Appendix 3. Review of Homosexuality Cases

For which written judgements are available

This review is compiled from that commenced in the early 1990s by Justice Woods, and continued in the Law Faculty, UPNG, until digitised case reporting commenced with the publication of *PNGinlaw* in the latter part of that decade. I have added some subsequent updates.

1957

Barker v. R **[1967-68] PNGLR 204, appeal to High Court of Australia from Supreme Court No. 92 18/8/56.**

Lae: Expatriate convicted of 'unlawfully and indecently dealing' (by handling private parts) an expatriate boy aged under 14 (one of several) in a swimming pool changing room.

1961

R v. John Bomai **[1964] PNGLR 278**

JB, from Chimbu, was convicted before a Court of Native Affairs of sodomy while in Lufa gaol on another sentence. He strenuously denied this act and claimed the charge was highly insulting to Chimbu people. It led him to murder his accuser, but on a defence of provocation, this was reduced to manslaughter.

1962

R v. Bates **(Unreported) Supreme Court No. 255 9/10/62**

Rabaul. Drunken expatriate attempted to procure two 'natives' for 'acts of gross indecency', offered a £1 note.

1969

R v. Kausigor, *R v. Piliu* (Unreported) FC3 7/11/69

Wewak. Kausigor (26, from Wewak Sub-District) and Piliu (19, from village near Vanimo) met at a tavern around midday, went to nearby bushes for sex. K. then gave P. a small sum of money. K claimed to have been solicited by P. An observer threatened to tell Piliu's brother.

Antecedent reports claimed that the crime was against 'local' (presumably Wewak) custom. New evidence at appeal rehearing, from a Catholic priest and contradicting, from the prosecution. Fr. Heinemans has 16 years' experience in 'the Sepik area' and considered that before European contact, homosexual behaviour may have been contrary to Sepik customs. But since the introduction of contract labour and plantation dormitory housing, homosexuality was 'very common and widespread where there are large labour lines. (See also Reed 1943, p. 220: where there is no normal sexual outlet in the labour lines, homosexual practices are the easiest adjustment—very common and increasing. 'The natives have a growing awareness of the extreme revulsion with which Europeans view such behaviour, and they know of the harsh prison sentences that are frequently imposed for it. In the aboriginal cultures, however, there existed no such severe sanctions on this form of conduct, and thus the native will try to get away with it when he can.') It has been introduced back to villages by returning labourers so that it was now 'quite common,' but not approved by those who do not indulge in it, though regarded as less serious than sex between men and unmarried girls, which interferes with bride price and exchange arrangements, and other family interests involved in negotiating marriages. Homosexual behaviour is not seen as serious because it is not a threat to society and traditions. A District Officer prosecution witness cast doubt on these assertions but the court believed the priest. A reference to 'six known instances before the Court.'

Appeal Minogue ACJ, Frost J, O'Loghlen AJ (Unreported) FC 3

Sentences reduced from three years to 18 months.

1970

R v. Byrne [1971-72] PNGLR 1

Accused was arrested and charged with carnal knowledge against the order of nature, committing an act of gross indecency with a male person and unlawful and indecent assault. Released on bail on his own recognisance. Disappeared.

1971

R v. Stanley Sydenham Oxenham & Hendrick Lapanga Patau

Prentice J. Kieta, Bougainville, 2nd Dec 1971

Papua New Guinea National Archives Acc 454 Box 4605 File 5-9087 (Crown Prosecutions file).

1972

R v. Mama Kamzo (Unreported, Unnumbered) No.671, 17 Feb 1972

Frost SPJ Port Moresby 17 Feb 1972

Criminal law—carnal knowledge. Not guilty; homosexual act; judge defined permitting carnal knowledge as an act of free will; he ruled accused only submitted to act; reversed in *R v M.K.*

R v. M.K. [1973] PNGLR 204

Appeal: Rubber plantation labourer permitted his *bosboi* to have sex with him under the threat that he would be reported for dereliction of duty. The trial judge acquitted on the grounds that free will permission must be proved, but referred the matter to the Full Court, which overturned the qualification.

Prentice J. quotes from Howard 176: many sex offences are designed to protect the victim. Others however, those prohibiting buggery, other deviant sexual practices between humans, and sexual contact with animals 'are not designed so much for private protection as for the enforcement of officially received opinions on particular aspects of sexual morality.' Buggery is 'traditionally hedged about with pejorative adverbs and adjectives in statutes, and in indictments…. The State until recent times has asserted an interest against its occurrence, to the extent of constituting it an assault despite its being a consensual act.' '[L]ong continuance of legislative abhorrence for this class of deed, apparently intended to be carried on into the *Criminal Code*…'

R v. Leni Gone of Tawat and Joseph Oura of Kumuki

Prentice J Kieta, Bougainville, 10 May 1972

Papua New Guinea National Archives Acc 454 Box 14619 File 5-9351

1972

R v. Siune Wel Acc 454 Box 14625 Files 5-9471

R v. Hugh William Sitai 5-9468

R v. Yawi Huaimbore 5-9474

Frost SPJ Kundiawa, Chimbu, June 1972

1972

R v. Christopher Leech

Supreme Court Archives Box 2038 SCRA Prentice J. Notebooks 37-38 1972

Indictment of 5 May 1972

s.208 permitted Peter Yakai to have carnal knowledge 7 Feb 1972. Plea: not guilty. Reliable witness ultimately arrested for wilful murder of another European.

1973

R v. Joseph Mambiam and Raphael Warasurin

Acc 454 Box 14,654 File 10058

Wewak, Committal hearing 1/10/73, discharged. Prisoners in Boram. Evidence of another prisoner. RM R.Tovue

1975

Secretary for Law v. Dewake [1975] PNGLR 100

Man 20 from Morehead, Western Province, holidaying in Port Moresby, took a small child about 3 from the same area to the beach and minimally penetrated his anus. The people of PNG hold strong concern that young children should not be exposed to such sexual treatment as this, and the sentence should reflect this.

1990

State v. Bui (Unreported) N944 14/12/90

Brunton J Goroka

Eastern Highlands Province. While imprisoned for rape, the accused forced sex on another detainee. He told the Court that homosexual acts were not uncommon in prison, and usually did not get punished. Judge (Brunton) said that homosexuality is a personal disposition, not a medical condition or a social affliction. Allowed remissions because to keep him in prison would only exacerbate the situation.

1991

State v. Pos [1991] PNGLR 208

Jalina J

Man 20 from Morobe who migrated to East New Britain as a plantation labourer but is not employed. While in prison, he with others threatened another man into submitting to sex from at least 4. Judge (Jalina) considered it the behaviour of animals, awarded deterrent punishment, referred *Dewake*.

1993

State v. Kuengu [1993] PNGLR 124

Doherty J

Man 29 forced sex on 16-year old remandee in prison in Rabaul. Judge (Doherty) considered it analogous to rape 'an act of forced sexual connection without the consent of the victim.' Because of Constitution S.55, the same factors should be considered in sentencing. Community attitudes differ with regard to sodomy. Very few communities where it is totally acceptable, but in some it is more tolerated than others, in some it invokes a high degree of abhorrence. But aware of no community in which forced connection of this kind is acceptable.

1993

State v. Merriam [1994] PNGLR 104

Accused was American founder and director of a mission in Eastern Highlands Province, alleged had sex with a 7–8 year-old boy whom he and his wife took in and treated like a son. Court considered it a typical child sexual abuse case (stated that nearly all victims of paedophiles were boys).

Court notes that Sections 213(4) defilement of girls under 12, 216(3) defilement of girls under 16 and of idiots, 218(2) procuring a girl or woman and 219(2) procuring a girl or woman by drugs all require corroborative evidence, but S.210 among others in the Division does not. Rape requires recent complaint.

1997

State v. Johnny Mala (Unreported, Unnumbered) CR96 of 1997, 26 February 1997

Pitpit AJ, Tabubil, Western Province

Premeditated and consensual sexual intercourse between two male adults. Plea of guilty. Carnal knowledge *per anum*, need for deterrent sentence.

This text taken from *Name, Shame and Blame: Criminalising consensual sex in Papua New Guinea*, by Christine Stewart, published 2014 by ANU Press, The Australian National University, Canberra, Australia.