>38</sup> *The State v Merriam* [1994] PNGLR 104, although it should be noted that this case involved sexual acts against a minor.

<sup>39</sup> Following search of reported cases online at [www.paclii.org](http://www.paclii.org)

Sections 210 and 212 of the Criminal Code Act relate to “unnatural offences” and “indecent practices between males”. These provisions have been used to convict and imprison men who have sex with men, including male sex workers.

**210. UNNATURAL OFFENCES.**

(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 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 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.

In the case of *Queen v Kausigor*, a man had paid for sex with another man; both men were adults and consented to the sexual relationship. In spite of finding that sex between men was not something which “was severely frowned upon in Sepik<sup>40</sup> culture” and that there was “no perceivable effect on public morality”, the judge convicted and sentenced both men. On appeal, the penalties against the two men were reduced to 18 months’ imprisonment each.<sup>41</sup>

It should also be noted that the validity of sections 210 and 212 of the Criminal Code have not been tested under the Constitution’s Bill of Rights. The right to privacy and the right to equality before the law, both of which are protected in Papua New Guinea’s Constitution, are inconsistent with criminalizing same-sex sexual activity between consenting adults in private.<sup>42</sup>

## INTENTIONALLY SPREADING HIV

A NGO activist and sex worker who spoke to Amnesty International claimed to have been arrested by police and accused of intentionally infecting a person with HIV.<sup>43</sup> The HIV/AIDS Management and Prevention Act (HAMP) Act 2003 criminalizes the intentional transmission of HIV, making it an act of assault or unlawful killing. For example:

**23. INTENTIONAL TRANSMISSION.**

(1) The intentional transmission or attempted transmission of HIV to another person is –

- (a) an assault or attempted assault, as the case may be, occasioning bodily harm within the meaning of Section 340; and
- (b) where death has occurred – an act of unlawful killing within the meaning of Section 298 of the Criminal Code Act 1974.

(2) Section 297 of the Criminal Code Act 1974 shall not apply in a prosecution under Subsection (1)(b).

(3) It is a defence to a charge of an offence relating to the intentional or attempted transmission of HIV to another person that –

- (a) the other person was aware of the risk of infection by HIV and voluntarily accepted that risk; or
- (b) the other person was already infected with HIV; or
- (c) where the transmission or attempted transmission is alleged to have occurred by sexual intercourse –
  - (i) a condom or other effective means of prevention of HIV transmission was used during penetration; or
  - (ii) the accused person was not aware of being infected with HIV.

(4) A court may, in any proceedings under this section, order either or both of the following:–

- (a) that an HIV test be performed on the accused;
- (b) that the court be informed of any information regarding the HIV status of the accused.

(5) In making an order under Subsection (4), the court may make any ancillary order it considers necessary or desirable, and in particular, orders relating to –

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<sup>40</sup> Sepik is an area of PNG which has a river of the same name, which runs through the East Sepik Province.

<sup>41</sup> *Queen v Kausigor* [1969] PGSC 48.

<sup>42</sup> A Fijian High Court case in 2005 found that homosexuality provisions under the Criminal Code were unconstitutional and therefore void to the extent that they criminalize acts carried out in private between consenting adults. See *Nadan & McCoskar v State* (Criminal Appeal Case Nos: HAA 85 & 86 of 2005). While this decision is not binding on courts in Papua New Guinea, the wording of criminal provisions and constitutional rights in Fiji is similar to wording of Papua New Guinean laws and it is likely to be persuasive jurisprudence.

<sup>43</sup> Interview with NGO activist and sex worker, Port Moresby, 21 and 24 January 2015.

- (a) the provision of counselling to the accused; and
- (b) the release or suppression of the results of any test performed or of any information obtained.

The Act permits prosecution in situations in which an individual intentionally aims to transmit HIV, but does not apply to situations in which a person used a condom, had disclosed their HIV status to the person with whom they engaged in sex, or if they were unaware of their HIV status. It does not permit police to arrest individuals simply for engaging in sex work. According to its preamble, the Act is aimed at protecting the rights and reducing the discrimination against people with HIV and those at risk of infection. Its use by the police to harass sex workers is contrary to its aims and objectives.

## TRAFFICKING OF WOMEN AND GIRLS

Under the Criminal Code, as amended in 2013, it is considered an offence to traffic in persons for the purposes of exploitation.<sup>44</sup> The penalty includes up to 20 years' imprisonment.

Any person who recruits, transports, transfers, conceals, harbours or receives any person by —

- (a) threat; or
- (b) use of force or other forms of coercion; or
- (c) abduction; or
- (d) fraud; or
- (e) deception; or
- (f) use of drugs or intoxicating liquors; or
- (g) the abuse of office; or
- (h) the abuse of a relationship of trust, authority or dependency; or
- (i) the abuse of a position of vulnerability; or
- (j) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, with the intention that the other person will be subject to exploitation, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 20 years.

(2) If the offence is committed in relation to a person who is under 18 years of age at the time of the offence, the offender is liable to imprisonment for a term not exceeding 25 years.

(3) If the offender subjects the person to circumstances that result in, or are likely to result in, the death of that person, the offender is liable, subject to Section 19, to imprisonment for life.

The US State Department in its 2015 Trafficking in Persons Report acknowledged some improvements by the Papua New Guinean government to address trafficking, including bringing into force the above laws and investing in training on trafficking through the Department of Justice and Attorney General. However, there remains an absence of mechanisms in place to identify victims of trafficking and to provide support to them, and investigations and prosecutions for trafficking remained low, with only one investigation taking place in 2015.<sup>45</sup>

In addition, the Government, through partnerships with the International Organisation for Migration (IOM) and the US Government, developed the Trafficking in Persons National Action Plan (TiPNAP) (2015–2020) and the Standard Operating Procedures (SOPs) for the identification, referral and prosecution of human trafficking cases in the country.<sup>46</sup> The TiPNAP and SOPs set the framework for cooperation between agencies in trafficking cases, identification of victims and prosecution of offenders and the provision of training for stakeholder groups involved in counter trafficking efforts. It is not clear to what extent, if any, these policies have been implemented in practice.

Amendments were made under the Criminal Code (Sexual Offences and Crimes Against Children Act) in 2002, with the aim of protecting children from sexual abuse and commercial sexual exploitation, including child prostitution. However, a police prosecutor who spoke to Amnesty International in Mount Hagen

<sup>44</sup> *Criminal Code (Amendment) Act 2013*, Division 1A, section 208C.

<sup>45</sup> US State Department, *Trafficking in Persons Report*, 2015, pp.274-275, available at: [www.state.gov/documents/organization/243561.pdf](http://www.state.gov/documents/organization/243561.pdf)

<sup>46</sup> UN Human Rights Council Working Group on the Universal Periodic Review, *National Report submitted in accordance with Paragraph 5 of the Annex to Human Rights Council resolution 16/21, Papua New Guinea*, 6-13 May 2016, A/HRC/WG.6/25/PNG/1.

appeared unaware of these changes, and said that children who engage in transactional sex will be prosecuted like adults. Children (persons under the age of 18) involved in commercial sex acts are victims of sexual exploitation, which is recognized by the International Labour Organization as a worst form of child labour.<sup>47</sup> Child victims of sexual exploitation are entitled to remedies and reparation, including provision of psychosocial support. The government should ensure that children are not prosecuted or otherwise penalized under criminal laws but are provided with necessary support.

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<sup>47</sup> Articles 3(b) and 6(1) of ILO Convention No. 182 (Worst Forms of Child Labor).

# 5. POLICING OF SEX WORK

Sex workers, advocates, lawyers and police raised a number of concerns to Amnesty International about the way in which policing of sex work is carried out in Papua New Guinea. Raids against sex workers, often carried out illegally, are rarely used to prosecute and convict sex workers but often to extort or assault them. Concerns were raised about the regular failure by police to comply with laws and procedures on arrest, search, seizure and appropriate use of force. In addition to this, concerns were raised about how prosecutions were conducted, the failure of adequate safeguards in detention and the use of condoms as evidence.

Human rights violations against sex workers by police, including arbitrary arrest and detention, are widespread in Papua New Guinea, and police have staged concerted crackdowns aimed at sex workers. Yet relatively few people have been formally charged and prosecuted in recent years for prostitution under the Criminal Code. Often there is inconsistent enforcement of the laws, and the laws themselves are misinterpreted by the police. For example, some officers had an understanding of factors such as poverty and gender inequality that lead women to engage in sex work and did not see it as their role to enforce such laws against marginalized women.<sup>48</sup> Technically, “living off the earnings of prostitution” is only unlawful if substantial and multiple transactions are established (see court cases above), however, some police officers said they felt it was their duty to prosecute sex workers where there is evidence of a single transaction.<sup>49</sup>

In March 2014, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions visited the country. In his report, Christof Heyns mentioned numerous cases of excessive and even lethal use of force by the police and noted that there was no human rights training for the police force.<sup>50</sup> In addition, the Special Rapporteur noted that a lack of accountability, delays in court cases, lack of awareness about legal remedies and the absence of witness protection programmes hindered efforts to obtain justice.<sup>51</sup> Implementation of these recommendations would also help to address some of the human rights violations that sex workers face at the hands of police.

## 5.1 RAID ON THREE MILE GUESTHOUSE: 2004

A notorious police raid on sex workers took place at Three Mile Guesthouse in Port Moresby on 12 March 2004. Nearly 40 women sex workers were arrested and marched through the town to the police station. They

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<sup>48</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and in Mount Hagen on 22 January 2015.

<sup>49</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and in Mount Hagen on 22 January 2015.

<sup>50</sup> Preliminary Observations on the official visit to Papua New Guinea by Mr. Christof Heyns, United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions, 3-14 March 2014, available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14373&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14373&LangID=E)

<sup>51</sup> Christof Heyns, *Report of United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions, Andendum – visit to Papua New Guinea, 3-14 March 2014*, 2015, A/HRC/29/37/Add.1



were forced to chew and swallow condoms and were “outed” as sex workers and publicly humiliated on their way to the police station. Some were physically and sexually abused by police officers in custody.<sup>52</sup>

While men were also present during the raid, only women were arrested and charged with offences related to sex work. The charges were later dropped due to lack of evidence, following public outcry over the police handling of the raid.<sup>53</sup>

It took nearly four years for the Ombudsman’s Commission to complete its inquiry into the incident, which found that the police unlawfully entered and raided the premises, used excessive force, unlawfully detained the women and treated the women in a cruel and degrading way. According to the Ombudsman’s report, police said they raided the premises on the basis that a large number of people were gathered and listening to music, which led them to assume that sex work may be taking place there. The Ombudsman found that this was insufficient evidence to give rise to a reasonable suspicion of offences related to sex work, and therefore the arrests were unlawful.<sup>54</sup>

Although the Ombudsman found that there was sufficient evidence of physical assault by the police, it did not make findings against any individual officers, or find that sexual assault took place. Few of the women arrested gave evidence to the inquiry. The Ombudsman recommended that offending police officers be dealt with under the Police Act, which provides for disciplinary action against officers.<sup>55</sup>

While the police officers who spoke to Amnesty International were aware of this incident, and felt they had learnt from it, none were able to tell us whether the police officers involved were held criminally responsible for their actions in the raid.<sup>56</sup> Indeed, police officers who spoke to Amnesty International claimed that dismissal for misconduct is rare and that criminal prosecution or conviction is even more infrequent.<sup>57</sup>

A report by Human Rights Watch found that four of the women arrested in the raid were gang raped in police custody and several others were sexually assaulted, including 20 women who were forced to chew, and in some cases swallow condoms.<sup>58</sup>

Police officers who spoke to Amnesty International claimed that sex workers have not been the subject of targeted campaigns by police since the raid on Three Mile Guesthouse in 2004.<sup>59</sup> However, sex workers and organizations working with sex workers told Amnesty International a different story. They claimed that targeted “crackdowns” on sex workers had taken place in Lae and Mount Hagen in the past 18 months and were widely reported in the media.<sup>60</sup>

The raid on Three Mile Guesthouse is a critical case that highlights policing attitudes towards sex workers, who see their role as punishment rather than law enforcement. In addition, there has been a complete lack of accountability towards the individual officers who perpetrated rape, and other cruel and degrading treatment of the sex workers, entrenching a culture of impunity regarding violence against sex workers.

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<sup>52</sup> Human Rights Watch, *Still Making Their Own Rules: Ongoing Impunity for Police Beatings, Rape, Torture in Papua New Guinea*, 2006, p. 35.

<sup>53</sup> Human Rights Watch, *Still Making Their Own Rules: Ongoing Impunity for Police Beatings, Rape, Torture in Papua New Guinea*, October 2006, p. 35.

<sup>54</sup> Human Rights Watch, *Still Making Their Own Rules: Ongoing Impunity for Police Beatings, Rape, Torture in Papua New Guinea*, October 2006, p. 35.

<sup>55</sup> Papua New Guinea Ombudsman Report on Raid at Three Mile Guesthouse, 2007.

<sup>56</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and in Mount Hagen on 22 January 2015.

<sup>57</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and in Mount Hagen on 22 January 2015.

<sup>58</sup> Human Rights Watch, *Still Making Their Own Rules: Ongoing Impunity for Police Beatings, Rape, Torture in Papua New Guinea*, October 2006, p. 35.

<sup>59</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and in Mount Hagen on 22 January 2015.

<sup>60</sup> Interviews with Kapul Champions, Friends Frangipani and Tingim Laip; The National, ‘PNG’s Lae city cracks down on prostitutes, brothels’, 3 September 2013, available at [www.onepng.com/2013/09/pngs-lae-city-racks-down-on-prostitutes.html](http://www.onepng.com/2013/09/pngs-lae-city-racks-down-on-prostitutes.html); The National, ‘PNG Police: Do not lure girls’, 29 October 2013, available at [www.onepng.com/2013/10/png-police-do-not-lure-girls.html?utm\\_source=dlvr.it&utm\\_medium=facebook](http://www.onepng.com/2013/10/png-police-do-not-lure-girls.html?utm_source=dlvr.it&utm_medium=facebook)

In addition to one sex worker Amnesty International being present during the raid on Three Mile Guesthouse, two others reported cases of sex workers being made to chew or swallow condoms by police, showing that such abhorrent ill treatment by the police continues. Talitha said that the week prior to speaking to Amnesty International, the police had stopped a friend (another sex worker) in front of her and found condoms in her bag. They forced her friend to chew the condoms, as a form of public shaming.<sup>61</sup>

A media report in December 2015 referred to a recent complaint about a woman in custody being forced to chew and swallow condoms.<sup>62</sup> Such conduct amounts to cruel and degrading treatment, and the police must take steps to promptly and independently investigate these allegations and ensure perpetrators are brought to justice.

## 5.2 POLICE CRACKDOWN ON SEX WORKERS: 2013

Three organizations working with sex workers in Mount Hagen told Amnesty International that police carried out a crackdown on sex workers in late 2013, resulting in increased arrests and detention of sex workers.<sup>63</sup> Police officers who spoke to Amnesty International denied knowledge of this; however, newspaper reports from Mount Hagen and Lae supported the claims of advocates of an increased focus on policing of sex workers.

An article in *The National* newspaper in September 2013 detailed a police raid on a brothel known as “Kings Cross” in Lae, Papua New Guinea’s second largest city. In the article, Lae city council police chief Simon Yapam was quoted as saying: “Prostitution is a serious issue in this city and we urge all stakeholders, including the community at large to report any such activities and places to us so we can move in and stop the practice.” It is not clear from the article how many people were arrested or charged with offences related to sex work.<sup>64</sup>

Another article in *The National* on 29 October 2013 highlighted policing attitudes in Mount Hagen. Provincial Police Commander Superintendent Martin Lakari, from Mount Hagen, warned guesthouses against “luring females to work as comfort girls”. While initially aiming such comments at owners of brothel-type establishments, he proceeded to warn women to return to their families or risk being arrested and charged with “loitering”.<sup>65</sup>

## 5.3 PROSECUTION OF SEX WORKERS

The Chief Sergeant of Prosecutions at Boroko Police Station, Port Moresby, said he had not seen any sex-work related prosecutions in the last year or so. He said that brothel raids had happened in the past, but not anymore. He was not aware of any recent criminal charges for consensual same-sex sexual activity, which is sometimes used to prosecute male sex workers.<sup>66</sup>

It is difficult to accurately assess how frequently sex workers, including women, transgender people or men, are being charged under these offences. Some sex workers say they were charged with sex-work related

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<sup>61</sup> Interview with Talitha, woman sex worker, 21 January 2015.

<sup>62</sup> Interview with Roselyn, 22 January 2015 in Mount Hagen. A week before she spoke to us, Roselyn had witnessed the police search the bag of a woman, remove condoms from her bag and force her to chew them. In December 2015, the media reported a woman’s complaint that five police officers at Boroko Police Station, Port Moresby, had forced her to chew condoms (see: PNG Facts, ‘Officer who forced young woman to chew and swallow condoms on the run’, 30 December 2015, available at <http://news.pngfacts.com/2015/12/officer-who-forced-young-women-to-chew.html>). While the woman has not been identified as a sex worker, being forced to chew condoms is a form of cruel and degrading punishment and gender-based violence aimed at condemning a woman’s sexuality and sexual agency.

<sup>63</sup> Interviews with Kapul Champions, Friends Frangipani and Tingim Laip.

<sup>64</sup> The National, ‘PNG’s Lae city cracks down on prostitutes, brothels’, 3 September 2013, available at [www.onepng.com/2013/09/pngs-lae-city-racks-down-on-prostitutes.html](http://www.onepng.com/2013/09/pngs-lae-city-racks-down-on-prostitutes.html)

<sup>65</sup> The National, ‘PNG Police: Do not lure girls’, 29 October 2013, available at [www.onepng.com/2013/10/png-police-do-not-lure-girls.html?utm\\_source=dldr.it&utm\\_medium=facebook](http://www.onepng.com/2013/10/png-police-do-not-lure-girls.html?utm_source=dldr.it&utm_medium=facebook)

<sup>66</sup> Interview with Chief Sergeant Koniu Polon, Port Moresby, 27 January 2015.

offences but were never brought before a court.<sup>67</sup> Court cases at the District Court level and below are often not recorded, or if they are, decisions are only distributed to the parties in the case and are not publicly accessible. In addition, there are significant differences in police attitudes towards sex workers in Port Moresby and Mount Hagen, with officers in Port Moresby not seeing the prosecution of sex workers or other forms of consensual sex as a priority for the police.<sup>68</sup>

An officer at the Police Prosecutions Office in Mount Hagen said that he had never encountered prosecutions of sex workers for selling sex under the Criminal Code, and that prosecutions for same sex sexual activity (used to prosecute male sex workers) were very rare.<sup>69</sup> While he had not overseen any actual prosecutions, several of his statements on how such cases would be handled raised concerns. For example, he stated that underage sex workers would be prosecuted for “prostitution” in an identical manner to adults, and that possession of condoms could be used as “evidence” to support a charge of prostitution. The police officer stated: “Yes, condoms are used as evidence. Under the law it’s called real evidence.”<sup>70</sup>

Children (anyone under 18 years of age) involved in commercial sex acts are victims of sexual exploitation, a grave human rights abuse recognized by the International Labour Organization (ILO) as one of the worst forms of child labour,<sup>71</sup> and are entitled to remedies and reparation, including provision of all necessary support. States have obligations to address underlying factors which increase the vulnerability of children to sexual exploitation, including but not limited to: lack of social support, discrimination, homelessness, poverty, harmful gender stereotypes and structural inequality.<sup>72</sup> Under international law, states must ensure that offering, delivering or accepting a child for the purpose of sexual exploitation is treated as a criminal offence, and must take all appropriate measures to prevent the exploitation and abuse of children.<sup>73</sup> States have additional responsibilities to protect the rights of children, including by ensuring that children are not prosecuted or otherwise penalized as “adults” under sex work laws but are supported as victims of crime.<sup>74</sup>

The fact that laws criminalizing sex work exist, even if they are not consistently implemented, is a concern. It creates negative relationships between police and sex workers, who often feel they are doing something illegal. In addition, police officers who spoke to Amnesty International appeared to have a limited understanding of the law, leading to arbitrary and unlawful arrests. Such conduct was frequently reported by sex workers who spoke to Amnesty International.

## 5.4 FAILURE OF SAFEGUARDS IN DETENTION

The Internal Affairs Unit (IAU) of Papua New Guinea’s police force (the Royal Papua New Guinea Constabulary, RPNGC) confirmed that it often investigates cases where people have been detained without charge for days or detained on the wrong charge and then subsequently released.

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<sup>67</sup> Interview with Ailyne (23 January 2015); Mehere (24 January 2015); Mere (24 January 2015).

<sup>68</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.

<sup>69</sup> Interview with Officer in Charge (Prosecutions, Mt Hagen Police), Mount Hagen, 21 January 2015.

<sup>70</sup> Interview with Officer in Charge (Prosecutions, Mt Hagen Police), Mount Hagen, 21 January 2015.

<sup>71</sup> Articles 3(b) and 6(1) of ILO Convention No. 182 (Worst Forms of Child Labor).

<sup>72</sup> Article 19 of the Convention of the Rights of the Child; Committee on the Rights of the Child, General Comment 10, UN Doc. CRC/C/GC/10 (2007) paras 7 and 16.

<sup>73</sup> Convention on the Rights of the Child; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

<sup>74</sup> International standards prescribe that in all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration, and that the different development needs of children constitute the basis for the lesser culpability of children in conflict with the law. The protection of the best interests of the child requires that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. See Committee on the Rights of the Child, General Comment 10, UN Doc. CRC/C/GC/10 (2007) para 10. In addition, international legal standards stipulate that children must not be criminalized for acts that would not be crimes if they were adults. See, for example, Article 56 of the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), UN Doc. A/RES/45/112 (1990).

In Papua New Guinea, all police facilities are required to record the details of people detained in cells. An IAU officer said that the Provincial Police Commander, or in his absence the next most senior officer, is responsible for checking records each morning and ensuring that the log book accurately records the details of people detained in the cells.<sup>75</sup> In practice, an officer of the IAU told Amnesty International that arbitrary and unlawful detention remains common, and records are not kept up to date.

Sex workers and advocates who spoke to Amnesty International in Mount Hagen and Port Moresby reported that unlawful detention for up to five days was common. International standards relating to detention would cover all places where a person is detained by the relevant authorities, whether that be in a police cell, prison, police vehicle or elsewhere. Following a short period of detention, sex workers were usually released without charge. There is often no formal police record showing whether sex workers are unlawfully detained in this way, but, as acknowledged by police officers who spoke to Amnesty International, senior police oversight of places of detention and the use of police vehicles is inadequate.<sup>76</sup>

When a sex worker or any other person is unlawfully detained without any record of their detention, it puts them at a greater risk of other human rights violations by the police, including torture and other ill-treatment.

When sex workers are the victims of crime, there are various reasons why they may be fearful or reluctant to report those crimes to police, including the possibility of being arbitrarily arrested and detained. More detail on this is given below, but it is especially relevant where the perpetrator is a police officer.

The Ombudsman's Commission is empowered under the Constitution and the Correctional Services Act to inspect places of detention. However, the Ombudsman's Commission told Amnesty International that due to a lack of funding and resources such as sufficient staff (at the time of writing there were only two full-time staff working on police complaints) these inspections have not taken place in recent years. The Ombudsman's Commission is receiving training from the Office of the UN High Commissioner for Human Rights and is hoping to re-establish visits to places of detention in Papua New Guinea if adequately funded to do so. The Ombudsman's Commission noted that even if this is done on a regular basis, it would take them more than one year to inspect all places of detention in Papua New Guinea.<sup>77</sup>

Under section 57 of the Constitution of Papua New Guinea, individuals whose rights have been affected can make an application to the National or Supreme Courts. The Court may inquire into and make orders regarding human rights violations. In the past, these constitutional powers have been used by the courts to inspect places of detention and make orders for improving conditions<sup>78</sup> and to investigate reports of police brutality.<sup>79</sup> The courts have wide-reaching powers to compel witnesses, investigate human rights violations and make any orders they see fit. In theory, this provides an alternative mechanism for human rights complaints by an individual or for a court to launch its own inquiry into alleged human rights violations. In practice, however, this provision has not been used to enforce the rights of sex workers, or gay or transgender people.

## 5.5 USE OF CONDOMS AS EVIDENCE

**“Condoms, both male and female, are the single most effective available technology to reduce the sexual transmission of HIV and other sexually transmitted diseases.**

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<sup>75</sup> Interview with IAU officer, Mount Hagen, 21 January 2015.

<sup>76</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.

<sup>77</sup> Interview with Patrick Niebo, Acting Team Leader for the Anti-discrimination and Human Rights Team, Ombudsman's Commission, Port Moresby, 26 January 2015.

<sup>78</sup> *In the matter of enforcement of Basic Rights under the Constitution re conditions of detention at Bialla Police Lock-up* (2006) N3022; *In the matter of enforcement of Basic Rights under the Constitution re conditions of detention at Kimbe Police Lock-up*, MP No 624 of 2006; *In re Section 57 of the Constitution of Papua New Guinea, Enforcement of Basic and Human Rights* [2006] PGNC 201; N4976.

<sup>79</sup> *Enforcement of Basic Rights, In re Section 57 Constitution of the Independent State of Papua New Guinea* [2014] PGNC 36; N5512.

**Condoms must be readily available for sex workers and their clients, either free or at low cost, and conform to global quality standards... harassment by law enforcement officers reduces the ability of sex workers to negotiate condom use; governments and service provider should address such factors to maximize the impact of condom programming focused on sex work.”**

UN Guidance Note on HIV and Sex work<sup>80</sup>

Raikos, a male sex worker in Mount Hagen, described sex workers being arrested for carrying condoms and sewing needles in late 2014. The police claimed that this was evidence that the sex workers were intentionally transmitting HIV.<sup>81</sup> Raikos explained:

**“Some of the sex workers were standing around the police station. The police found thread, needle and condoms in their bilums<sup>82</sup> and bashed them up. I was there. I saw this happen. I did not get beaten up as I ran away. They put them in the cell at the police station for three days and then they released them. Two girls [adult sex workers] had sex with the police and they released them. Five were taken to the cells. The police thought they were going to prick the condoms and use them to spread HIV/AIDS.”**

Raikos said the police warned the sex workers on their release not to carry sewing needles and thread alongside condoms. Police officers in Mount Hagen denied knowledge of this incident.<sup>83</sup>

Amnesty International received two reports from sex workers that police search sex workers for condoms, claiming that they are spreading HIV.<sup>84</sup> Mary, explained:

“When the police catch us or hold us, if they find condoms on us they bash us up and say we are promoting sex or ‘you are the ones spreading this sickness like HIV’. The police ask for money, they threaten us or say give us this amount. We give it to them as we are scared that if we don’t give it to them they might bash us up.”<sup>85</sup>

Ailyne said that police often stop her in Port Moresby to search her bag, and harass her if they find condoms. Ailyne said that she tells the police: “PNG is full up with HIV. If you don’t want us to carry this, we end up with HIV. You have no right to stop us carrying condoms. Condoms are for our safety.”<sup>86</sup>

Tanaka, a sex worker in Port Moresby, said that the police often search her bag for condoms and that she is worried they will also take her money or mobile phone. Tanaka said that as a result she usually runs away when she sees police, or throws away her condoms.<sup>87</sup>

Use of condoms as evidence is counterproductive to the objective of the HIV/Aids Management and Prevention Act (HAMP) 2003, as well as international law and standards. Access to condoms and related HIV-prevention services is an essential part of the right to the highest attainable standard of health. The International Covenant on Economic, Social and Cultural Rights obliges state parties to take steps “necessary

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<sup>80</sup> UNAIDS, *Guidance Note on HIV and Sex Work*, p. 12.

<sup>81</sup> Interview with Raikos, sex worker, 21 January 2015.

<sup>82</sup> A bilum is a crocheted bag which is made locally.

<sup>83</sup> Interviews with police officers in Mount Hagen on 22 January 2015.

<sup>84</sup> Interview with Elizabeth, sex worker, 24 January 2015; and Ailyne, sex worker, 23 January 2015.

<sup>85</sup> Interview with Mary, sex worker, 24 January 2015.

<sup>86</sup> Interview with Ailyne, sex worker, 23 January 2015.

<sup>87</sup> Interview with Tanaka, sex worker, 26 January 2015.

for... the treatment, prevention and control of epidemic... diseases,” including HIV.<sup>88</sup> The Committee on Economic, Social and Cultural Rights has interpreted this provision to require “the establishment of prevention and education programmes for behaviour-related health concern such as sexually transmitted diseases, in particular HIV”.<sup>89</sup>

International law also protects the right of women to control their reproductive and sexual health. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides that all women have the right “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights”.<sup>90</sup>

Law enforcement must be consistent with these and other international human rights obligations. UNAIDS recommends: “Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients.”<sup>91</sup>

The use of condoms as evidence in criminal investigations is not consistent with these standards.

## 5.6 POLICE ABUSES AGAINST SEX WORKERS



### CASE STUDY: MONA

Mona was in tears as she described being gang raped by six police officers in Port Moresby in August 2012. Mona and her client were each told to pay 600PGK (\$190 USD) to the police, but were never prosecuted in a court of law. Mona was too afraid to report that she was raped by the police.

“It was 6pm. I was having sex with one of my friends [clients] at Jack Perry Park in a bus. The police started to beat my friend and me. They tried to make me do group sex with the six policemen. Then they told me to suck my friend’s dick. Six police officers did sex to me one by one. They were armed with guns, so I had to do it. I don’t have any support to come to court and report them. It was so painful to me, but then I let it go. If I go to the law, they cannot help me as sex work is against the law. The police have the law to do that.”<sup>92</sup>

Some of the sex workers who spoke to Amnesty International reported unlawful detention, rape and extortion by police.<sup>93</sup> In most cases, sex workers are not actually charged with any offence, although laws that criminalize aspects of sex work allow police officers to extort sex workers with the implicit threat that they could be charged. It is widely known that for a sex worker or another person to be “living off the earnings of prostitution” is illegal, so police do not need to make explicit threats about arresting or charging sex workers. In addition, the shame associated with sex work and fear of family members finding out about it is often sufficient to persuade sex workers to give in to the demands of police officers rather than be charged with a relevant offence. Some sex workers told us they were fearful of being prosecuted because their families might find out that they are sex workers.

It is difficult to verify reports of unlawful detention and extortion because police fail to keep accurate records or implement other procedural safeguards, but Amnesty International received consistent testimonies regarding this, which are described below. In addition, police officers confirmed that unlawful detention is a common complaint against police, and that not all detainees are properly recorded in the police station log book (see above); a key protection against arbitrary detention and other abuses in custody.<sup>94</sup>

In the most serious cases, sex workers reported being gang raped by police or beaten after being caught having sex with a client. The rape of sex workers by police officers is a criminal offence that also violates the

<sup>88</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights.

<sup>89</sup> Committee on Economic, Social and Cultural Rights General Comment 14, UN Doc. E/C.12/2000/4 (2000) para. 16.

<sup>90</sup> Article 16(1)(e) of CEDAW.

<sup>91</sup> UNAIDS, *International Guidelines on HIV and Human Rights*, para. 21(c).

<sup>92</sup> Interview with Mona, 24 January 2015.

<sup>93</sup> Interviews with Nikinu, 21 January 2015; Josephine, 24 January 2015; Talitha, 21 January 2015; Stella, 22 January 2015.

<sup>94</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.

prohibition on torture.<sup>95</sup> Unlawful detention, forced chewing or swallowing of condoms and public shaming, such as sex workers experience in the raid on Three Mile Guesthouse (outlined above) are also violations of the right to be free from cruel, inhuman and degrading treatment.



### A WOMAN SEX WORKER IS RAPED IN POLICE CELLS, OCTOBER 2014

Raikos, a gay sex worker and advocate, explained a case where a woman sex worker was raped while detained in police cells in Mount Hagen. She was arrested for offences not related to sex work. The case was reported to him through the organization that he worked for.

“A female sex worker was threatened by a policeman and forced to have sex with him. The lady had the HIV virus. He used a condom, but she used her fingernails to break it. She did this to try and stop him raping her. She told him she had the virus, and he continued to rape her.”<sup>96</sup>

The IAU confirmed it had investigated this case and recommended that the Provincial Police Commander charge the police officer with rape, in addition to disciplinary action such as terminating his employment.<sup>97</sup>

Two sex workers told Amnesty International that they had narrowly escaped rape, arrest or violence by the police. Tuki, a woman sex worker described an incident in October 2014 after police officers searched them for *buai*, the sale of which is now banned in Port Moresby: “One time, the policeman beat me and another lady with a girl [a 19-year-old sex worker]. They took us to Six Mile Police Station, said we went with six policeman each. I ran away with the girl, and the other woman was raped by the six policemen.”<sup>98</sup> This incident was reported to the police through an organization working with sex workers. One of the perpetrators went to court and is believed to be in police custody.<sup>99</sup>

Sakuri said she had been targeted numerous times by the police. The most recent incident was in 2012 when she was sitting with several other female sex workers in front of a police station. Sakuri said a police officer approached them because they were looking at a mobile phone and he suspected them of watching “blue [pornographic] movies”. The police officer reportedly scolded them: “Aren’t you ladies tired of eating condoms every day? You are spoiling the public.” He then began to beat them with a stick. Sakuri and some of the others ran away. Others, she said, who were younger and less experienced, did not immediately flee and were arrested and subjected to sexual abuse while in detention.<sup>100</sup>

Some sex workers felt that they could refuse demands for sex from the police or pay a bribe instead including with money, *buai* (betel nut), or beer,<sup>101</sup> but other sex workers said they were afraid to say no to the police.<sup>102</sup>

<sup>95</sup> International and regional human rights bodies and experts recognize rape by state officials as torture. See: *Aydin v Turkey* (23178/94), European Court Grand Chamber (1997) §86. See also *Malawi African Association and Others v Mauritania*, African Commission (2000) Comm. Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98, §§117 and 18. The Committee Against Torture and various UN Special Rapporteurs have also taken this view (see: *C.T. and K.M. v Sweden*, CAT, UN Doc. CAT/C/37/D/279/2005 (2006) §7.5; Special Rapporteur on torture, Annual Reports: UN Doc. E/CN.4/1986/15 (1986) p. 29 §119; UN Doc. E/CN.4/1995/34 (1995) §15-24; UN Doc. A/HRC/7/3 (2008) §§26, 34-36.)

<sup>96</sup> Interview with Raikos, Mount Hagen, 21 January 2015.

<sup>97</sup> Interview with Constable Mary McDonald (RPNGC IAU), Mount Hagen, 22 January 2015.

<sup>98</sup> Interview with Tuki, sex worker, 22 January 2015.

<sup>99</sup> It is not clear whether one or more police officers were charged and arrested in relation to this incident, the complainant was only aware of one officer being charged.

<sup>100</sup> Interview with Sakuri, sex worker, 24 January 2015.

<sup>101</sup> Interview with Sakuri, 24 January 2015.

<sup>102</sup> Interview with Helen, Port Moresby, 24 January 2015; see further examples below.

Four sex workers told Amnesty International they had been “fined” by police after being caught having sex with a client. In these cases, it was not clear if the “fine” was in accordance with law, or was a bribe which was kept by the police, but only two sex workers who spoke to Amnesty International said they had appeared in court for offences related to sex work.<sup>103</sup> In some cases (as outlined above), sex workers were fined as well as being physically or sexually assaulted by police. Others were picked up or detained by the police without being fined or prosecuted.

Ailyne, a sex worker, said she had been picked up by police and “forced” to have sex with officers several times. She has also been threatened with prosecution. Often, Ailyne says, she can pay a 50PGK or 100PGK “fine” (US\$15-30) and the police will let her go. Other times, she is taken to the station, where she is locked up for a few days, until friends can gather bail money. Ailyne says that after being bailed out, she has never faced charges or been brought to court.<sup>104</sup>

Mehere said the police had charged her and her client after they were caught having sex. She went to court, and was sentenced to two weeks’ imprisonment and fined 200PGK (US\$60).<sup>105</sup>

Elizabeth recounted an incident in which police officers tried to force her and a client to have sex while the officers watched. When she refused, she says the police officer kicked her hard in the back with his boot. Elizabeth sought medical care later at a private clinic.<sup>106</sup>

Helen said that police offer to “drop us home”, but that “in exchange for that, we have to have sex with them”. Helen said that this did not happen in every instance, but was unpredictable. In early 2014, she and several other female sex-worker friends were driven home from a night club by police officers. Along the way, the police began to demand sex. Helen said: “We were thinking, if we say no, they’ll probably drop us somewhere on the road”, leaving them in a potentially more dangerous situation.<sup>107</sup>

Mehere, a sex worker living with HIV, said she and two other female sex workers were picked up by the police in Port Moresby in December 2014. The police drove them to a nearby beach and tried to force them to have sex. Mehere told the police that she is HIV positive and they started beating her. The other two sex workers were raped by the police. Mehere reported this incident to the police liaison officer at the NGO, Poro Sapot Project. She did not know if any action was taken against the police officers in this case.<sup>108</sup>

Roselyn said that she was approached by police in Port Moresby in late 2014 while she was drinking in a park with some clients and fellow sex workers. The police accused the clients of trying to buy sex with beer and money. They beat them, one woman severely, and took their beer. Following this, Roselyn says, she lost those clients permanently, since they were afraid of the police.<sup>109</sup>

Vavine said that the day prior to meeting Amnesty International, she had gone to meet a friend at a market around 6am to buy *buai*. A male police officer approached her and asked what she was looking for, and she told him. He then reportedly called her a *pamuk* (prostitute) and said: “Can you come and chew my *buai*?” and, “you guys are spreading HIV in this city!” She said the officer hit her and took her to the police station where he tried to force her into a cell. Vavine protested: “I didn’t do anything wrong and you will force me into a cell?” When she said this, the officer “belt [beat] me again, he was in full uniform and he belted me. For what good reason?” Vavine suffered a minor injury to her eye, for which she did not seek medical treatment, but was taking medicine given to her by a friend. Her friend was able to obtain her release and register a complaint with the help of another police officer.<sup>110</sup>

Consistent with these testimonies, the UN Special Rapporteur on torture, on his mission to Papua New Guinea in 2010, found that:

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<sup>103</sup> Interview with Mary and Mehere, 24 January 2015.

<sup>104</sup> Interview with Ailyne, 23 January 2015.

<sup>105</sup> Interview with Mehere, 24 January 2015.

<sup>106</sup> Interview with Elizabeth, 24 January 2015.

<sup>107</sup> Interview with Helen, 24 January 2015.

<sup>108</sup> Interview with Mehere, 24 January 2015.

<sup>109</sup> Interview with Roselyn, 24 January 2015.

<sup>110</sup> Interview with Vavine, woman sex worker, Port Moresby, 26 January 2015.



- Women are vulnerable to sexual abuse by police and other detainees when held in custody;
- Detainees are commonly beaten on arrest by police; and
- There is a lack of accountability for torture and ill treatment by the police<sup>111</sup>.

The Special Rapporteur made a range of recommendations to address torture and other ill-treatment by the police, including holding senior police officers responsible, promptly investigating cases of torture and other ill-treatment, and amending the Criminal Code to include “torture” as defined by international human rights law.<sup>112</sup> These recommendations have not been fully implemented by the government of PNG.

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<sup>111</sup> Report of UN Special Rapporteur on torture or other cruel, inhuman or degrading treatment or punishment: Mission to Papua New Guinea, UN Doc. A/HRC/16/52/Add.5 (2011).

<sup>112</sup> Report of UN Special Rapporteur on torture or other cruel, inhuman or degrading treatment or punishment: Mission to Papua New Guinea, UN Doc. A/HRC/16/52/Add.5 (2013).

# 6. CRIMES AND OTHER ABUSES

As well as violence from the police, sex workers face a range of human rights abuses from clients, including rape and physical violence that sometimes results in death. Laws criminalizing aspects of sex work in Papua New Guinea make sex workers fearful of reporting violence to the police, or of risking further abuse if they do so. Many felt that the police did not follow up or take their cases seriously because they are sex workers and therefore “criminals”.<sup>113</sup>

Sex workers are entitled to equal protection of the law, and complaints of rape and killings of sex workers must be taken seriously and investigated with due diligence by law enforcement agencies.

Amnesty International received several consistent reports of two sex workers who had recently been killed by clients in the course of their work – one outside Mt Hagen police station in 2013 and another in Port Moresby in January 2015.

Nikinu from Mount Hagen described the killing of Ambe, a woman a sex worker, by a group of men outside a police station in Mount Hagen in late 2013:<sup>114</sup>

**“We call her Ambe, which means woman from out of town. We only use nicknames for safety, to protect families. One of my ‘sisters’ was with her. They were trying to come out [of the night club] with older men who were buying them drinks. The street boys<sup>115</sup> tried to grab the two ladies and rape them. The sex worker tried to run to police station for help, but they grabbed her and belt her hard. Lots of blood. She died. There were some witnesses, but they were afraid to come out. They put it to a police case. It was close to the police station, so they came. I don’t know what happened to the case.”**

Two NGOs also mentioned this same case.<sup>116</sup>

Amnesty International also received consistent reports of the murder of a sex worker in Port Moresby in January 2015, just days before our visit.<sup>117</sup> Liviko, a woman sex worker, described what she knew of the case:

**“Some they kill them for sex. Now, one of the ladies, I am going to the morgue to identify her. She was forced raped, she was a sex worker. It happened on Wednesday last week. They took her to [an informal settlement in**

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<sup>113</sup> Interview with health care provider, Port Moresby, 19 January 2015; interview with Koke, Port Moresby, 24 January 2015.

<sup>114</sup> Interview with Nikinu, 21 January 2015.

<sup>115</sup> Also known as ‘raskols’, ‘street boys’ are groups of young boys engaged in illegal activity, often asserting their authority in the community through threats, intimidation or use of violence.

<sup>116</sup> Tingim Laip and Kapul Champions.

<sup>117</sup> Interviews with women sex workers Sakuri and Helen, 24 January 2015; Talitha, 21 January 2015; Liviko, 23 January 2015.

**Port Moresby] and dumped her there. That lady is a neighbour to me. The other sex workers contacted me. They saw her get into a cab with a person.”<sup>118</sup>**

Josephine, a woman sex worker, lamented that in the first few weeks of 2015, “we lost three girls”.<sup>119</sup>

Other sex workers reported killings of sex workers that happened some years ago. Koke, a woman sex worker, told Amnesty International that her cousin was raped and killed in 2007 while working as a sex worker. She said the police investigated the case, but no one was charged. Koke said that the police do not take crimes against sex workers seriously.<sup>120</sup>

Mona described the killing of two other sex workers:

**“Some of my friends died, but I was the survivor. In 2010, there was a big kidnap at Bomana [Port Moresby]. Me and another two sex workers. They raped us, dragged us in the bush, we were naked and they pointed at us with guns and a knife. I called up to the Lord, ‘Lord have mercy on me!’ One lady called out, so they left me and went [after her]. Only I survived. The other two were killed.”**

Mona said she was afraid of going with some clients: “I get scared, I get fear. My life is at risk because I am a sex worker.”<sup>121</sup>

Some sex workers stated that negotiating safe sex practices, such as the use of condoms, can lead to violence and abuse by clients.<sup>122</sup> For example, Sakuri said that her current clients did not like to wear condoms, and that if she objected, they would beat her. She did not feel safe reporting this type of abuse as the clients might retaliate against her if she did.<sup>123</sup>

Mehere said “Last night, a person came to have sex with me. I said I am PLHIV [a person living with HIV] and he has to use a condom. He bashed me and then went away.”<sup>124</sup> Other sex workers said they were able to convince most or all of their clients to wear condoms.<sup>125</sup>

Sex workers said that certain practices, such as going with unknown clients in a car, rather than meeting at a pre-arranged hotel room, significantly increased their risk.<sup>126</sup> Helen said that she refused to engage with clients who appeared drunk.<sup>127</sup> Ailyne said that when going in a car, she had friends make sure to note down the licence plate number, and sometimes even asked for identification from new clients. Ailyne said that otherwise, she could end up in an unknown place and then, “you see a bush knife banging on the car, or an ax”. However, despite this she sometimes went with unknown clients because “money is money”. She lamented: “We go out there looking for money, and people are killing us, raping us, slicing us.”<sup>128</sup>

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<sup>118</sup> Interview with Liviko, 23 January 2015.

<sup>119</sup> Interview with Josephine, 24 January 2015.

<sup>120</sup> Interview with Koke, 24 January 2015.

<sup>121</sup> Interview with Mona, 24 January 2015.

<sup>122</sup> Interviews with Roselyn, 24 January 2015; Nikinu, 21 January 2015.

<sup>123</sup> Interview with Sakuri, 24 January 2015.

<sup>124</sup> Interview with Mehere, 24 January 2015.

<sup>125</sup> Interviews with Helen and Elizabeth, 24 January 2015.

<sup>126</sup> Interview with Helen, 24 January 2015.

<sup>127</sup> Interview with Helen, 24 January 2015.

<sup>128</sup> Interview with Ailyne, 23 January 2015.

## 6.1 ABUSES AGAINST TRANSGENDER AND MALE SEX WORKERS

**“Normally with street boys they slap us, throw things at us. They broke my teeth there [points to missing tooth]. In Lae, the street boys knifed me and [I had my] leg broken.”**

Alexi, a transgender sex worker, who showed Amnesty International the scar on the back of his leg (interviewed on 20 January 2015).

Transgender and male sex workers are particularly vulnerable to violence and sexual abuse as a result of their real or perceived sexual orientation or gender identity, in addition to the stigma they face as sex workers.

A recent study of sex workers in Port Moresby found that 27% of transgender sex workers have experienced physical abuse from police officers and 29% experienced abuse from family members in the previous six months.<sup>129</sup> 21% of transgender sex workers surveyed had experienced rape by police officers in the last six months.<sup>130</sup> Male sex workers were less likely to experience physical violence or rape than women sex workers.

Raikos, a male sex worker, who identified as gay, said that it was more difficult for transgender people to hide their identity than for gay men. This may explain why gay sex workers report less violence than transgender people. He went on to note that while he felt comfortable seeking health care from certain clinics, he did not disclose his sexual orientation to doctors.<sup>131</sup>

A Tingim Laip report found that transgender and male sex workers in the Highlands were frequently “underground” (not open about having sex with men) and at risk of physical violence, rape or death if they were to be public about their preference for having sex with men.<sup>132</sup>

While a number of church groups have supported positive initiatives aimed at improving sexual and reproductive health care for “key populations”, the prevailing social perception is that sex between men is seen as “unnatural” and “imported”.<sup>133</sup> This perception contributes to negative health care outcomes among sex workers (see chapter on stigma and discrimination in health care).

Some coastal areas, such as the village of Hanuabada in Port Moresby, are known to be more tolerant or friendly towards transgender and gay people, highlighting that levels of violence and discrimination against male and transgender sex workers may vary significantly across the country.<sup>134</sup> Tingim Laip, in their *Highlands Highway* report, noted that:

**“Men who have sex with men (MSM) and transgender (TG) people remain highly stigmatised in society, especially within the Highlands. Around coastal and urban areas these men are more visible, and report sexual relationships with each other and increasingly with married men. Some MSM and TG people are sex workers and their clients are both male and female.”<sup>135</sup>**

According to an NGO that works with a range of marginalized groups in Port Moresby, many transgender sex workers had been forced to leave their homes, families and education at an early age due to discrimination,

<sup>129</sup> A. Kelly, M. Kupul, et al ‘Askim na save’, pp. 25-26.

<sup>130</sup> A. Kelly, M. Kupul, et al ‘Askim na save’, pp. 25-26.

<sup>131</sup> Interview with Raikos, 21 January 2015.

<sup>132</sup> Tingim Laip, *Social Mapping Report: Highlands Highway*, 2011/2012, p. 53.

<sup>133</sup> Tingim Laip, *Social Mapping Report: Highlands Highway*, 2011/2012, p. 25; C. Stewart, *Name, Shame and Blame*, p. 176.

<sup>134</sup> C. Stewart, *Name, Shame and Blame*, p. 79.

<sup>135</sup> Tingim Laip, *Social Mapping Report: Highlands Highway*, 2011/2012.

and thus experience high rates of illiteracy and homelessness.<sup>136</sup> Moana, a transgender sex worker from Mount Hagen explained that she was not safe walking down the street, and that she tries to cover up as much as possible when in public and stays close to home. She says she is regularly verbally harassed on the street. Regarding the constant verbal abuse she receives, she said: “I’m in prison.” She said that family members had come into her home and taken things, telling her that if she is a woman, she has “no right” to a house or to own property. As part of traditional cultural practices, property and land in Papua New Guinea is often communally owned and women or gender non-conforming individuals, especially those who defy cultural norms, are more likely to be dispossessed or excluded from customary land. Moana also said that her family sometimes force her to do work that is traditionally done by men.<sup>137</sup>

Raikos said: “One of our TGs [a transgender person] got raped at a home-brew place in 2014. He was new to this place. He was walking home at 6pm and he was raped by a group of drunken boys. It was not reported to police as he was ashamed and hid it.” Raikos works with a non-governmental organization that was informed about this case a few weeks later.<sup>138</sup>

Stella, a transgender sex worker, said she felt that clients did not always respect her sexual preferences and that she had been forced to have sex without protection. Stella described the police as hypocrites or “pretenders”, because the same police officers who harassed her as a transgender sex worker were also her clients.<sup>139</sup>

Moana, a transgender woman sex worker, explained how she had been abused by police officers:

**“Sometimes they force us to do oral sex, sex without a condom or to expose ourselves publicly, suck cock publicly, bash us up. They tell us to run, after everything has been done.”**

Moana also claimed that in January 2015, police officers took her to a police station and made her remove her bra, so they could laugh at her. She said it was humiliating, but she was afraid to make a complaint: “I am worried I will be harmed again.”<sup>140</sup>

Organizations working with sex workers said that transgender women are routinely detained in police cells or prisons with men.<sup>141</sup> The police in Papua New Guinea lack policies and practices that require them to place transgender women in custodial facilities with other women, or to ensure that transgender women are searched by female officers, consistent with international human rights standards.

## 6.2 INTERNATIONAL STANDARDS ON THE TREATMENT OF TRANSGENDER PEOPLE IN PRISONS

It is well-known that prison cultures can be particularly brutal for transgender people and the authorities have an obligation to protect transgender people from abuses in custody. For example, in a 2010 report the UN Special Rapporteur on torture reflected on the strict hierarchy that frequently exists within detention settings and how those at the bottom of the hierarchy often include transgender persons who suffer double or triple discrimination as a result.<sup>142</sup> The Special Rapporteur also highlighted the increased rates of physical and sexual abuse that transgender women face in detention if placed within the general prison population in men’s prisons.<sup>143</sup>

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<sup>136</sup> Interview with Development Law Association, Port Moresby, 22 January 2015.

<sup>137</sup> Interview with Moana, a transgender sex worker, Mount Hagen, 21 January 2015; see also C. Stewart, *Name, Shame and Blame*

<sup>138</sup> Interview with Raikos, 20 January 2015.

<sup>139</sup> Interview with Stella, 22 January 2015.

<sup>140</sup> Interview with Moana, Mount Hagen, 21 January 2015.

<sup>141</sup> Interview with Kapul Champions, Port Moresby, 19 January 2015.

<sup>142</sup> Report of the Special Rapporteur on torture, UN Doc. A/HRC/13/39/Add.5 (2010) para. 231

<sup>143</sup> Report of the Special Rapporteur on torture, UN Doc. A/56/156 (2001) para. 23.

Everybody has the right to humane treatment and to freedom from violence and other forms of abuse while in detention.<sup>144</sup> To secure these rights, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, developed by a group of human rights experts in 2006, call on states to ensure that placement in detention avoids further marginalizing people on the basis of their gender identity.<sup>145</sup> The principles also call on states to provide adequate access to medical care, including access to hormonal or other therapy<sup>146</sup> and to ensure that any protective measures “involve no greater restriction of their rights than is experienced by the general prison population”.<sup>147</sup>

Other jurisdictions are increasingly adopting policies for the detention of transgender people in line with the Yogyakarta Principles. For example, in Canada, in January 2015 the Ontario Correctional Service announced revised policies for the admission, placement and classification of transgender inmates.<sup>148</sup> Under Ontario’s revised policies:

- Inmates must be placed in an institution “appropriate to their self-identified gender or housing preference” unless there are overriding health or safety risks that require otherwise.
- “[W]herever possible and subject to inmate preferences” inmates will be integrated into the general population, and not isolated. Under the previous policy, transgender inmates were often kept in segregation.
- The option for transgender inmates to be searched by a male or female guard, or both, now extends to frisks (clothed searches). Under the earlier policy, this option applied only to strip searches.
- Transgender detainees will also be referred to by their preferred names and gender pronouns in verbal communication as well as in written documents.

The police were unable to provide Amnesty International with any clear policies or procedures regarding the treatment of transgender people in custody.

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<sup>144</sup> See Article 10 of the ICCPR; Basic Principles for the Treatment of Prisoners, para. 1 (“All prisoners shall be treated with the respect due to their inherent dignity and value as human beings”); Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person”).

<sup>145</sup> Principle 9(A) of the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity.

<sup>146</sup> Principle 9(B) of the Yogyakarta Principles.

<sup>147</sup> Principle 9(D) of the Yogyakarta Principles.

<sup>148</sup> See D. Vincent, ‘Revised Policy Will Determine Where Transgender Inmates Housed in Ontario’ in *The Star* (Toronto), 26 January 2015, available at [www.thestar.com/news/canada/2015/01/26/revised-policy-will-determine-where-transgender-inmates-housed-in-ontario.html](http://www.thestar.com/news/canada/2015/01/26/revised-policy-will-determine-where-transgender-inmates-housed-in-ontario.html); K. Kirkup, ‘Ontario’s Welcome Move on Rights Shows Reality of Trans People in Prisons’ in *The Globe and Mail* (Toronto), 26 January 2015, available at [www.theglobeandmail.com/globe-debate/ontarios-welcome-move-on-rights-shows-reality-of-trans-people-in-prisons/article22638122/](http://www.theglobeandmail.com/globe-debate/ontarios-welcome-move-on-rights-shows-reality-of-trans-people-in-prisons/article22638122/)

# 7. BARRIERS TO ACCESSING JUSTICE

Knowing that sex work is criminalized, sex workers who experience abuse rarely come forward to report cases of victimization, violence and other crimes, as many believe that they will not gain any protection from the police. In this way, the criminalization of sex work acts as a barrier to sex workers seeking justice.

The fear of reporting to police, police impunity for physical and sexual violence against sex workers, the cost of legal representation and a range of other factors combine to make it difficult for sex workers to access justice in Papua New Guinea.

## 7.1 FEAR OF REPORTING TO POLICE

Some sex workers told Amnesty International that they would not report crimes to the police because they were afraid that police officers would assault them.<sup>149</sup> Elizabeth, when asked why she did not report a police officer who injured her, stated simply: “They’ll start belting me.”<sup>150</sup> Ailyne said she did not report abuse by two police officers because they were “tough guys”.<sup>151</sup>

The Assistant Police Commissioner for Public Safety noted that the fear of reporting to police “is getting to be quite prevalent now,” and for a woman, “the fear is reasonable, especially if the girl is alone”. Regarding men who have sex with men, and transgender women, he noted: “I don’t think we [the police] are really sensitive to this issue. Gay men are ridiculed.”<sup>152</sup>

For several people, the fear of police abuse was based on past experiences, leading them to decide that they would not report crimes against them to the police in the future. For example, Helen said she did not believe the police would help her if she faced abuse. Helen recounted an incident in which she had once tried to make a complaint to the police against her step-father for abuse. The police officer took her in a private room and told her to strip off her clothes and perform oral sex on him. Helen says her complaint about this was never followed up. Helen said she thought about searching for the officer who did this to her and following up the complaint, but she was afraid because he knew her identity.<sup>153</sup>

Some sex workers said that the police blame them for crimes committed against them and automatically dismiss complaints from sex workers. Sakuri said she tried to report abuse by a client to the police once, but the police told her they did not want to “waste time” on sex workers. Subsequently, when she has been the victim of abuse, she has not reported it.<sup>154</sup> As she put it: “If I am abused and I go to the police, they’ll tell

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<sup>149</sup> Interviews with five sex workers, Port Moresby, 24 January 2015, and an NGO activist in Mount Hagen, 21 January 2015.

<sup>150</sup> Interview with Elizabeth, Port Moresby, 24 January 2015.

<sup>151</sup> Interview with Ailyne, Port Moresby, 23 January 2015.

<sup>152</sup> Interview with Jim Wan, Assistant Commissioner for Public Safety, Port Moresby, 26 January 2015.

<sup>153</sup> Interview with Helen, Port Moresby, 24 January 2015.

<sup>154</sup> Interview with Sakuri, Port Moresby, 24 January 2015.

me, 'that's what you deserve'." <sup>155</sup> Talitha said: "If I go there, they won't listen to me. They say, go get a husband!" <sup>156</sup>

Sex workers told us that their fear of the reactions of their family or community was also a reason not report abuse to the police. Talitha, a woman sex worker who was assaulted by police while drinking with clients (described above), said she did not report this to the police as she was afraid her family or community would find out that she is a sex worker. <sup>157</sup> Vavine said that she had failed to report serious abuses against her by police, in part due to fear of publicity and her family finding out about her sex work. Vavine says her brothers will beat her if they discover that she is a sex worker. <sup>158</sup>

The outlawed nature of aspects of sex work also deters people from seeking justice. A solicitor working with sex workers seeking civil damages noted that sex workers "feel illegal" and so sometimes do not even consider seeking legal remedies. <sup>159</sup>

In some cases, sex workers said they felt comfortable making a complaint to the police, but often this depended on whether they personally knew, or were related to, a police officer. <sup>160</sup>

## 7.2 PROSECUTIONS FOR CRIMES AGAINST SEX WORKERS

Numerous barriers exist that discourage or prevent sex workers from seeking to have perpetrators of crimes against them prosecuted. When the perpetrator is a police officer, there are yet more barriers.

Constable Kombega of the Sexual Offences Squad, Mount Hagen Police Station, said he was aware of one rape conviction of a police officer in the previous four years in Mount Hagen (in a case that did not involve a sex worker). Prosecution of cases can take several years, and often witnesses or victims of crime will withdraw their claims. <sup>161</sup> Customary compensation was also cited by police and advocates as a barrier to prosecution. <sup>162</sup> While compensation does not necessarily bar criminal proceedings, often customary compensation is provided on the basis that it resolves all matters between the parties and the victim is expected to withdraw the complaint to the police. <sup>163</sup>

There is often family pressure to resolve complaints through customary compensation. <sup>164</sup> A police officer explained that the police try to encourage victims to pursue justice, but that their powers are limited. If the victim refuses to come to court then the police have to withdraw the case. "They [the family] start putting pressure and threatening the victim. The victim has no voice. If they are from a large tribe, they decides what happens." <sup>165</sup>

Police officers told Amnesty International that shame and fear are likely barriers to sex workers reporting crimes of violence or sexual assault. A number of police officers who spoke to Amnesty International said "a crime is a crime" and that they would treat a complaint made by a sex worker no differently to any other case. However the lack of successful prosecutions for rape, regardless of the identity of the perpetrator, highlights the challenges a rape survivor might face in seeking justice. <sup>166</sup>

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<sup>155</sup> Interview with Helen, Port Moresby, 24 January 2015.

<sup>156</sup> Interview with Talitha, Mount Hagen, 21 January 2015.

<sup>158</sup> Interview with Vavine, woman sex worker, Port Moresby, 26 January 2015.

<sup>159</sup> Interview with Development Law Association, Port Moresby, 22 January 2015.

<sup>160</sup> Interviews with Raikos (21 January 2015), Liviko (23 January 2015), Philma (23 January 2015) and Koke (24 January 2015).

<sup>161</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.

<sup>162</sup> Customary compensation refers to an agreed payment to a person through traditional indigenous forms of mediation.

<sup>163</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.

<sup>164</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.

<sup>165</sup> Interview with Constable Remigius Kombega, Mount Hagen, 20 January 2015.

<sup>166</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.



Even when sex workers report abuses to the police, the police are often unable to help for a variety of reasons. A number of police officers mentioned the lack of capacity to investigate and prosecute cases unless complainants actively pursue their case.<sup>167</sup> Police officers expect complainants to bring to them a written statement, any witnesses or evidence of the offence, to identify the perpetrator, and in some cases, to bring the perpetrator to the station so that they can be questioned. This places an extraordinary burden on victims of crime, who are likely to feel unable to pursue their complaint.

Roselyn said that she reported an abusive client to the Family and Sexual Violence Unit at a local police station. She said she knew these officers through her work in HIV education and that they treated her respectfully and took her seriously when she reported the abuse. However, Roselyn was told that she needed to bring the accused to the station herself if they were to charge him. Roselyn served her abusive client with a summons, which he tore up. She brought a second summons, which he also tore up. Roselyn was too afraid to try again. When Roselyn told the police that it was difficult for her to compel her abuser to come to the station, they suggested that if she saw him again, she could call them and they would try to pick him up.<sup>168</sup>

Police also said that lack of access to a suitable vehicle, or lack of money for petrol, meant that they were unable to investigate cases.<sup>169</sup> Justice for those living outside urban centres can be very costly, with victims of crime often required to cover the expense of bringing witnesses to court.<sup>170</sup> It is not uncommon for victims of crime to be asked to cover “petrol expenses” or “lunch money” for police officers to investigate cases, even though this should be facilitated from the police budget.<sup>171</sup>

A senior police official conceded that police officers often ask complainants to bring their witnesses to the police station, but argued that they should not be doing so, and that the police should carry out investigations themselves: “That’s their job. That’s their bread and butter. That’s what they get paid to do.” He lamented that “officers are using excuses like ‘there’s no money for fuel’. It’s getting to a stage where it’s becoming acceptable.” He noted that the public know this, and often feel the need to bribe officers to carry out investigations.<sup>172</sup>

Police officers complained of being under-staffed and under-resourced, with many mentioning the need to increase the numbers of police officers and improve independent mechanisms to review police misconduct.<sup>173</sup> A number of police officers mentioned a new initiative to double the size of the police force, but were concerned that in order to expedite this, police training had been reduced from six months to four months. With the existing challenges the police force has, these officers felt that reduced training could have the effect of further eroding public confidence in the institution.<sup>174</sup>

Complainants are also required to provide medical reports, at their own cost, in order to pursue a complaint of abuse against a police officer.<sup>175</sup> An officer at Mount Hagen Internal Affairs Unit said that it was difficult to exercise jurisdiction over other police officers since, “we are comrades”.<sup>176</sup> Nonetheless, the office does secure around two to three convictions against police officers each year, and a greater number of disciplinary sanctions. However, these numbers, the officer conceded, are not adequate to meaningfully deter police abuses.<sup>177</sup>

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<sup>167</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.

<sup>168</sup> Interview with Roselyn, woman sex worker, Port Moresby, 24 January 2015.

<sup>169</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.

<sup>170</sup> Interviews with police officers in Mount Hagen on 22 January 2015; see also: See Human Rights Watch Report, *Bashed Up: Family violence in Papua New Guinea*, 2015, for an overview of government law and policy measures to address family violence. Available at [www.hrw.org/report/2015/11/04/bashed/family-violence-papua-new-guinea](http://www.hrw.org/report/2015/11/04/bashed/family-violence-papua-new-guinea)

<sup>171</sup> See Human Rights Watch Report, *Bashed Up: Family violence in Papua New Guinea*, 2015.

<sup>172</sup> Interview with Jim Wan, Assistant Commissioner for Public Safety, Port Moresby, 26 January 2015.

<sup>173</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.

<sup>174</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.

<sup>175</sup> Interviews with police officers at Boroko Police Station, Port Moresby on 27 January 2015 and Mount Hagen on 22 January 2015.

<sup>176</sup> Interviews with IAU in Mount Hagen, 22 January 2015.

<sup>177</sup> Interview with police officer (IAU Mount Hagen), 21 January 2015.

## 7.3 DUE DILIGENCE

Acts of murder, sexual assault, physical assault, and other forms of violence against sex workers are human rights abuses – infringing the rights to life, security of person and health, among other human rights – as well as crimes under domestic law. The state has an obligation to exercise due diligence to prevent these and other human rights abuses by private actors and respond to such abuses when they are committed.<sup>178</sup>

In practical terms, the obligation of due diligence requires police to make good-faith efforts to investigate reports of crimes, regardless of who the alleged victim is. That is, a sex worker who reports an act of violence or sexual assault should be treated as the victim of a crime, and police should ensure that the report is investigated fully.

To fulfil these due diligence obligations, law enforcement officials must ensure that their policies or practices do not have the effect of deterring sex workers from reporting crimes. In order to address this, the Papua New Guinean authorities must cease policies and practices of targeting or harassing sex workers and address issues that undermine public confidence in the police force, including the lack of accountability for police officers who commit crimes.

## 7.4 OTHER CHALLENGES TO ACCESSING JUSTICE

People who suffer human rights abuses committed by the police or private individuals may also in theory seek compensation through civil cases. However, there are numerous obstacles for most people seeking to do so. The barriers include court costs, access to legal advice and travel expenses. In addition, court proceedings can drag on for years, and courts are often under-resourced and dealing with a backlog of cases. Moreover, the Development Law Association (DLA), who occasionally represent sex workers and other marginalized individuals in legal cases, claimed that many clients opt not to pursue cases out of fear of retaliation against themselves or their families (pursuant to a local ‘pay back’ culture).<sup>179</sup>

Procedural hurdles also discourage some claimants, especially in claims against the state. In order to pursue a case against the government of Papua New Guinea, a notice must be personally served on the Department Head for the Department of Justice or the Solicitor General, whose office is in Port Moresby, within six months of the incident giving rise to the claim.<sup>180</sup> The claim must also identify the government officer involved in the violation, which is a challenge when police officers display no visible signs of their identity. Even if a claim is successful, it is often difficult to enforce a judgment.<sup>181</sup>

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<sup>178</sup> As articulated by the Inter-American Court of Human Rights in the *Velásquez-Rodríguez* case, an illegal act that “violates human rights and which is initially not directly imputable to a State... can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it.” *Velásquez Rodríguez v Honduras*, Inter-American Court, para. 172. See also Human Rights Committee General Comment 31, UN Doc. CCPR/C/74/CRP.4/Rev.6 (2004), para. 8; CEDAW Committee General Recommendation 19, UN Doc. A/47/38 (1993); Article 4 of the Declaration on the Elimination of Violence against Women, U.N. Doc. A/RES/48/104 (1994) (adopting the due diligence standard as the framework for assessing states’ obligations with regard to all forms of violence against women).

<sup>179</sup> Interview with DLA, Port Moresby, 22 January 2015.

<sup>180</sup> See section 5 of the Claims By and Against the State Act 1996.

<sup>181</sup> Interview with DLA, Port Moresby, 22 January 2015.

# 8. STIGMA AND DISCRIMINATION AGAINST SEX WORKERS

Stigma and discrimination are significant barriers preventing sex workers from fully realizing their human rights and living free from violence. Public opinion on sex work within Papua New Guinea has been largely informed by the prevailing attitude that sex work is “shameful” and a criminal offence.<sup>182</sup> According to a transgender sex worker and advocate, the main barriers that sex workers face are social isolation and hatred:

**“I have been stigmatized so many times but I say to myself I won’t give up. My goal is to make the law see me as a normal person.”<sup>183</sup>**

One local NGO that has advocated for social inclusion of sex workers is Kapul Champions, a national network of gay and transgender people that represents the interests of these communities and advocates for the improvement of their access to health services.<sup>184</sup>

Alexi explained her experience as a transgender sex worker:

**“When I was in school, I left at Grade 8 [at 14 years of age]. They thought ‘are you a man or a woman?’ Now with the support of NGOs like Kapul Champions, they respect us.”<sup>185</sup>**

However, organizations like Kapul Champions, and individuals who promote dialogue on HIV prevention, testing and treatment are also the targets of discrimination and stigmatization. At the launch of Kapul Champions in 2010, there was a national dialogue in Parliament supported by the Minister for Health, at which the organizations’ representatives were invited to speak. Kapul Champions’ speech was aired in the national media and members of the organization received death threats from the public.<sup>186</sup>

Sex workers, transgender people and men who have sex with men are frequently blamed for “spreading” HIV and other sexually transmitted infections because they are identified as at-risk populations.

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<sup>182</sup> C. Stewart, *Name, Shame and Blame*, p. 232.

<sup>183</sup> Interview with Rossa, transgender sex worker, 19 January 2015.

<sup>184</sup> M. Tyne, ‘Regional Feature – Kapul Champions: A Proud New Voice in Papua New Guinea’, in *HIV Australia* 11(2), 2013, pp. 42-43.

<sup>185</sup> Interview with Alexi, transgender sex worker, Mount Hagen, 20 January 2015.

<sup>186</sup> Interview with several members of Kapul Champions, 19 January 2015.

## 8.1 ISOLATED BY FAMILIES AND COMMUNITIES

**“My family asked me to leave because I do sex work. I left the family home when I started sex work. Later on they accepted that it is my body, my life.”**

Philma, a sex worker, explained how she was ostracized by her family after they discovered she does sex work.<sup>187</sup>

Violence, stigma and discrimination by family members is a major concern for sex workers, particularly for women sex workers. There is no formal social welfare system. Families and communities provide a level of social support for those who cannot support themselves (referred to as the *wontok* system), so isolation from families and communities can increase poverty and limit the social support that sex workers receive, in turn affecting the full realization of their human rights.

Family and community connections are particularly important when 98% of the land in the country is owned under customary laws. People supported by families and communities within the traditional *wontok* system are more likely to have stronger social support networks, access to secure housing and land that they can cultivate in order to sustain themselves or supplement their income. Those who are isolated from families and communities often migrate to burgeoning informal settlements in urban centres, such as Mount Hagen and Port Moresby, where housing conditions are particularly poor and access to clean water, electricity and other services is limited.

The isolation from families, coupled with limited social and economic opportunities, increases poverty and other factors which might lead a person into sex work in order to survive. A survey of sex workers in Port Moresby in 2010 showed that physical abuse of sex workers was most likely to be committed by family members, with 35% of sex workers saying they had experienced physical abuse from family members in the previous six months. Family members were more likely to perpetrate violence against women sex workers and transgender sex workers, while 9% of sex workers said they had experienced physical violence from non-family members of the community in the previous six months.<sup>188</sup>

One sex worker said that she believes she is at greater risk of abuse from community members in rural areas.<sup>189</sup>

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<sup>187</sup> Interview with Philma, woman sex worker, Port Moresby, 23 January 2015.

<sup>188</sup> A. Kelly, M. Kupul, et al, 'Askim na save', p. 25.

<sup>189</sup> Interview with Talitha, woman sex worker, Mount Hagen, 20 January 2015.

## **BRIDE PRICE, EARLY AND FORCED MARRIAGES IMPACT ON WOMEN ENTERING INTO SEX WORK**

Most sex workers are women, and as such are limited by the cultural perceptions and gender stereotypes of the role women are expected to play in Papua New Guinean society. Women often marry at a young age and are expected to fulfil the “traditional” roles of mother, wife and housewife, which often extends to maintaining the home and garden. Cultural and traditional practices which harm women remain widespread. These include paying a “bride price” to the woman’s family and forced and early marriage. This limits a women’s ability to exercise agency over her body and her sexuality. For example, women who choose their sexual partners or have multiple sexual partners are at greater risk of violence from family members for defying cultural expectations and norms and for potentially causing the family to lose income from a bride price. Family members also put pressure on women to stay in abusive relationships because they may be obliged to return payment of the bride price in the event of a separation or divorce. If women cannot turn to family members for assistance in times of hardship, they may turn to sex work as a means of survival.

Monica, a sex worker interviewed by Amnesty International, said she was forced into an illegal “marriage” at 11 years of age to pay off a family debt.<sup>190</sup> She had her first child at 12 years of age, and when she left her abusive husband she did sex work to support herself and her child.<sup>191</sup> While this is illegal and amounts to child sexual abuse, forced and early marriage is rarely challenged. Under the Marriage Act, the minimum age for marriage for a girl is 16 years, but can be lowered to 14 years if authorized by a judge or magistrate in exceptional circumstances.

Sarah said, “It’s like PNG culture, especially in the Highlands, when a young girl gets a bride price and then has marriage problems, we can’t go back to family. You are wasting your sibling’s share of money, because otherwise they will have to pay back the bride price.”<sup>192</sup>

Another sex worker, Helen, said that “the main problem is families. When they find out that you work in the sex industry, they chase you away”. She continued: “Most of us are not wanted by our families and our communities.”<sup>193</sup>

Elizabeth said that her family rejected her because of her sex work.<sup>194</sup> Roselyn said her family chastised her because she engaged in sex work and did not give her the support they gave other family members. Her family pressured her to be more religious, and she felt they wanted her to be “like a little child”.<sup>195</sup> She says her family would beat her if they found out about her sex work.<sup>196</sup>

Pauline highlighted the lack of general understanding of the reality for sex workers in Papua New Guinea:

**“It’s illegal due to our tradition, culture, but they must understand the circumstances and the current life we are facing.”<sup>197</sup>**

In some cases, women have married into a family in a different province, left the relationship due to physical violence, and turned to sex work as they had no other means of financially supporting themselves or returning to their families. Ume Wainetti of the Family and Sexual Violence Action Committee (FSVAC) explained that the organization has supported a number of women in such circumstances to relocate back to their families. Without this financial assistance, the women would not be able to return to their families. FSVAC says that the government must establish social support services as a priority for single mothers and

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<sup>190</sup> Interview with Monica, 26 January 2015.

<sup>191</sup> Section 7 of the Marriage Act 1963.

<sup>192</sup> Interview with Sarah, 24 January 2015.

<sup>193</sup> Interview with Helen, 24 January 2015.

<sup>194</sup> Interview with Elizabeth, 24 January 2015.

<sup>195</sup> Interview with Roselyn, 24 January 2015.

<sup>196</sup> Interview with Roselyn, 24 January 2015.

<sup>197</sup> Interview with Pauline, 24 January 2015.

women escaping violence.<sup>198</sup> Currently there is no government social welfare system in Papua New Guinea, and inadequate support services for survivors of gender-based violence.<sup>199</sup>

## 8.2 ACCESS TO ADEQUATE HOUSING

**“Some of us gave birth on the streets. Our kids grow up on the street. There is nowhere we can go. The street is where we belong.”**

Helen, a sex worker interviewed on 20 January 2015.

Some sex workers spoke of the challenges in finding accommodation because of their sex work. Homeless sex workers were particularly exposed to violence and other human rights abuses.

Mona, a homeless sex worker who lives on the streets with her three children, explained the verbal abuse she experiences:

**“I sleep at the drain at [a suburb in Port Moresby]. We just sleep under the shade. Sometimes a partner [client] will buy us a room. We wash in the drain. It is shameful, but there is no hope for us to go find a proper home. If we ask for water from [neighbours] they chase us away and say *pamuk* [prostitute], *sex woka*. Sometimes they call us *fire reis* [burnt rice] and say ‘go away’.”<sup>200</sup>**

Nearly half of the residents of Port Moresby live in informal settlements due to the high cost of living in the city. Access to housing is difficult for many people, but sex workers, face additional challenges in finding adequate housing. Sex workers interviewed either hide the fact that they do sex work from family members or sleep on the streets. Many described living or working in city’s informal settlements, where violence is common.

Utu, a sex worker in Port Moresby, explained that she does sex work three days per week at a guesthouse. She moved to Port Moresby to live with her husband, but left him when he started being abusive. She found out about sex work through other women who work at the guesthouse. Utu said that she is not allowed to stay overnight at the guesthouse, but she has nowhere else to go. Most nights she stays awake with the guards at the front of the guesthouse until midnight or 1am and then sneaks in to share a room with another woman who works and lives there. She leaves at around 5am so that the owner of the guesthouse does not know she stayed there.<sup>201</sup>

Roselyn said it had been difficult to find housing since her family excluded her. She explained that she had left her children in the care of relatives. Roselyn mostly sleeps outside with friends who are also sex workers, returning home when she can to give money or food to her children.<sup>202</sup>

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<sup>198</sup> Interview with Ume Wainetti, FSVAC, Port Moresby, 26 January 2015.

<sup>199</sup> See Human Rights Watch Report, *Bashed Up: Family violence in Papua New Guinea*, 2015, for an overview of law and policy measures to address family violence. Available at [www.hrw.org/report/2015/11/04/bashed/family-violence-papua-new-guinea](http://www.hrw.org/report/2015/11/04/bashed/family-violence-papua-new-guinea)

<sup>200</sup> Interview with Mona, Port Moresby, 24 January 2015.

<sup>201</sup> Interview with Utu, Port Moresby, 26 January 2015.

<sup>202</sup> Interview with Roselyn, Port Moresby, 24 January 2015.

**SEX WORKERS TOLD AMNESTY INTERNATIONAL THAT FAITH-BASED AND NON-GOVERNMENTAL ORGANIZATIONS WORKING WITH SEX WORKERS TO PROVIDE HOUSING SOMETIMES STIGMATIZE THEM AND FAIL TO PROVIDE THE CARE NEEDED TO SUPPORT THEM.**

Tuki, a sex worker living with HIV, went to live at a shelter run by a faith-based organization. The shelter was established specifically for people living with HIV and sex workers. Nearly a dozen women lived at the shelter, many with their children. Tuki said the owner of the shelter provided them with basic food such as canned fish and rice, and some second-hand clothing. Tuki said it was not enough for them to survive on. The woman running the centre, Tuki said, was initially understanding and knew that it would take time for the women to leave sex work. However, when some women continued to do sex work to buy additional food, they were forced to leave the shelter.

Tuki claims she was falsely accused of ‘forcing’ a 14-year-old girl living at the shelter into sex work. Tuki was imprisoned for three months, before the charges were dropped due to lack of evidence. She claims she was discriminated against by the woman running the shelter and forced to leave because she continued to do sex work, and was therefore seen as a bad influence on the others living at the shelter.<sup>203</sup>

## 8.3 ACCESS TO HEALTH CARE

**“It’s very difficult for young people to access sexual health information [because of the] culture. They don’t talk about it even if sick and infected, they will not say. They are scared, they don’t want people to know they are infected. They are worried other people will see them going to Anglicare [a free sexual health clinic] to get tested and assume they are infected.”**

Mary, a sex worker, interviewed on 24 January 2015.

While significant progress has been made in recent years to improve access to health care, much more needs to be done to reduce the barriers in accessing health care for key populations such as sex workers, transgender people and men who have sex with men. Access to health care in rural areas is much more problematic, and rural health care providers appear to be less sensitive to the needs of these groups, including the need to protect the right to privacy.

A health care provider in Mount Hagen spoke of the discrimination people face at other health care clinics:

**“People treat sex workers as not welcome, it makes them unable to access services... They are citizens of this country, they have a right to access services. Your duty is to respect and treat everybody equally.”<sup>204</sup>**

Sex workers, NGOs and health care providers that spoke to Amnesty International said that access to health care and knowledge of HIV and other sexually transmitted infections has improved significantly over the past 10 years thanks to education and awareness campaigns. However, access to health care is generally better in urban centres like Port Moresby, which now has a centre especially dedicated to providing health services, particularly to “key populations”, including sex workers.

<sup>203</sup> Interview with Tuki, 22 January 2015.

<sup>204</sup> Interview with health care provider, Mount Hagen, 19 January 2015.

Sex workers that spoke to Amnesty International in Port Moresby said they were able to access health care at a private clinic without discrimination.<sup>205</sup> Helen, who has been performing sex work in Port Moresby for more than 20 years, said that access to condoms used to be a serious problem, but had become much easier in recent years, due to sexual health awareness campaigns.<sup>206</sup>

Not all sex workers, transgender people and men who have sex with men felt comfortable accessing health care, or disclosing their status. For example, Raikos said: “I go to the clinic. I tried to give my real story to a counsellor. I never say I am gay because the nurses and doctors are not sensitized.”<sup>207</sup>

The perceived stigma around getting tested was enough to deter some people from getting tested for HIV. According to Nikinu: “If you want an HIV test through the hospital people look at you and think you already have it. It is shameful for us. We have pride.”<sup>208</sup>

These findings are consistent with the Tingim Laip Highlands Highway report, which found that people often do not go to health clinics for testing until they have advanced symptoms of illness.<sup>209</sup>

Koke, a sex worker from Port Moresby, said that the manner in which sex workers are treated when accessing health care makes them reluctant to return and get tests or information. She explained that the behaviour of nurses and other staff prevents them from returning, and that while the rest of the public is treated fairly, sex workers are gossiped about and judged.<sup>210</sup>

In Mount Hagen, sex workers told Amnesty International that discrimination in access to health care is common. For example, Talitha said that she has often been made to wait all day at clinics, much longer than other people. She said that staff often curse at her and she believes this is because she is known to be a sex worker. She also says she does not go to private clinics because, “they hate us”.<sup>211</sup> Moana, a transgender woman from Mount Hagen, said that while things have improved recently, she has often been subjected to verbal harassment at health clinics, and made to wait for long periods without being treated.<sup>212</sup>

Transport and medical costs remain a barrier to all Papua New Guineans seeking medical care, particularly for people living in rural areas. A clinic in Mount Hagen said that some clients travel from as far as Porgera (a 10-hour bus journey) because they are worried that their privacy will not be respected in smaller clinics that are closer to home.<sup>213</sup> In addition, the clinic in Mount Hagen can go for months without the essential drugs required to treat people living with HIV due to transport delays with the Ministry of Health.<sup>214</sup> While access to health care is generally more limited in rural areas, these barriers have disproportionate and more serious consequences for sex workers and other key populations who are at higher risk because the marginalization and discrimination they experience.

Mehere, a female sex worker from Central Province who is living with HIV, said: “I have to come to Port Moresby for my treatment every two months. It’s a four-hour return trip by car [or] a 50 PGK [US\$20] bus fare. It’s expensive.”<sup>215</sup>

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<sup>205</sup> Interviews with Ailyne (22 January 2015), Helen (24 January 2015) and Roselyn (21 January 2015) and Sakuri (24 January 2015).

<sup>206</sup> Interview with Helen, 24 January 2015.

<sup>207</sup> Interview with Raikos, 20 January 2015.

<sup>208</sup> Interview with Nikinu, 21 January 2015.

<sup>209</sup> Tingim Laip, ‘Social Mapping Report: Highlands Highway’, 2011/2012.

<sup>210</sup> Interview with Koke, 15 January 2015.

<sup>211</sup> Interview with Talitha, 21 January 2015.

<sup>212</sup> Interview with Moana, 21 January 2015.

<sup>213</sup> Interview with health care provider, 20 January 2015.

<sup>214</sup> Interview with health care provider, 19 January 2015.

<sup>215</sup> Interview with Mehere, 24 January 2015.



# 9. INTERNATIONAL LAWS AND STANDARDS

Human rights violations are committed against sex workers across the world. Sex workers have the same rights as everyone else, but are particularly vulnerable to abuses because of their marginalized or criminalized status. Rights which affect sex workers include: the right to life, liberty, autonomy and security of person; the right to equality and non-discrimination; freedom from torture or cruel, inhuman or degrading treatment or punishment; the right to privacy; the right to the highest attainable standard of health; access to information and education; freedom of opinion and expression; the right to adequate housing; just and favourable conditions of work; and the right to remedy for human rights abuses. States have an obligation to protect these rights for everyone, including sex workers.

Amnesty International calls for decriminalization of sex work in recognition of a growing body of research from UN agencies, human rights organizations, including Amnesty International's own research, and social science which indicates that criminalization in its varying forms exposes sex workers to increased risks of human rights violations.

Human Rights Watch,<sup>216</sup> Open Society Foundations,<sup>217</sup> Global Alliance Against the Trafficking in Women (GAATW),<sup>218</sup> among other groups, have also called for the decriminalization of sex work. Most significantly, a large number of sex worker organizations and networks, including the Global Network of Sex Work Projects,<sup>219</sup> support the decriminalization of sex work as a means to realize sex workers' human rights. UN bodies and experts are increasingly turning their attention to the impact of criminalizing sex work on a range of human rights. In part, this is because punitive approaches tend to put sex workers at heightened risk of violence, often with little legal recourse. For example, various UN bodies have recognized that "[c]riminalization legitimizes violence and discrimination against sex workers (particularly from law enforcement officers and healthcare providers) and makes authorities reluctant to offer protection or support to sex workers."<sup>220</sup>

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<sup>216</sup> J. Amon, *Canada's prostitution bill as step in the wrong direction*, Human Rights Watch (media release), 2014, available at: [www.hrw.org/news/2014/06/18/canadas-prostitution-bill-step-wrong-direction](http://www.hrw.org/news/2014/06/18/canadas-prostitution-bill-step-wrong-direction)

<sup>217</sup> Open Society Foundations, *Ten reasons to decriminalize sex work*, 2012.

<sup>218</sup> See Global Alliance Against the Traffic of Women (GAATW), *Statement to the Human Rights Council*, 2012, available at [www.gaatw.org/statements/GAATWStatement\\_05.2013.pdf](http://www.gaatw.org/statements/GAATWStatement_05.2013.pdf)

<sup>219</sup> See [www.nswp.org/](http://www.nswp.org/)

<sup>220</sup> UNFPA, APNSW, UNDP, *Policy brief: Sex work, violence and HIV in Asia – From evidence to safety*, 2015, p. 7. *The World Health Organization calls on all countries to "work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.* WHO, UNFPA, UNAIDS, NSW, *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach*, 2012, p. 8, available at: [apps.who.int/iris/bitstream/10665/77745/1/9789241504744\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf). The UN Special Rapporteur on the right to health has also highlighted the impact of criminalizing sex work on health and human rights and explicitly called for decriminalization

Whilst the link between the direct criminalization of sex workers (for example, through laws that make selling sex a crime) and human rights violations is linear and relatively clear, it is important to recognize that the increased risk of human rights violations that sex workers experience is not only linked to the criminalization of the selling of sex. Antagonistic relationships between sex workers and the police occur wherever sex workers, clients or those providing services to sex workers are criminalized. Such relations compromise the safety of sex workers and limit their ability to effectively manage risks or secure redress for abuse or exploitation.<sup>221</sup> Criminalization in all its forms also actively stigmatizes sex work which can, in turn, bolster public prejudice, denial of agency and active marginalization of sex workers by the state, including discrimination within the social protection system.

Prejudice, discrimination, abuse and violence against sex workers are not unique to criminalized systems and can also occur in all contexts. Similarly, related problems such as homophobia, transphobia, gender-based violence and endemic police corruption undoubtedly require responses that go beyond changes in sex work laws. States must take action beyond decriminalization of sex work in order to address the full range of human rights abuses that sex workers face. The key international human rights laws and standards as they relate to sex work are outlined below.

## 9.1 HUMAN RIGHTS OBLIGATIONS OF PAPUA NEW GUINEA

Papua New Guinea has ratified six (6) core human rights treaties:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- Convention on the Rights of the Child (CRC);
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and
- Convention on the Rights of Persons with Disabilities (CRPD).

At its second Universal Periodic Review in May 2016, the Papua New Guinean government delegation announced that it was making 'notable progress' towards ratifying the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT). However, the obligation to prevent and address torture exists as a part of international customary law and is a State obligation irrespective of the ratification of UNCAT.

It should be noted that some human rights, for instance the prohibitions of torture, cruel, inhuman or degrading treatment or punishment, discrimination and slavery, constitute rules of customary international law which bind all nations irrespective of whether or not they have ratified relevant treaties. In addition, PNG has a Bill of Rights in its Constitution which is largely adapted from the Universal Declaration of Human Rights.

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of sex work. See Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (UN Doc. A/HRC/14/20), 2010, para. 76(b).

<sup>221</sup> See K. Blankenship and S. Koester, 'Criminal law, policing policy, and HIV risk in female street sex workers and injection drug users', *Journal of Law, Medicine and Ethics*, 2002. Raids, cautions, arrests, and the use of antisocial behaviour orders (ASBOs) against sex workers in the United Kingdom have been found to shift sex workers toward unsafe areas and to diminish sex workers' ability to choose clients and negotiate condom use.

## 9.2 RIGHT TO SECURITY OF THE PERSON AND FREEDOM FROM VIOLENCE

Sex workers face extortion and violence at the hands of police, clients and others, when they are forced to work in a precarious, clandestine manner because of stigma and criminality, whether real or presumed. When they cannot seek police protection from violence, sex workers' right to security of the person is at stake. In an authoritative General Comment, the Human Rights Committee, the expert body charged with overseeing the implementation of the ICCPR, has stated that under the ICCPR this right entails a requirement that the state protect individuals from intentional physical or mental injury.<sup>222</sup> To respect and protect this right, state parties must respond appropriately to patterns of violence against people, including sex workers.

States have an obligation to protect sex workers from violence, harassment and other abuse by adopting and enforcing laws that prohibit such violence and abuse.<sup>223</sup> Notably, the CEDAW Committee, in its General Comment 19 (violence against women), specifically recognizes the vulnerability of sex workers to human rights violations, including violence, resulting from their marginalization and unlawful legal status.<sup>224</sup> The CEDAW Committee notes that:

**“Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.”<sup>225</sup>**

Along those lines, the Committee has called on states to take measures to ensure “the rights of all sex workers, whether men, women or transgender people, to access sexual health services; that they are free from violence or discrimination, whether by state agents or private persons; and that they have access to equal protection of the law.”<sup>226</sup> Notably, the Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment 22 on the Right to sexual and reproductive health (Article 12), explicitly calls on states parties to “take measures to fully protect persons working in the sex industry against all forms of violence, coercion and discrimination.”<sup>227</sup> Under CEDAW, States also have an obligation to tackle gender stereotypes that essentially justify violence against certain groups of people, such as transgender people.<sup>228</sup>

Violence should never be considered an inherent aspect of sex work, and states have an obligation to protect sex workers from violence regardless of whether or not sex work is criminalized. In 2013, the Canadian

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<sup>222</sup> Human Rights Committee, General comment 35 (Article 9 (liberty and security of person)), (UN Doc. CCPR/C/GC/35), 2014, para. 9.

<sup>223</sup> See Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (UN Doc. A/HRC/14/20), 2010; CESCR, General Comment 22 (right to sexual and reproductive health (Article 12)), (UN Doc. E/C.12/GC/22), 2016, para. 32. Along similar lines, the CEDAW Committee has recently expressed concern to one state party about “widespread violence and discrimination against women in prostitution, in particular by the police.” CEDAW, Concluding observations: Kyrgyzstan, (UN Doc. CEDAW/C/KGZ/CO/4), 2015, para. 21(c).

<sup>224</sup> For a more in-depth discussion of the CEDAW Committee's analysis around the human rights of sex work or “women in prostitution”, including the impact of criminalization of aspects of commercial sex, see Amnesty International's ‘Explanatory Note’ (which both contextualizes and provides an overview of Amnesty International's research base for its policy on states' obligations to respect, protect and fulfill sex workers' human rights).

<sup>225</sup> CEDAW, General Recommendation 19 (violence against women), (UN Doc. A/47/38), 1992, para. 15.

<sup>226</sup> CEDAW, General Recommendation 24 (Article 12: Women and health), (UN Doc. A/54/38/Rev.1), Chapter 1, 1999. See also Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (UN Doc. A/HRC/14/20), 2010; and CEDAW, General Recommendation 19 (Violence against women), (UN Doc. A/47/38), 1992.

<sup>227</sup> See CESCR, General Comment 22 (The right to sexual and reproductive health (Article 12)), (UN Doc. E/C.12/GC/22), 2016, para. 32.

<sup>228</sup> See CEDAW, Article 5; CEDAW, General Recommendation 28 (core obligations of States Parties under Article 2 of CEDAW), (UN Doc. CEDAW/C/2010/47/GC.2), 2010, paras 18, 26. See also the Convention of Belém do Pará, Articles 6, 8; Office of the High Commission for Human Rights, Gender stereotyping as a human rights violation, 2013, pp. 23-24.

Supreme Court struck down criminal laws which restricted the ways in which sex workers could work on the basis that it violated the right to security of the person in the Canadian Constitution, stating:

**“The prohibitions all heighten the risks the applicants face in prostitution — itself a legal activity. They do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution; they prevent people engaged in a risky — but legal — activity from taking steps to protect themselves from the risks. That causal connection is not negated by the actions of third-party johns and pimps, or prostitutes’ so-called choice to engage in prostitution. While some prostitutes may fit the description of persons who freely choose (or at one time chose) to engage in the risky economic activity of prostitution, many prostitutes have no meaningful choice but to do so. Moreover, it makes no difference that the conduct of pimps and johns is the immediate source of the harms suffered by prostitutes. The violence of a john does not diminish the role of the state in making a prostitute more vulnerable to that violence.”<sup>229</sup>**

This obligation to protect a person from violence is closely related to and overlaps the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment (see below). The prohibition on torture and other ill-treatment covers not only acts by officials but also ones undertaken “at the instigation of or with the consent or acquiescence of” officials.<sup>230</sup> In line with this, and the human rights principle of “due diligence”, the state must adopt the legislative, administrative, social, economic and other measures necessary to prevent, investigate, prosecute and punish acts of violence and humiliation, whether perpetrated by the state or by private individuals.<sup>231</sup> The authorities must also provide mechanisms for redress and ensure reparations to victims and survivors.<sup>232</sup>

The CEDAW Committee has expressed concern about the criminalization of sex work and its negative impact on the security of sex workers.<sup>233</sup> The Committee has consistently made clear that under the Convention criminal sanctions should be reserved for those who profit from the “exploitation of prostitution.”<sup>234</sup> It has noted that imposing criminal penalties on sex workers only “entrenches sexual exploitation of women.”<sup>235</sup> Along those lines, the Committee has specifically condemned policies that seem to exacerbate the situation of sex workers instead of improving it. For example, in its concluding observations to China, Hong Kong and

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<sup>229</sup> Canada (Attorney General) v. Bedford [2013] 3 SCR 1101, 2013 SCC 72

<sup>230</sup> Articles 1 and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>231</sup> See Committee against Torture, General Comment 2 (Implementation of article 2 by States Parties), (UN Doc. CAT/C/GC/2), 2008; and UN General Assembly, Declaration on the Elimination of Violence against Women, (UN Doc. A/RES/48/104), 1993.

<sup>232</sup> See Human Rights Committee, General Comment 31 (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant), (UN Doc. CCPR/C/21/Rev.1/Add.13), 2004; and Inter-American Court of Human Rights, Ana, Beatriz and Celia González v Mexico, 2001; and Velasquez-Rodriguez v Honduras, 1988.

<sup>233</sup> See CEDAW, Concluding observations: Fiji, (UN Doc. A/57/38), 2002, paras 64-65; Hungary, (UN Doc. A/57/38), 2002, paras 323-324; Kenya, (UN Doc. CEDAW/C/KEN/CO/6), 2007, paras 29-30; Republic of Korea, (UN Doc. CEDAW/C/KOR/CO/6), 2007, paras 19-20; France, (UN Doc. CEDAW/C/FRA/CO/6), 2008, paras 30-31; Germany, (UN Doc. CEDAW/C/DEU/CO/6), 2009, paras 49-50; Japan, (UN Doc. CEDAW/C/JPN/CO/6), 2009, para. 39; and China, (UN Doc. CEDAW/C/CHN/CO/6), 2006, para. 4. Article 6 of CEDAW requires states to protect women and girls against “exploitation of prostitution”.

<sup>234</sup> See CEDAW, Concluding observations: Fiji, (UN Doc. A/57/38), 2002, paras 64-65; Hungary, (UN Doc. A/57/38), 2002, paras 323-324; Kenya, 27 (UN Doc. CEDAW/C/KEN/CO/6), 2007, paras 29-30; Republic of Korea, (UN Doc. CEDAW/C/KOR/CO/6), 2007, paras 19-20; France, (UN Doc. CEDAW/C/FRA/CO/6), 2007, paras 30-31; Germany, (UN Doc. CEDAW/C/DEU/CO/6), 2009, paras 49-50; Japan, (UN Doc. CEDAW/C/JPN/CO/6), 2009, para. 39; and Albania, (UN Doc. CEDAW/C/ALB/CO/3), 2010, para. 29. While Article 6 of CEDAW requires that states take “all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”, the CEDAW Committee does not define the terms “exploitation” or “prostitution.” The inclusion of the term “exploitation” suggests that not all forms of commercial sex are exploitative and that states are not obligated to suppress “prostitution”, but rather only that which involves exploitation. Indeed, when the text of CEDAW was being drafted, a proposal to amend Article 6 to call for the abolition of prostitution in all its forms was rejected. Furthermore, the delineation between “traffic in women” and “exploitation of prostitution” recognizes the two issues as distinct, but in some cases related, phenomena. See C. Mgbako and L.A. Smith, ‘Sex work and human rights in Africa’, Fordham International Law Journal, 2011, p. 1200-01; General Recommendation 19 (violence against women), (UN Doc. A/47/38), 1992, para. 16; CEDAW, Concluding observations: Indonesia, (UN Doc. CEDAW/C/IDN/CO/5), 2007, paras. 28-29.

<sup>235</sup> CEDAW, Concluding observations: Lithuania, (UN Doc. A/55/38), 2000, para. 152. See also CEDAW Concluding observations: Armenia, (UN Doc. CEDAW/C/ARM/CO/4/Rev.1), 2009, para. 27 (addressing administrative penalties imposed on sex workers); and Egypt, (UN Doc. CEDAW/C/EGY/CO/7), 2010, para. 25 (expressing concern that women in prostitution are punished, as opposed to clients).

Macau, the Committee expressed concern that “the continued criminalization of prostitution disproportionately impacts on prostitutes rather than on the prosecution and punishment of pimps and traffickers.”<sup>236</sup>

## 9.3 RIGHT TO LIBERTY

Criminal sanctions and in particular imprisonment for sex work related offences violates the right to liberty, where sex workers are detained in a manner considered arbitrary under international law.<sup>237</sup> The Human Rights Committee has determined that detention must be legally authorized, reasonable, necessary and proportionate taking into account the specific circumstances of a case.<sup>238</sup> Detention can be arbitrary, even if it is authorized by law, if it includes “elements of inappropriateness, injustice, lack of predictability and due process of law”.<sup>239</sup> Related to this, the UNAIDS Advisory Group on HIV and Sex Work has recommended that:

**“States should move away from criminalizing sex work or activities associated with it. Decriminalization of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work. To the degree that states retain non-criminal administrative law or regulations concerning sex work, these should be applied in ways that do not violate sex workers’ rights or dignity and that ensure their enjoyment of due process of law.”<sup>240</sup>**

Imprisoning sex workers does nothing to address the violence and other abuses that sex workers face and is likely to further marginalize them. In addition, having a criminal record is likely to make it more difficult for sex workers to find alternative employment should they wish to do so.

## 9.4 TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Amnesty International research has shown that criminalizing sex work often leads to violations of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment). The prohibitions against torture and other ill-treatment is absolute and cannot be derogated from at any time.<sup>241</sup> States are obliged to take measures to prevent torture and other ill-treatment, to investigate all reports of torture and other ill-treatment promptly, impartially, independently and effectively prosecute

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<sup>236</sup> See CEDAW, Concluding observations: China (including mainland China, Hong Kong and Macau), (UN Doc. CEDAW/C/CHN/CO/6), 2006, para. 19.

<sup>237</sup> See Article 9(1) of the ICCPR, Human Rights Committee, General comment No. 35, Article 9: Liberty and security of person, UN Doc. CCPR/C/GC/R.35/Rev.3, 10 April 2014, paras. 10-23; Methods of work of the Working Group on Arbitrary Detention, UN Doc. A/HRC/30/69, 4 August 2015, para. 8.

<sup>238</sup> See Human Rights Committee, *Van Alphen v The Netherlands* (UN Doc. CCPR/C/39/D/305/1988), 1990, para. 5.8; Human Rights Committee, Comm. No. 560/1993, *A v Australia* (UN Doc. CCPR/C/59/D/560/1993), 1997, para. 9.2.

<sup>239</sup> Human Rights Committee, *A. W. Mukong v Cameroon* (UN Doc. GAOR, A/49/40 (vol. II)), 1991, para. 9.8.

<sup>240</sup> UNAIDS, UNAIDS guidance note on HIV and sex work, Annex I, 2011, p. 6. The report makes clear that its recommendation relates to buying as well as selling sex.

<sup>241</sup> See ICCPR, Article 4.2; American Convention on Human Rights, Article 27. The UN Committee Against Torture has said that the obligations contained in Articles 2 and 15 of the Convention against Torture may not be derogated from under any circumstances. See also Human Rights Committee, General Comment 29 (States of Emergency (article 4)), (UN Doc. CCPR/C/21/Rev.1/Add.11), 2001.

suspected perpetrators,<sup>242</sup> and to provide or ensure adequate reparations for victims.<sup>243</sup> States have an obligation to diligently prevent acts of torture and other ill-treatment, including during law enforcement operations.<sup>244</sup>

This is relevant in relation to the treatment of transgender sex workers, who often report ill treatment at the hands of police. For example, placing transgender persons in solitary cells can amount to torture or ill treatment if used as a form of punishment, for prolonged periods or indefinitely.<sup>245</sup>

Rape by state officials, including police officers, has been unequivocally defined as torture by international criminal tribunals,<sup>246</sup> as well as by UN and regional human rights bodies.<sup>247</sup> These bodies have recognized that rape by a state agent is a deliberate act of punishment, intimidation, coercion or discrimination and abuse of power that causes severe pain or suffering, physical or mental, justifying characterization as an act of torture.<sup>248</sup> Rape and other forms of sexual assault on women and girls have also been defined as acts of gender-based violence which constitute discrimination as prohibited by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Papua New Guinea is a state party.<sup>249</sup>

## 9.5 RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

Criminalization of sex work also impacts on the right to the highest attainable standard of health on various grounds.<sup>250</sup> The right to health contains both freedoms and entitlements, including the “right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference,” as well as “equality of opportunity for people to enjoy the highest attainable level of health.”<sup>251</sup>

Like other rights, the right to health is subject to non-discrimination guarantees, including the right to non-discrimination on the basis of sex, property or other status. The CEDAW Committee has recommended that

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<sup>242</sup> See Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4; Human Rights Committee, General Comment 20 (replaces General Comment 7 concerning prohibition of torture and cruel treatment or punishment (article 7)), (UN Doc. HRI/GEN/1/Rev.1), 1992, paras 8 and 11. See also Human Rights Committee, *Rodriguez v Uruguay* (UN Doc CCPR/C/51/D/322/1988), 1994; Human Rights Committee, *Blanco v Nicaragua* (UN Doc CCPR/C/51/328/1988), 1994; and Human Rights Committee, *Kurbanov v Tajikistan*, Comm. No. 1096/2002 (UN Doc CCPR/C/79/D/1096/2002), 2003.

<sup>243</sup> See Human Rights Committee, General Comment 20, 1992, paras. 14 and 15; UN General Assembly, Interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment (UN Doc. A/55/290), 2000, para. 28.

<sup>244</sup> See *Cabrera Garcia and Montiel Flores v Mexico*, Inter-American Court of Human Rights, 2010, para. 135.

<sup>245</sup> UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 January 2016, A/HRC/31/57, paras 22 and 35.

<sup>246</sup> See for instance *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment of 2 September 1998, para. 687; *Prosecutor v. Zejnir Delalic*, Case No. IT-96-21, ICTY Trial Chamber II, Judgment of 16 November 1998, paras. 475-496, 943, 965; *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, ICTY Trial Chamber, Judgment of 10 December 1998, paras. 264-9.

<sup>247</sup> See for instance Interim Report of the Special Rapporteur on torture to the General Assembly, UN Doc A/55/290 (2000), para. 5; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/7/3, 15 January 2008, paras. 34-6; *Aydin v. Turkey*, European Court of Human Rights, Reports 1997-VI (57/1996/676/866), Judgment of 25 September 1997, para. 86; *Fernando and Raquel Mejia v. Peru*, Inter-American Commission on Human Rights, Report No. 5/96, Case No. 10.970, 1 March 1996; para. B(3)(a); *Almonacid Arellano et al. v. Chile*, Preliminary objections, merits, reparations and costs, Inter-American Court of Human Rights, Judgment of 26 September 2006, Series C No. 154, para. 82.4.

<sup>248</sup> See the definition of torture in Art. 1(1) of UNCAT.

<sup>249</sup> See for instance UN Committee on the Elimination of Discrimination Against Women, General Recommendation 19, Violence against women, UN Doc. HRI/GEN/1/Rev.1 (1992), para. 23.

<sup>250</sup> CESCR, Article 12; Protocol of San Salvador, Article 10.

<sup>251</sup> CESCR, General Comment 14 (The right to the highest attainable standard of health (Article 12 of the Covenant)), (UN Doc. E/C.12/2000/4), 2000, para. 8.

special attention be given to the health rights of women belonging to at-risk groups, including “women in prostitution”.<sup>252</sup>

Health services should be made available, accessible and acceptable to people engaged in sex work based on the principles of equality and non-discrimination and the right to the highest attainable standard of health.<sup>253</sup> Human rights bodies have called on states to provide timely and affordable access to good quality health services that ensures informed consent, respects dignity, guarantees confidentiality and is sensitive to people’s particular needs and perspectives.<sup>254</sup>

Laws which preclude individuals’ access to needed health services, including those for all dimensions of sexual health, violate human rights and are commonly associated with preventable ill health.<sup>255</sup> The CESCR has confirmed that criminalizing consensual adult sexual activities violates states’ obligation to respect the right to sexual and reproductive health as it amounts to a legal barrier that impedes access to sexual and reproductive health services.<sup>256</sup> Therefore, states have an immediate obligation to “repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine [an] individual’s or particular group’s access to sexual and reproductive health facilities, services, goods and information”.<sup>257</sup> The CESCR has further called on state parties to ensure that people in the sex industry have access to the full range of sexual and reproductive health care services.<sup>258</sup>

The public health impact of criminalizing sex work is well documented. Public health research has found, for example, that laws criminalizing sex work undermine sex workers’ ability to collaborate to identify potentially violent clients and their capacity to demand condom use with clients as a means to prevent unintended pregnancy, HIV and sexually transmitted infections.<sup>259</sup> Being forced into furtive, rushed transactions is repeatedly identified in the public health literature as a principal factor in sex workers’ reduced ability to negotiate safer sex.<sup>260</sup> Criminalization also diminishes sex workers’ ability to access health services.<sup>261</sup>

### **IMPACT OF CRIMINALIZATION OF SEX WORK ON HIV PREVENTION**

Criminalization of sex work has particularly dire consequences for HIV prevention because it may result in sex workers – and sometimes their clients – from taking the necessary precautions to lower the risk of transmission. It also deters sex workers from testing or seeking treatment for fear of arrest.<sup>262</sup> An examination of HIV among female sex workers published in July 2014 in *the Lancet* concluded that of all

<sup>252</sup> CEDAW, General Recommendation 24 (Article 12: Women and health), (UN Doc. A/54/38/Rev.1), 1999, para. 6.

<sup>253</sup> CESCR, Article 12.

<sup>254</sup> CEDAW, General Recommendation 24 (UN Doc. A/54/38/Rev.1), 1999; CRC, General Comment 4 (Adolescent health and development in the context of the Convention on the Rights of the Child), (UN Doc. CRC/ GC/2003/4), 2003.

<sup>255</sup> See General Recommendation 24 (UN Doc. A/54/38/Rev.1), 1999; CESCR, General Comment 14 (UN Doc. E/C.12/2000/4), 2000; CRC, General Comment 15 (The rights of the child to the highest attainable standard of health), (UN Doc. CRC/C/GC/15), 2013.

<sup>256</sup> See CESCR, General Comment 22 (right to sexual and reproductive health (Article 12)), (UN Doc. E/C.12/GC/22), 2016, para. 57.

<sup>257</sup> CESCR, General Comment 22 (UN Doc. E/C.12/GC/22), 2016, para. 49(a).

<sup>258</sup> See CESCR, General Comment 22 (UN Doc. E/C.12/GC/22), 2016, para. 32.

<sup>259</sup> See UNAIDS, *UNAIDS guidance note on HIV and sex work*, Annex 2, 2011, p. 8; see also D. Kulick, “Sex in the new Europe: The criminalization of clients and Swedish fear of penetration”, *Anthropological Theory*, 2003, pp. 199-218; NSWP, *Research for sex work*, No. 12, 2010; K. Blankenship and S. Koester, “Criminal law, policing policy, and HIV risk in female street sex workers and injection drug users”, *Journal of Law, Medicine and Ethics*, 2002, p. 550 (finding that raids, cautions, arrests, and the use of anti-social behaviour orders (ASBOs) against sex workers in the United Kingdom shift sex workers toward unsafe areas and diminish sex workers’ ability to choose clients and negotiate condom use).

<sup>260</sup> See K. Shannon, et al, “Global epidemiology of HIV among female sex workers: Influence of structural determinants”, *The Lancet*, 2010, p. 10, available at: [dx.doi.org/10.1016/S0140-6736\(14\)60931-4](https://doi.org/10.1016/S0140-6736(14)60931-4). “Kenyan sex workers describe similar experiences to Vancouver—of how criminalisation compromises HIV prevention by rushed transactions due to fear of arrest, bribes, extortion, sexual coercion, and the forgoing of condoms, and the deterrence of sex workers from reporting violence to authorities.”

<sup>261</sup> See C.M. Lowndes, et al, “Injection drug use, commercial sex work, and the HIV/STI epidemic in the Russian Federation”, *Sexually Transmitted Diseases*, 2003, p. 47. See also UNDP, Global Commission, *HIV and the Law: Risks, Rights & Health*, 2012, available at: [www.hivlawcommission.org/index.php/report](http://www.hivlawcommission.org/index.php/report).

<sup>262</sup> See UNDP, Global Commission, *HIV and the Law: Risks, Rights & Health*, 2012, p. 38.

potential interventions identified, “[d]ecriminalization of sex work would have the greatest effect on the course of HIV epidemics across all settings, averting 33-46% of HIV infections in the next decade.”<sup>263</sup>

The importance of recognizing and promoting sex workers’ human rights is a basic building block of sound HIV prevention, reflected in the policy positions of the Global Fund to Fight AIDS, Tuberculosis and Malaria and the Joint United Nations Programme on HIV/AIDS (UNAIDS). The UNAIDS strategy for 2011-2015, “Getting to Zero”, commits UNAIDS and its co-sponsors to empowering sex workers, pushing for the repeal of punitive laws, policies, practices and countering stigma and discrimination that block effective HIV responses.<sup>264</sup>

The Independent Commission on AIDS in Asia has also called for the removal of legislative, policing and other barriers that prevent sex workers from organizing collectives and asked donors to remove conditionalities that prevent partners from working with sex worker organizations.<sup>265</sup> Similarly, the Independent Commission on AIDS in the Pacific has called on countries to “undertake progressive legislative reform to repeal legislation that criminalizes high-risk behaviour [identified in the report to include sex work].”<sup>266</sup> The Commission noted that “[c]hanging the laws need not imply approval of the behaviour but would signal a greater concern for people.”<sup>267</sup> In 2012, the Global Commission on HIV and the Law<sup>268</sup> recommended the decriminalization of sex work and called for laws and policies to ensure safe working conditions for sex workers.<sup>269</sup>

International human rights law and standards make it clear that the grounds set out on which discrimination is prohibited are non-exhaustive and that equal treatment is essential for specific population groups (regardless of race, colour, sex, national or social origin, or other status) as part of their right to access sexual and reproductive health services without discrimination.<sup>270</sup>

International human rights bodies and experts such as the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health have called on states to ensure (at a minimum) the rights of all sex workers to access sexual health services; that they are free from violence or discrimination, whether by state agents or private persons; and that they enjoy equal protection of the law.<sup>271</sup>

Human rights standards also call for quality health care information to be available, accessible and acceptable, including for transgender and gender non-confirming people. They also require that all those seeking services should be treated with respect and dignity and without discrimination.<sup>272</sup> Some regional

<sup>263</sup> K. Shannon, et al, “Global epidemiology of HIV among female sex workers: influence of structural determinants”, *The Lancet*, 2010, p. 1.

<sup>264</sup> See UNAIDS Strategy 2011-2015, “Getting to Zero”, 2010, p. 7. UNAIDS issued an updated Guidance Note on HIV and Sex Work in 2009 and some additional Annexes to the Guidance Note in 2012.

<sup>265</sup> See the Commission on AIDS in Asia, *Redefining AIDS in Asia: Crafting an effective response*, 2008, para. 5.3.

<sup>266</sup> See the Commission on AIDS in the Pacific, *Turning the tide: An open strategy for a response to AIDS in the Pacific*, 2008, p. 6.

<sup>267</sup> See the Commission on AIDS in the Pacific, *Turning the tide: An open strategy for a response to AIDS in the Pacific*, 2008, p. 6.

<sup>268</sup> The Global Commission on HIV and the Law was an independent expert body created under UN auspices to develop actionable, evidence-informed and human rights-based recommendations for effective HIV responses that promote and protect the human rights of people living with and most vulnerable to HIV.

<sup>269</sup> See UNDP, Global Commission, *HIV and the Law: Risks, Rights & Health*, 2012, p. 99.

<sup>270</sup> See CRC, General Comment 15 (the rights of the child to the highest attainable standard of health), (UN Doc. CRC/C/GC/15), 2013; CESCR, General Comment 20 (Non-discrimination in economic, social and cultural rights (Article 2, para. 2)), (UN Doc. E/C.12/GC/20), 2009, para. 108; Human Rights Committee, *Toonen v Australia* (UN Doc. CCPR/C/50/D/488/1992), 1994.

<sup>271</sup> Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (UN Doc. A/HRC/14/20), 2010; CEDAW, General Recommendation 24 (Article 12: Women and health), (UN Doc. A/54/38/Rev.1), Chapter I, 1999; and CEDAW, General Recommendation 19 (Violence against women), (UN Doc. A/47/38), 1992.

<sup>272</sup> See CESCR, General Comment 14 (the right to the highest attainable standard of health (Article 12 of the Covenant)), (UN Doc. E/C.12/2000/4), 2000; CRC, General Comment 15 (the rights of the child to the highest attainable standard of health), (UN Doc. CRC/C/GC/15), 2013; CESCR, General Comment 20 (Non-discrimination in economic, social and cultural rights (Article 2, para. 2, of the



standards specifically call for the consideration of the specific needs of transgender people in the development of national health plans, including suicide prevention measures, health surveys, medical curriculums, training courses and materials, and when monitoring and evaluating the quality of health services.<sup>273</sup>

Particular policing practices, such as the use of condoms as evidence of sex work related offences actively discourages the use of condoms and access to health care, hampering HIV reduction and awareness efforts.

## 9.6 RIGHT TO ADEQUATE HOUSING

The right to adequate housing regardless of one's status is enshrined in the ICESCR.<sup>274</sup> Article 11(1) of the ICESCR requires that state parties guarantee the right to adequate housing without discrimination of any kind.<sup>275</sup> This right is central to the enjoyment of a range of other economic, social and cultural rights.<sup>276</sup>

A core component of the right to adequate housing is legal security of tenure or the principle that all people should be guaranteed "legal protection against forced eviction, harassment and other threats."<sup>277</sup>

Furthermore, states should "take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups."<sup>278</sup>

To fulfil its international obligations related to the right to adequate housing the state must adopt all appropriate legislative, administrative, budgetary, judicial, promotional and other measures required to realize the right to adequate housing for all; prioritizing the most disadvantaged groups when allocating resources.<sup>279</sup> The stigma and discrimination that sex workers face for a range of reasons makes them more vulnerable to violations of the right to adequate housing.

## 9.7 RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

States have an obligation to ensure that everyone has the right to the enjoyment of just and favourable conditions of work and is protected against exploitation, including people who are self-employed or who make their living in informal settings.<sup>280</sup> There have been some moves at all levels – international<sup>281</sup>,

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ICESCR), (UN Doc. E/C.12/GC/20), 2009; CEDAW, General Recommendation 28 (Core obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women), (UN Doc. CEDAW/C/20107477GC.2), 2010.

<sup>273</sup> See Council of Europe, *Discrimination on grounds of sexual orientation and gender identity in Europe* (2nd edition), 2011.

<sup>274</sup> CESCR, Article 11(1).

<sup>275</sup> CESCR, Article 11(1).

<sup>276</sup> CESCR, General Comment 4 (The right to adequate housing), UN Doc. E/1992/23, annex III at 114, 1991, para. 1.

<sup>277</sup> CESCR, General Comment 4 (The right to adequate housing), UN Doc. E/1992/23, annex III at 114, 1991, para. 8(a).

<sup>278</sup> CESCR, General Comment 4 (The right to adequate housing), UN Doc. E/1992/23, annex III at 114, 1991, para. 8(a).

<sup>279</sup> CESCR, Article 2(1); CESCR, General Comment 4 (The right to adequate housing), UN Doc. E/1992/23, annex III at 114, 1991, paras. 12, 14 and 15.

<sup>280</sup> ICESCR, Article 7; see also Protocol of San Salvador, Articles 6 and 7 (Article 7, in particular, highlights the need for fair, equitable and satisfactory conditions in one's exercise of work); Inter-American Charter of Social Guarantees, IX International Conference of American, 1948 (sets forth the minimum rights workers must enjoy in the American states, including fair working conditions, without prejudice to the fact that the laws of each state may extend such rights or recognize others that are more favourable).

<sup>281</sup> See ILO, Report of the Committee on HIV/AIDS, HIV and AIDS and the world of work (Provisional Record 13 (Rev.), 2010, paras. 192-210.

regional<sup>282</sup> and national<sup>283</sup> – to recognize that sex workers must be protected with relevant labour and employment guarantees even in the absence of explicit recognition by the state that they are undertaking work (even in some cases where sex work remains criminalized). Notably, the ILO decided in 2010, that its recommendation on HIV and the World of Work (Recommendation 200) should apply to all workers, both formal and informal and that this should include sex workers.<sup>284</sup>

## 9.8 RIGHT TO PRIVACY

Laws that criminalize consensual adult sex in private violate the right to privacy.<sup>285</sup> Everyone is entitled to respect for their privacy and to enjoy this right without fear or discrimination. The right to privacy means that individuals may not be subject to arbitrary or unlawful interference with their privacy and should enjoy protection of the law in this respect.

The rights to privacy and bodily integrity have been applied to sexuality and individuals' autonomous decisions with regard to their bodies.<sup>286</sup> For example, in *Toonen v Australia*, the Human Rights Committee confirmed that laws that interfered with adult consensual sex in private breached the ICCPR, in particular Article 17 (right to privacy). While the Committee considered a criminal "sodomy" law in this communication, it did not limit its reasoning to this specific type of criminal provision. The Committee's analysis and reasoning is applicable to all laws prohibiting consensual adult sex. To justify such laws which infringe on individuals' human rights, governments must demonstrate that the law has a legitimate purpose, is appropriate to meet that purpose, necessary for and proportionate to the legitimate aim sought and not discriminatory.<sup>287</sup> Penalizing sex workers for consensual sexual activity directly violates the rights to privacy and to personal autonomy.

## 9.9 RIGHT TO FREEDOM OF EXPRESSION

The right to freedom of expression includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print".<sup>288</sup> This may also include commercial advertising.<sup>289</sup> The Human Rights Committee has stated that: "the commercial element in an expression

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<sup>282</sup> In 2001, the European Court of Justice ruled that a group of Polish and Czech women had the right to engage in sex work in the Netherlands under treaties between the European Union and its applicant countries. The judges said that 'prostitutes' could work in any European Union country where selling sex was tolerated as long as they were genuinely self-employed, had the means to set up their business and had a reasonable chance of success. See *Jany and others v Staatssecretaris van Justitie*, Case C-268/99, European Court of Justice, 2001.

<sup>283</sup> See *Kylie v Commission for Conciliation, Mediation and Arbitration & Ors*, C52/07, C52/07, ZALC 86, 2008 (in which the South African Labour Appeals Court ruled that a sex worker was entitled to protection against unfair dismissal even though sex work remained criminalized). See also the minority judgment of Sachs and O'Regan JJ in *S v Jordan and others*, 2002 (6) SA 642 (CC), para 74.

<sup>284</sup> See ILO, Report of the Committee on HIV/AIDS, 'HIV/AIDS and the world of work' (Provisional Record 13 (Rev.)), 2010, paras. 192-210.

<sup>285</sup> See UDHR, Article 12, ICCPR, Article 17; Human Rights Committee, *Toonen v Australia* (UN Doc. CCPR/C/50/D/488/1992), 1994; American Convention, Article 11; see also American Declaration of Human Rights, Article V.

<sup>286</sup> ICCPR, Article 17(1)(2); CRC, Article 16(1)(2); Convention on the Rights of Persons with Disabilities, Article 22(1); Human Rights Committee, *K.L. v Peru*, (UN Doc. CCPR/C/85/D/1153/2003), 2005, paras. 6.4 and 6.5; CEDAW, General Recommendation 24 (Article 12: Women and health), (UN Doc. A/54/38/Rev.1), 1999.

<sup>287</sup> See ICCPR, Articles 18, 19, 21 and 22; ICESCR, Article 4; Protocol of San Salvador, Article 5. The content of these requirements has been developed extensively by independent experts. See, for example, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (UN Doc. E/CN.4/1985/4), annex, 1985; Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (UN Doc. E/CN.4/1987/17), annex, 1987. See also UN Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights, (UN Doc. A/66/265), 2011, para. 11.

<sup>288</sup> ICCPR, Article 19; American Convention, Article 13.

<sup>289</sup> Human Rights Committee, General Comment 34 (Article 19: Freedoms of opinion and expression), (UN Doc. CCPR/C/GC/34), 2011, para. 11

taking the form of outdoor advertising cannot have the effect of removing this expression from the scope of protected freedoms.”<sup>290</sup>

Sex workers have the same rights to freedom of expression as others. This includes the right to communicate, dress or otherwise present themselves in a particular way without repercussions, such as being profiled or targeted by the authorities in brothel raids or crackdowns on street-based sex work. In addition, sex workers should be able to speak publicly and advocate for law reform, including for protection of their rights and safety measures, without threats, intimidation or violence, and states should take steps to protect the right to freedom of expression.

Laws against communication related to sex work, including prohibitions on solicitation that do not consider the impact on the health and safety and other rights of sex workers that forces them to work in more isolated and dangerous situations, may violate the right to freedom of expression, as well as the right to health and the right to liberty and security of the person. International human rights law allows only for limited restrictions on the right to freedom of expression. These restrictions must be set out in law, may only be imposed for one of the purposes permitted under international law,<sup>291</sup> and must conform to strict tests of necessity and proportionality with regard to the intended purpose.<sup>292</sup> To that end, the legitimate aim of such laws must be weighed against the impact on the most marginalized sex workers (especially street-based sex workers) and the risks they face, and not require them to work in ways which compromise their health and safety.

In addressing permissible restrictions on the right to freedom of expression, the UN Human Rights Committee has confirmed that such restrictions cannot be overbroad. Specifically, “they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; [and] they must be proportionate to the interest to be protected”.<sup>293</sup> Along those lines, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has affirmed that any limitation must not be more restrictive than required to achieve their purpose, must be periodically reviewed for its continued relevance and “must be consistent with other rights recognized in the [ICCPR] and in other international human rights instruments, as well as with the fundamental principles of universality, interdependence, equality and non-discrimination as to race, colour, sex, language, religion, political or other belief, national or social origin, property, birth or any other status.”<sup>294</sup>

## 9.10 RIGHT TO EQUALITY, NON-DISCRIMINATION AND EQUAL PROTECTION UNDER THE LAW

While laws can reflect social attitudes that lead to discrimination against sex workers, discrimination and inequality can occur in many different contexts, regardless of whether or not sex work is criminalized. States must take steps to address the discrimination faced by sex workers, including where this is based on structural gender inequality and other grounds.

The principle of non-discrimination is fundamental to the realization of all human rights. All of the core international human rights treaties reiterate this general principle, including the Universal Declaration of

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<sup>290</sup> Human Rights Committee, *Ballantyne, Davidson and McIntyre v Canada* (UN Docs. CCPR/C/47/D/359/1989 and 385/1989/Rev.1), 1990, para. 11.3

<sup>291</sup> The right to freedom of expression can only be restricted if this is demonstrably necessary and proportionate for any of the following reasons: to protect the rights or reputations of others, national security or public order, or public health or morals.

<sup>292</sup> See Human Rights Committee, General Comment 34 (Article 19: freedoms of opinion and expression), UN Doc. CCPR/C/GC/34, 2011, paras. 21-36.

<sup>293</sup> See Human Rights Committee, General Comment 34 (Article 19: freedoms of opinion and expression), UN Doc. CCPR/C/GC/34, 2011, para. 34 (citing Human Rights Committee, General Comment 27 (freedom of movement (Article 12)), UN Doc. CCPR/C/21/Rev.1/Add.9, 1999, para. 14).

<sup>294</sup> Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (UN Doc. A/HRC/14/23), 2010, para. 79.

Human Rights.<sup>295</sup> Under international law, states have an obligation to refrain from having laws and to prohibit policies and practices that are deliberately discriminatory, as well as those whose impact could be discriminatory with regard to certain groups or categories of individuals, even when it is not possible to prove a discriminatory intention.

Sex workers are often comprised of the most marginalized people in society and may be exposed to inequality and discrimination on the basis of one or more grounds including because of their race, sex, disability, migrant or other status. This discrimination can have a serious and detrimental impact, leading people into, affecting them during and have a lingering impact after they leave sex work. It acts as a significant barrier to the full realisation of other human rights for sex workers. States must actively address this inequality and discrimination.

States also have an obligation to ensure that people are treated equally under the law. Article 7 of the UDHR, for example, states: “All are equal before the law and are entitled without discrimination to the equal protection of the law.”<sup>296</sup>

## 9.11 THE RIGHTS OF CHILDREN

International law prohibits the involvement of children—that is, all those who are under 18—in commercial sex acts. This prohibition is spelled out through the Convention on the Rights of the Child, its Optional Protocol on the sale of children, child prostitution, and child pornography, and in the ILO Worst Forms of Child Labor Convention. Under these treaties, states are obliged to protect children from economic exploitation, sexual exploitation, and any work that is likely to be hazardous or harmful to a child’s health or physical, mental, or social development.<sup>297</sup> The “use, procuring, or offering” of a child for prostitution or pornography is considered a “worst form of child labor,” for which states shall design and implement action programs to eliminate as a priority.<sup>298</sup> States are also required to criminalize “offering, obtaining, procuring or providing a child” for use “in sexual activities for remuneration or any other form of consideration.”<sup>299</sup> Importantly, states must “*take all feasible measures*” to ensure that all children who have been involved in sexual activities for remuneration or any other form of consideration receive “all appropriate assistance including their full social reintegration and their full physical and psychological recovery.”<sup>300</sup> Such assistance should include the “necessary and appropriate direct assistance for the removal of children” from such work and ensuring “access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour.”<sup>301</sup> Children should be supported as victims of crime.<sup>302</sup>

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<sup>295</sup> Article 2 of the Universal Declaration of Human Rights provides a non-exhaustive list of prohibited grounds for discrimination, including race or colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>296</sup> ICCPR, Article 26.

<sup>297</sup> Convention on the Rights of the Child, arts. 32(1), 34.

<sup>298</sup> ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention), adopted 17 June 1999, 2133 UNTS 161 (entered into force 19 November 2000), arts. 3(b), 6(1). China ratified the Worst Forms of Child Labour Convention on 8 August 2002.

<sup>299</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2002), arts. 2(b), 3(1)(b). China ratified the optional protocol on 3 December 2002 but notified the UN Secretary-General that “the application of the Protocol to the Hong Kong Special Administrative Region of the People’s Republic of China requires prior enactment of domestic legislation by the Hong Kong Special Administrative Region, and the Protocol shall not apply to the Hong Kong Special Administrative Region of the People’s Republic of China until the Government of China notifies otherwise.”

<sup>300</sup> *Ibid.*, art. 9(3).

<sup>301</sup> Worst Forms of Child Labour Convention, arts. 7(2)(b) and (c).

<sup>302</sup> International standards prescribe that in all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration, and that the different development needs of children constitute the basis for the lesser culpability of children in conflict with the law. The protection of the best interests of the child requires that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child

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offenders. See Committee on the Rights of the Child, General Comment 10, 'Children's rights in juvenile justice', UN Doc. CRC/C/GC/10 (2007), para. 10.

# 10. CONCLUSION AND RECOMMENDATIONS

Criminalization of sex work has had a significant impact on the violence, stigma and discrimination experienced by sex workers in Papua New Guinea. Police often use laws as a means to extort money and sexual services from sex workers, who then feel unable to access justice in part because sex work is seen as 'illegal'.

Policing practices, particularly the use of condoms of evidence, discourages the use of safer sex practices thereby making it counterproductive to health care initiatives to combat the spread of HIV/AIDS.

In addition, the failure of the police to adequately investigate criminal complaints by sex workers, including those against the police, and lack of due diligence in prosecuting such cases means that sex worker rarely obtain justice for crimes committed against them. A range of factors, including cost, time and delays in bringing matters to court further limits the ability of sex workers to obtain justice.

Decriminalization alone is not going to end the violence, discrimination and stigma suffered by sex workers, but it would remove the purported legal justification for violence and other abuses against sex workers, allowing them to be recognized as equal before the law. Criminal laws and policing resources must be refocused to target violence and exploitation in general, as well as within sex work. This requires a national and co-ordinated response to the high rates of gender based violence throughout the country, which was often cited as a reason for entry into sex work.

Social and cultural attitudes towards sex workers, grounded in harmful gender stereotypes, fuel the stigma and discrimination that sex workers face, driving them further underground, exposing them to more risk and leading to increased human rights violations for some of the most marginalized people in society. Attitudes towards sex workers are invariably negative, particularly in regard to male and transgender sex workers.

Addressing the factors that lead people to enter into sex work requires structural changes on many levels, including through laws and policies, which target social change, education and empowerment that promote gender equality and non-discrimination. These initiatives and policies must be compatible with the realization of sex workers' human rights and should be developed primarily in consultation with sex workers themselves.

## **AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF PAPUA NEW GUINEA TO:**

- Repeal all laws, which are used to prosecute and punish sex workers, or criminalize related aspects of sex work, including laws, which prohibit 'living off the earnings of prostitution', or 'owning or operating a brothel'.
- Repeal sections 210 and 212 of the Criminal Code Act, which criminalize consensual same sex sexual activity.
- Repeal section 59(b) of the Child Welfare Act, which denies women the opportunity to seek child support payments if deemed to be a 'common prostitute'.

- Release, immediately and unconditionally, all individuals who have been detained or convicted for actual or alleged consensual sex work or same sex activity.
- Amend relevant laws to prohibit discrimination on the basis of sexual orientation and gender identity.
- Ensure that all allegations and reports of human rights violations against sex workers, or as a result of a person's real or perceived sexual orientation or gender identity, are promptly and impartially investigated by competent authorities and perpetrators are held accountable and brought to justice without recourse to the death penalty.
- Implement training and guidelines for health care professionals and administrators highlighting their obligation to treat all patients with respect and refrain from discrimination against marginalized groups, including sex workers and people living with HIV, refrain from discrimination on the basis of sexual orientation or gender identity, and to protect the right to privacy.
- Ratify and implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, its Optional Protocol, and the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women.
- Implement in full the recommendations made in the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2011 (A/HRC/16/52/Add.5) with particular priority given to the recommendations in relation to torture, providing safeguards in detention, and addressing complaints of ill treatment by the authorities.
- Introduce ongoing training for all levels of police, prosecutors, magistrates, judges and court officials on human rights obligations related to equality and non-discrimination, particularly as it applies to sex work, sexual orientation and gender identity, and on effective, impartial investigation and prosecution of all acts of violence, including gender-based and sexual violence, against individuals without discrimination.
- Adopt and implement effective programmes, laws and policies, in line with obligations under international human rights law to protect against trafficking for the purposes of exploitation, as defined in the Palermo Protocol.
- Develop and implement support programmes, in consultation with sex workers, including social welfare, education and training and/or alternative employment to ensure that sex workers can leave the industry if and when they choose, whilst guaranteeing that sex workers are not compelled to participate in such programmes (such as through the use or threat of sanctions).
- Develop and implement comprehensive policies to address the high levels of violence against women and girls, and to achieve gender equality, including by ensuring equal access to education, health care and employment opportunities.
- Establish systems to ensure basic social security for those living in extreme poverty, seeking international assistance as needed.
- Ensure that sex workers are not denied access to health, housing, education, child or spousal maintenance or any government programs because of they have engaged in sex work (past or present) or because of their sexual orientation or gender identity.
- Ensure that sex workers enjoy equal protection under the law and are not excluded from the application of labour, health and safety and other laws.
- Adopt and implement a gender policy for law enforcement officials to ensure that people are not discriminated against or ill-treated in custody including procedures to ensure that transgender women are not searched by male officers or locked up with male detainees.
- Ensure that the Ombudsman's office has adequate powers, authority and resources to independently investigate all acts of violence and extortion by law enforcement officials. It should have the power to call witnesses, report promptly and publicly and make directions regarding criminal investigations to ensure that perpetrators are brought to justice.

- Remove barriers to people accessing justice and reporting crimes including by:
  - Ensuring that all survivors of rape and sexual violence do not have to pay for forensic medical reports in order for police to open a file or initiate an investigation for a complaint;
  - Removing requirements that claims against the State must be personally served on government offices in Port Moresby; and
  - Developing a witness protection strategy for people at high risk of violence.
- Ensure that all police officers have names on their uniforms to make them clearly identifiable to the public.
- Ensure that police officers who engage in torture, inhuman and degrading treatment and punishment, including sexual violence, are promptly investigated and face disciplinary and criminal sanctions if found guilty of such action, and survivors of such acts can access justice and remedy.
- Ensure that the HIV/AIDS Management and Prevention Act (HAMP) Act 2003, is not used by police to justify raids and other human rights abuses against sex workers.

**TO UN AGENCIES AND RELEVANT DONOR COUNTRIES, INCLUDING AUSTRALIA AND NEW ZEALAND:**

- Ensure that their technical and financial assistance to the law and justice sector including the police includes human rights training on the appropriate use of force, arbitrary arrest and detention, torture and other ill treatment (including the physical and sexual abuse of persons in custody), including on how to sensitively handle complaints of gender based violence and without discrimination on the basis of gender and sexual orientation in line with international standards.
- Request that the government of Papua New Guinea investigate all allegations of human rights violations against sex workers by police and military officers through an independent and impartial tribunal. Where appropriate, police and security officers found guilty of such offences must face criminal prosecution, without recourse to the death penalty, in addition to any disciplinary measures.
- Ensure that their financial assistance is targeted at addressing gender inequality and discrimination, including by addressing the discrepancy in girls' education and by providing vocational and other training to ensure meaningful opportunities of employment of women across all professions.
- Ensure that law and justice sector training that they support distinguishes between sexual violence, exploitation, human trafficking and consensual adult sex work or sexual activity, recognises that sex workers are at high risk of human rights abuses and ensure that sex workers are not punished or otherwise criminalized under national laws, policies and practices.
- Support local human rights organizations and sex workers organizations that are assisting sex workers on a voluntary, participatory basis.



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# OUTLAWED AND ABUSED

## THE HUMAN COST OF CRIMINALIZING SEX WORK IN PAPUA NEW GUINEA

In Papua New Guinea, sex workers are beaten, raped, unlawfully detained and killed without recourse to justice. In a country where violence against women is high, sex workers face extreme levels of violence because of the stigmatization of sex work and because they defy social and cultural norms.

This report shows that acts of violence against sex workers are committed by police officers, clients, and members of sex workers' families and communities. These crimes are rarely reported or investigated. Some police officers abuse their power, extorting sex workers for sexual services, money or goods. Sex workers have been forced to chew or swallow condoms and subjected to cruel and degrading treatment during brothel raids and crackdowns on sex work. Criminal laws do nothing to improve safety for sex workers or protect them from violence. Instead, the law fuels antagonistic relationships between sex workers, the police and the community.

Sex workers also experience high levels of stigma and discrimination, especially in accessing health care. Gender inequality is a significant factor contributing to the high levels of violence, stigma and discrimination that women, gay and transgender sex workers face. This report includes recommendations aimed at ending violence and discrimination against sex workers.

Index: ASA 34/4030/2016

May 2016

Language: English

[amnesty.org](https://www.amnesty.org)

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