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**PAPUA NEW GUINEA
NATIONAL CONSULTATION
ON HIV, HUMAN RIGHTS
AND THE LAW**

Papua New Guinea National AIDS Council
Port Moresby, Papua New Guinea

13-14 June 2011

The Hon. Michael Kirby AC CMG

UNAIDS, UNDP, AusAID

PAPUA NEW GUINEA NATIONAL AIDS COUNCIL

PORT MORESBY, PAPUA NEW GUINEA

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NATIONAL DIALOGUE – SUB-REGIONAL MEETING

Between 13-14 June 2011, in Port Moresby, Papua New Guinea (PNG) a National Dialogue on HIV, human rights and the law took place in the precincts of the National Parliament.

Participating in the consultation were the Hon. Dame Carol Kidu, DBE, MP (PNG) and the Hon. Michael Kirby (Australia), both Commissioners of the UNDP Global Commission on HIV and the Law (the UNDP Commission). Although the National Dialogue in PNG was substantially a country exercise, it involved the participation of the representatives in PNG of many agencies of the United Nations, including UNAIDS, UNDP, WHO, UNICEF, ILO and UNFPA. The involvement of two Commissioners of the UNDP Commission, each of whom had participated in earlier Regional Dialogues of that Commission, prompted the suggestion of reporting on the meeting to UNAIDS and UNDP,

* Past Justice of the High Court of Australia (1996-2009); Commissioner of the UNDP Global Commission on HIV and the Law (2010-11); member of the UNAIDS Reference Group on HIV and Human Rights (2002-).

although formally the PNG consultation was not funded or organised as an activity of the UNDP Commission.

The regional Dialogue for Asia and the Pacific took place in Bangkok, Thailand, 16-17 February 2011. This was the formal opportunity for examination of aspects of the HIV epidemic of special interest to UNDP and the UNDP Commission in PNG. However, necessarily, most of the attention in the Bangkok regional dialogue was addressed to the developments occurring on the Asian mainland. Accordingly, the PNG consultation afforded a supplementary opportunity to consider some of the issues special to Pacific countries such as PNG.

The HIV epidemic in PNG is the largest in the Pacific. In some respects, particularly the role of Christian churches in responses to the epidemic, notably in PNG, there are different features from those existing in most of the Asian mainland. It is therefore timely and useful to provide this report to the UNDP Commission.

THE PNG EPIDEMIC

HIV was first reported in PNG in 1987. In 2003, PNG became the fourth country of the Asia-Pacific region to be classified as having a generalised HIV epidemic. This classification followed reports of a prevalence of HIV amongst women attending ante-natal services, more than 1% of whom presented with HIV. In 2009, the number of adults in PNG (aged 15-49) in the general population, living with HIV, was estimated to be 35,800, suggesting a national prevalence rate of 0.9%. The number of persons who have died of AIDS in PNG is disputed. Access to outlying regions in remote areas of PNG is physically difficult. Great stigma attaches to HIV infection. Securing accurate statistics is

therefore extremely difficult. The formal cumulative total contained in government documentation suggests aggregate deaths totalling 11,520, resulting also in 5,610 orphaned children. Informed estimates expressed at the National Dialogue suggested that the rates of infection, and numbers of deaths and orphans, were considerably higher. Several estimates of actual total deaths totalled 30,000.

The primary mode of transmission of HIV in PNG is heterosexual sexual conduct. In one region (the Highlands), there has been a report of a recent decline in infections. However, in two other regions (Momase and New Guinea Islands) the epidemic continues to increase. Some populations in PNG, including sex workers (CSW), men who have sex with men (MSM), transgender people (TGP) and people living with HIV (PLWHA) are more vulnerable to HIV infection or re-infection. At this stage, it is not considered that injecting drug use (IDU) is a significant factor in the PNG epidemic.

The *HIV/AIDS Management and Prevention Act 2003* (PNG) clarifies provisions of the *Criminal Code* of PNG relating to criminal transmission of the HIV virus, limiting liability to cases of intentional transmission or attempted transmission.

Other relevant legislative provisions include the *Criminal Code Act*, derived from the *Griffith Code* operating in the Australian State of Queensland and elsewhere at the time of independence of PNG from colonial and trusteeship administration by Australia. This Code contains criminal prohibitions relevant to the spread of HIV amongst MSM, CSW, TGP. In particular, male to male sex between consenting adults in private, is criminalised in PNG. There were reports of selective

prosecutions of offences against MSM, TGP and CSW. The punitive and discriminatory legal environment evident in PNG involving these groups is, to some extent, reinforced by attitudes on the part of organised religion, almost entirely Christian denominations. The hostility to MSM, TGP and CSW in PNG society remains strong. This hostility was evident during the PNG National Dialogue.

PNG continues to criminalise aspects of the work of CSW, including by rendering soliciting and the keeping of a brothel criminal offences. The criminal provisions applying to MSM tend to drive affected persons underground and to impede their access to services because of discrimination or unprofessionalism and harassment when such services are approached.

National experience in Australia and New Zealand and international experience elsewhere explained successively by WHO, UNAIDS and UNDP, suggests that, by impeding access of vulnerable populations to health care messages for prevention, testing, care and treatment increases the HIV epidemic and impedes the vital strategy of prevention. Prevention is vital in PNG and the Pacific because of the high cost of anti-retroviral drugs; the continuing spread of the virus in many countries; and the global financial crisis which has affected replenishment of the Global Fund Against AIDS, Tuberculosis and Malaria (the Global Fund).

The United Nations, and its agencies, have become increasingly involved in PNG in combating the spread of HIV and addressing the associated problems of discrimination and prejudice on the grounds of sexual orientation, gender identity and adult private sexual conduct.

Within PNG, the United Nations is working with government, civil society and the private sector to endeavour to promote the human rights and legal aspects of HIV and to support legal reforms addressed to criminalisation, discrimination, stigma and other impediments to capacity development.

Many UN agencies were represented at events of the National Dialogue. Many references were made, during the dialogue, to the support of the foregoing agenda by the Secretary-General (Ban Ki-moon), the Administrator of UNDP (Helen Clarke), the High Commissioner for Human Rights (Navi Pillay), and the Director of UNAIDS (Michel Sidibé). Rarely have the United Nations and its agencies spoken with such unanimity, clarity and vigour on any topic.

AUSTRALIAN AUSAID SUPPORT

The National Dialogue in PNG followed within days the conclusion of the High Level Meeting (HLM) of the United Nations General Assembly on HIV/AIDS, held at its 65th session. On 10 June 2011, the General Assembly adopted, by consensus, a new *Declaration of Commitment 2011*. For the first time, this Declaration, in a major General Assembly political text, identified references to the vulnerable populations by name: MSM, CSW and IDU. Also, for the first time, a specific reference was made to the strategy of “harm reduction”, particularly relevant to IDU, but also pertinent to other vulnerable groups. One of the UNDP Commissioners, Michael Kirby, attended the HLM as part of the Australian Delegation. He used opportunities during the PNG National Dialogue to report on the debates in New York and on the progress made there.

Towards the close of the HLM, the Australian Foreign Minister, the Hon. Kevin Rudd MP (as co-convenor of the HLM) delivered his address which made extensive references to Australia's commitments to combating HIV in the world and in the Pacific region, specifically in PNG:

“Over the decades since the first Declaration in 2001, Australia has spent \$1 billion on HIV/AIDS world programmes worldwide. Australia has also increased by 55% its commitment to the Global Fund, to \$210 million for 2011-2013. Australia's global HIV/AIDS programme this year is \$172 million, focussing on PNG, Indonesia, Vietnam, Cambodia, Laos, Burma, The Philippines, South Pacific, as well as Africa. ... The largest single programme is with our closest neighbour, PNG, where infection rates are high.

Our investment in PNG amounts to \$183 million over the five years 2008-2013. ... We intend to focus on infants with HIV who somehow have slipped through the cracks of many of our global efforts. ... HIV infection rates are higher in PNG than anywhere else in the Pacific. ... A country of 5 million people [has] more than 700 different cultural groups and languages. ... [As a result of funding] of the Clinton Health Access Initiative for PNG 2006 ... HIV deaths amongst young children has fallen dramatically in the past few years from 95% in late 2006 to just 6% in 2010. ... We have just set aside \$11 million to extend the programme across PNG for the next two years. That makes nearly \$25 million since 2006.”

The representatives of AUSAID in PNG gave strong financial and logistical support to the National AIDS Council Secretariat of PNG to assure the success of the National Dialogue and to engage with the vulnerable groups in PNG. Special mention should be made of Ms. Anne Malcolm, Director, PNG-Australia HIV and AIDS Programme, and to Dr. Nii-k Plange and other officers of the AUSAID Port Moresby office for their support for the project.

The Australian High Commissioner to Papua New Guinea (Mr. Ian Kemish AM) attended, and addressed, the opening welcome of the

Dialogue with members of key affected populations also attending. This took place on 13 June 2011. Whilst sensitive to Australia's position as a former colonial and trusteeship power in PNG, the AUSAID group exercised a responsible and supportive function, consistent with the Australian financial and logistical support to PNG to help it to address its epidemic.

MEETINGS WITH KEY POPULATIONS

On 13 June 2011, members of the key affected populations (MSM, TGP and CSW) met at the Holiday Inn Hotel in Port Moresby. An extended conversation took place between these representatives and Michael Kirby. Many of the representatives were participating in open, public dialogue about their sexuality (MSM), identity (TGP) or work (CSW) for the first time. The conversations were fruitful and mutually respectful. Michael Kirby indicated his association with the participants, himself being an MSM. This identification helped break the ice.

The opening dialogue included many interventions that described the practical difficulties faced by members of vulnerable groups in PNG:

- * Gender-based violence inflicted on CSW and domestic partners of PLWHA;
- * Harassment, involving reliance on evidence of condom possession to establish soliciting;
- * Disrespect exhibited at hospitals and elsewhere to CSWs presenting for check-ups, tests and treatment in conjunction with possible sexually transmitted diseases; and
- * Similar harassment of MSM and TGP (Friends Frangipane).

The opening dialogue was followed by a public reception attended by representatives of the host (National Aids Council) (NACS), the Australian High Commission and United Nations agencies and civil society organisations. Some governmental officials also attended, including Dame Carol Kidu, MP, PNG Minister for Community Development. The welcome concluded with a dance and musical sequence, appealing for acceptance of diversity and tolerance in PNG society.

OPENING OF NATIONAL DIALOGUE

On 14 June 2011, in a large hall, the State Function Room, attached to the National Parliament of PNG, the opening plenary of the National Dialogue took place. Participants included Mr. Wep Kanawi, Director of NACS, who was facilitator of the occasion. There were also representatives of the PNG Alliance of Civil Society Organisations (PACSO), members of affected populations and senior PNG and United Nations officials.

In his keynote address, Michael Kirby placed the HIV epidemic in PNG in the context of the global epidemic and its significant features. He briefed participants on the course of events at the United Nations General Assembly High Level Meeting on HIV, which had concluded in the preceding week. He informed them of the strong commitment made by Foreign Minister Kevin Rudd, on behalf of Australia, to ongoing support for the PNG response to HIV. He reflected on the priority areas for legislative and other actions in PNG in order to reduce the ongoing spread of the virus. He explained the “AIDS paradox” and the need for greater engagement of the elected and appointed officials of PNG in the struggle against the epidemic. He expressed disappointment at the fact

that, although the day was a sitting day in the afternoon, only two members of the PNG Parliament had attended the National Dialogue, and only one Minister. He welcomed the Acting Chief Justice, Justice Gibbs Salika, who was attending in the place of the Chief Justice who was overseas. He also welcomed Dr. Moses Manwaw MP, chair of the National Parliamentary HIV/AIDS Committee who addressed the plenary. Addresses were given to the plenary by Mr. David McLachlan-Karr (UNDP), Dame Carol Kidu, Dr. Moses Manwaw, representatives of UNAIDS, UNDP and other UN agencies.

The opening panel discussions that followed the plenary addresses were vigorous and continued during the day. Michael Kirby proceeded to a luncheon dialogue with invited Members of Parliament. However, only one additional member of Parliament attended, together with a District Governor and Dr. Manwaw. The attendance at the lunchtime meeting with the Parliamentary Committee on HIV was very disappointing. The absence of the Minister for Health from the National Dialogue was also disappointing. Later in the day, in reviewing developments before the conclusion of the Dialogue, Mr. Kirby expressed his surprise that so few Ministers and members of the government and Parliament had attended at least the morning sessions of the National Dialogue, when Parliament was not actually sitting.

DISCUSSIONS WITH SELECTED GROUPS

The afternoon sessions involving Mr. Kirby included:

- * A meeting with journalists and members of the Media Council that took place in the Parliamentary Theatre;
- * A meeting with the Churches' Alliance; and

- * A meeting with the law and justice sector, including the Solicitor-General, the Public Solicitor, the Public Prosecutor, and the State Solicitor, Deputy Chief Ombudsman and Director of Village Courts.

The foregoing officials were briefed on the role of the UNDP Global Commission on HIV and the Law; the needs for improvements and better engagement with civil society in the PNG response to the epidemic; and the specific need for law reform affecting MSM. TPG and CSW.

In the course of these discussions, it emerged that the National Executive had requested the Attorney-General (and past Chief Justice) (Sir Arnold Amet) to refer to the Constitutional and Law Reform Commission a reference to enquire into the reform of the *Penal Code*, to delete the provisions of the Code which criminalise adult consensual private sexual activity involving MSM, and to decriminalise activities of CSW. Several of the law officers indicated their understanding of the needs for legal reform as proposed by UN agencies. Reportedly, the terms of the reference to the Commission had been held up because of concern by the Attorney-General of some of the language of the proposed reference.

The urgency of securing the commencement of work on the reference by the Constitutional and Law Reform Commission was emphasised by Mr. Kirby. If the terms needed modification, that should occur so that work on the reference could proceed during the current and forthcoming electoral period. The officials recognised that, being pursuant to a decision of the National Executive of PNG, the reference would have to

be made by the Attorney-General or the decision of the Executive revoked. Matters could not be left in abeyance.

The most difficult meeting of the day was held with the Churches Alliance. Those attending were representatives of all the major Christian denominations in PNG, namely Anglicans, Roman Catholics, United Church and Pentecostals. As well, a former officer of the Salvation Army in PNG attended. Whereas the representative of the Catholic Church expressed understanding of the call by Michael Kirby for consideration of changes to the law affecting MSM, TGP and CSW, the other denominations were either unenthusiastic or hostile. Two of the participants in the private meeting with the Churches Alliance (from the Salvation Army and a Pentecostal Church) were particularly opposed to any suggestion for repeal of the *Penal Code* provisions criminalising MSM. Disparaging comparisons were made between MSM and animals.

When attempts were made to explain the reasons why such criminal law provisions impede the successful strategies to prevent the spread of HIV, the response was repeatedly to refer to the suggested proscriptions to immorality in the Bible, and to invoke the provisions of the Preamble to the Constitution of PNG, declaring that the country is a “nation guided by Christian principles”. An attempt was made by Mr. Kirby to explain that:

- * Guidance by Christian principles did not make them, as such, legally binding in their terms;
- * Disputes exist as to what such “principles” actually were, when understood in a modern context with the benefit of contemporary science; and

- * PNG is a secular nation not a theocracy, so that attempts to give effect in law to religious beliefs were antithetical to the structure and provisions of the Constitution. However, these explanations were dismissed by some church representatives. At one stage, the former officer of the Salvation Army appeared to attempt to rally the church representatives present, possibly to quit the Dialogue. Fortunately, this did not occur and the conversations continued.

At the end of them, Mr. Kirby suggested the following areas of substantial agreement:

1. That all forms of violence against MSM, TGP and CSW were alien to Christian beliefs;
2. That a central aspect of Christian beliefs was love for one another, leaving ultimate moral judgment upon human beings to God;
3. That a major new deadly epidemic was present in PNG, the largest in the Pacific, that required urgent attention to secure prevention and recognition that ongoing reliance on expensive therapies was not a viable long-term response to the epidemic;
4. That the PNG government, the churches and citizens have a moral duty to support those persons infected, or at risk of infection, and to do everything in their power to promote the removal of barriers such as stigma and discrimination, which impede effective strategies against HIV; and
5. That dialogue must continue between the churches, the Churches Alliance and all spiritual people in PNG, with those having the responsibility to promote an effective national response in HIV to the epidemic, as well as engagement with vulnerable individuals and groups. An ongoing conversation was a major imperative to

endeavour to find common ground and to reduce the suffering of the people.

At the end of the dialogue with the Churches Alliance, Mr. Kirby invited the sole woman religious representative (from the United Church) to send participants on their way with a Christian prayer. This was done with assurances that the conversation would continue, as it may be hoped that it will.

The dialogue with the representatives of the churches, and its outcome, was subsequently reported to the closing plenary session on the afternoon of 15 June 2011. This session was followed by reports from the breakout groups which had discussed the morning's panel dialogue and the events that followed, and a buffet dinner. The evening sessions also included a repeat of the dancing and musical interlude which had featured at the opening buffet.

CLOSING EVENTS OF THE DIALOGUE

On Wednesday 15 June, four events were organised in which Commissioner Dame Carol Kidu and Commissioner Michael Kirby severally took part:

1. A breakfast was scheduled between Michael Kirby and the Acting Chief Justice and judges of the National Court of Papua New Guinea. This took place at the Holiday Inn Hotel. However, the judges of the National Court did not attend. Justice Gibbs Salika was the sole participant. He had a friendly discussion with Mr. Kirby, who briefed him on the recent decision of the High Court of Delhi in India in *Naz Foundation v Delhi* [2009] 4 LRC 838. The commonalities between the penal codes operating in India and in

PNG made it useful to consider, and be aware of, the *Naz Foundation* decision, invalidating s377 of the Indian Penal Code. Acting Chief Justice Salika agreed to receive copy of the *Naz Foundation* decision, which will be sent to him. He affirmed that, in the PNG Constitution, there are provisions guaranteeing rights to *equality* before the law on the part of all persons in PNG and also guaranteeing a right to *privacy*. As these considerations were the foundations for the *Naz* decision in India, they may be relevant to any future PNG consideration of the issue in the judiciary. Justice Salika explained the establishment of a new mechanism within the National Court, providing for streaming of human rights cases so that they can be assured of appropriate attention with awareness of any relevant international jurisprudence.

2. Commissioner Kirby, with Dame Carol Kidu MP, participated in a nationwide talk-back radio programme with Roger Hau'ofa. Mr. Wep Kanawi also took part in this broadcast, and described the events of the National Dialogue. Mr. Hau'ofa urged that, in future National Dialogues, facilities should be provided to record and broadcast the entire dialogue to the interested populations in PNG. Dame Carol Kidu explained the differences between "legalisation" and "de-criminalisation" of MSM/TGP/CSW in a PNG context. She also explained the way in which the criminal sanctions against MSM, TGP and CSW were not aspects of indigenous law and customs, but were imported by the colonial power and supported by Christian missionaries in PNG;
3. A press conference was then held at the departmental office of Dame Carol Kidu as in the Department of Community Development. The press conference was well attended by PNG

media and Australian media. The reports on the press conference were subsequently broadcast in PNG and in Australia; and

4. There was then a final meeting of Mr. Kirby with the office of AUSAID in Port Moresby with words of encouragement for the vital work performed by AUSAID to assist PNG in responding to its HIV epidemic.

EVALUATION

1. As with the UN *Declaration of Commitment 2011*, adopted at the General Assembly of the United Nations in New York the preceding week, there were aspects of the PNG National Dialogue that were favourable and others that were less so. The favourable included the participation of the Churches Alliance and the open expression of differing points of view by them and by vulnerable groups in a public forum. It may be hoped that this public conversation will continue into the future and promote better understanding of the diverse viewpoints that exist upon the matters of importance for the future of the epidemic in PNG.

2. Another significant first was the open and strongly expressed viewpoints of participating CSW, TGP and MSM. This was one of the first times in PNG that such persons had stood up, spoken out and expressed their demands as citizens for engagement with, and protection by, their government. The fact that a young gay man, a member of a national sporting team in PNG, spoke openly and bravely about his hopes and aspirations as a human being and citizen could only have a good effect on the watching participants. This was a considerable achievement.

3. The strong showing of the Australian High Commissioner, Commission and AUSAID staff and by representatives of all relevant

officials of UN agencies in PNG, indicated the substantial unanimity with which the United Nations is now addressing the HIV epidemic. This was also visible in New York and represented a strong indication of the leadership of the United Nations on HIV, especially on the part of UNAIDS, UNDP, UNFPA and WHO.

4. A disappointing feature of the National Dialogue was the hostility occasionally evident in the participation of the Churches Alliance members. On the other hand, they were forthright in expressing their points of view. The fact that they shared the platform and speaking space with persons of different and opposed viewpoints was a step in the right direction. Through dialogue, consensus will ultimately be built, based upon respect for human dignity and protection of the fundamental human right to life and to the highest attainable standards of health care.

5. Once again, the vital role played by Dame Carole Kidu MP was evident in the National Dialogue. She is currently the only woman member of the Parliament of PNG. She has announced that she will retire at the coming election. Her retirement will leave a large gap in the champions for HIV in the national Parliament. The size of that gap was most evident at the dialogue by the absence of Members of Parliament, even though the event was held in the parliamentary precincts and on a sitting day. The UN agencies and Australian representatives should be considering the ways in which they can support other participants in the Parliament of PNG and in provincial governments so as to secure a continuation of the national voice that Dame Carol has hitherto provided. Her work in the UNDP Global Commission on HIV and the Law and elsewhere, including in PNG, will continue. But outside public office.

6. Mr. Wep Kanawi and his colleagues in the National Aids Council of PNG are to be congratulated on the concept of the National Dialogue. So are the international agencies that supported their efforts.

7. Of particular disappointment was the non-appearance of the Minister for Health, other Ministers and Members of Parliament at the National Dialogue. Subsequent reports have suggested that they may not have all received invitations. However that may be, the large contingent of interested groups and individuals attending suggests that many would have known of the happening of the dialogue. The non-appearance of MPs at the luncheon meeting arranged with the Parliamentary Committee on HIV and during the sessions of the National Dialogue was particularly discouraging.

8. If there are future National Dialogues, especially in regions of the country, it may be hoped that Members of Parliament and officials will be specifically invited and will attend in greater numbers.

9. Efforts should be made to secure the formalisation of the reference to the Constitutional and Law Reform Commission, mandated by the National Executive and still awaiting the signature of the Attorney-General. It is highly desirable that work on that reference should commence during the present electoral period when it is unlikely that moves will be made to secure reform of the law as recommended by Dame Carol Kidu.

10. A copy of the *Naz Foundation* decision is to be sent to the Hon. Justice Salika, so that the PNG judiciary may be made aware of developments in jurisprudence in a Commonwealth legal jurisdiction having relevant constitutional similarities to PNG.

11. Ongoing dialogue with the Christian churches in PNG is necessary, given the significant influence which those churches play in resisting legal changes that are necessary for a wholehearted national effort addressed to reducing the high level of the PNG epidemic.

12. Attention of AUSAID should be drawn to the disappointing participation by Ministers and Members of Parliament in the National

Dialogue addressed to the HIV epidemic. The large investment by Australia in assisting PNG to respond to the epidemic invites a reciprocal obligation on the part of PNG leaders to acquaint themselves with the features of the epidemic, its likely vectors and the strategies that are likely to encourage and promote a reduction in the current rates of infection. Neighbouring countries, including Australia, should, of course, help PNG, whose citizens are innocent of official non-engagement. But current and future national leaders need to be reminded of the obligation of PNG itself to respond to its significant HIV epidemic and to listen to, and consider, advice addressed to enhancing the national response to HIV. So far, as several of the speakers from vulnerable communities pointed out, MSM, TGP and CSW have been speaking. But there is no certainty that the national leaders have been listening to them. Enhancing the attention to the epidemic must be a major aspect of United Nations and donor community endeavours in the years ahead.
