

HIV, human rights, and men who have sex with men

For the **International Lesbian and Gay Association** see statistics at www.ilga.org

For the **UNAIDS Action Framework: Universal Access for Men who have Sex with Men and Transgender People and Joint Action for Results 2009–2011** see http://data.unaids.org/pub/report/2009/jc1713_joint_action_en.pdf

For the **Global Fund Strategy in Relation to Sexual Orientation and Gender Identities (SOGI)** see <http://www.theglobalfund.org/documents/replenishment/2010/The%20Global%20FUND%20SOGI%20Strategy%20Update.pdf>

For **UNAIDS** see <http://www.unaids.org/en/default.asp>

For the **HIV/AIDS programme of the United Nations Development Programme** see <http://www.undp.org/hiv/>

The issue of human rights for men who have sex with men and how national and local attitudes can affect the spread of HIV and AIDS was highlighted last month when Steven Monjeza and Tiwonge Chimbalanga, a male couple in Malawi, were sentenced to 14 years hard labour for sodomy, after they held the country's first known same-sex commitment ceremony. International outcry followed, and after pressure from UN Secretary General Ban Ki-moon during a visit to the country, Malawi's president, Bingu wa Mutharika, granted an unexpected pardon. "This was a very courageous decision by President Mutharika. I highly applaud the President's leadership. Distinguished members of the Parliament, I am confident that you will take appropriate steps to update laws discriminating based on sexual orientation in line with international standards", Ban announced at a press conference shortly afterwards.

In the 20 years since homosexuality was removed from the list of mental health disorders by the World Health Assembly, there has been substantial progress in North America, western Europe, and more recently in Latin America, towards greater public acceptance and legal protection for men who have sex with men. In many parts of the world, however, denial of health care, stigmatisation by health-

care workers, and the continued "pathologisation" of homosexuality is still a reality. Highly publicised cases of arrests and imprisonment of gay men in Egypt, Senegal, and Malawi often required doctors to carry out examinations and provide evidence confirming homosexual conduct for prosecutors on the basis of spurious scientific knowledge. "Many serious cases of human rights abuses against men who have sex with men, such as killings, torture, violence, harassment, and sexual abuse, are also reported every year in many countries", reported Cheikh Traore, Senior Adviser on Sexual Diversity at UN Development Programme (UNDP), New York, USA.

"Around 86 countries worldwide still have laws that criminalise sexual relationships between two consenting adults of the same sex, according to the International Lesbian and Gay Association (ILGA), which tracks this", says Chris Beyrer, Professor of Epidemiology, International Health, and Health, Behavior, and Society at Johns Hopkins Bloomberg School of Public Health (Baltimore, MD, USA). According to a study being prepared for publication by the UNDP, male-to-male sex between adults is criminalised in 19 of the 48 Asia-Pacific countries and territories. "These are all jurisdictions with common law traditions; some countries also apply traditional or local religious law, which imposes severe penalties including death (in Afghanistan and parts of Pakistan), whipping, and life imprisonment", explained Mandeep Dhaliwal, Cluster Leader: Human Rights, Gender & Sexual Diversities, UNDP, New York, USA. Countries such as Vietnam, Cambodia, Laos, Philippines, and Indonesia all follow civil-law traditions that do not criminalise male-to-male sex, except in provinces where Sharia law applies.

"Offences may be rarely prosecuted, but the existence of these laws significantly impedes HIV responses by adding to stigma and acting as a

strong deterrent to men who have sex with men identifying themselves to HIV services", notes Dhaliwal. When prosecutions do occur, the effects are immediate and take a long time to recover. "What we've seen in Senegal, for example, when the leaders and staff of a programme set up to support men who have sex with men were sentenced to 5 years for sodomy (they were later released on appeal due to lack of evidence) was that testing and use of HIV and STD services plummeted among this group due to fear of persecution. Anecdotal evidence suggests the same thing has happened in Malawi, Kenya, and Uganda in the face of homophobic attacks and court decisions", Beyrer told *TLID*. But he believes that the worst places for human rights abuses against men who have sex with men are currently Iran and Iraq, where the situation has worsened recently. "Iraq had become more tolerant but there has been a real decline in rights, which has been attributed to the influence Iran has had with the new regime in Baghdad. In Iran the state is executing gay people with impunity. In Iraq there have been more clandestine and extrajudicial killings than state death penalties, but the death toll has been high and the fear very real", he said.

Men who have sex with men and transgender people face daunting barriers if they seek access to any HIV interventions, whether prevention or treatment. Societal stigma, homophobia, transphobia, active discrimination, criminalisation, and violent attacks are commonplace, hampering the ongoing global battle against the spread of HIV and AIDS. The UN Joint Programme on HIV/AIDS (UNAIDS) data from the Caribbean (where many countries have recently decriminalised consensual sex between adult men) suggest that legal prohibition of sodomy and sex between men could be a contributing factor to the higher levels of the epidemic. "The



AP Photo/Alex Ntonya

Tiwonge Chimbalanga was sentenced to 14 years hard labour but later pardoned

success or failure of HIV programming is highly dependent on the legal and social environments of a country. Criminalisation increases stigma, drives behaviours underground, and discourages vulnerable groups from accessing testing and other HIV-related services", explained Dhaliwal. "Where non-discriminatory laws and regulations exist to protect the rights of men who have sex with men, a remarkably higher proportion of this high-risk group can be reached by HIV prevention services", she added.

In sub-Saharan Africa, the enforcement of criminal penalties on sex between men has limited the ability of health-care workers to provide essential HIV-prevention services. "In Senegal and Malawi, men who have sex with men are not getting the necessary education. They are not being provided with condoms and water-based lubricants and voluntary counselling; HIV testing and treatment of sexually transmitted infections is in short supply", says Traore. Similar problems are likely in Uganda if the proposed anti-homosexuality bill becomes law. "Even in regions where services are available, active enforcement of these laws limits uptake of essential programmes among entire communities of men who have sex with men—this has the direct result that the vulnerabilities among these men, and the population as a whole, are increased", he commented. "It is also critically important to counter the aggressive efforts of evangelical and other conservative Christians; it is difficult to admit, but many in the USA are actively working to increase homophobic attitudes and to demonise lesbian, gay, bisexual, and transgender people. US evangelicals have played prominent roles in the effort to draft the new anti-homosexuality bill in Uganda, for example", cautioned Beyrer.

In the Asia-Pacific region, successful efforts to remove punitive laws and policies through court judgments have been driven by collaborative efforts between communities and legal and human-rights professionals

in partnership with government health officials and parliamentarians. "Recent court judgments have played a significant role in improving the legal environment in Nepal, India, Pakistan, Philippines, Fiji, South Korea, and Hong Kong", said Edmund Settle, Regional HIV Policy Advisor for UNDP based in Bangkok. Another positive development is that national HIV policies now identify men who have sex with men as a priority, even though the legal environment in many countries remains repressive. "Health departments in 22 countries in the Asia-Pacific region have identified men who have sex with men as a most-at-risk or priority population in the national HIV policy for the purposes of HIV prevention and four countries have specific national strategic plans or action plans on male-male sex and HIV—Cambodia, China, Indonesia, and India", commented Settle. He does admit, however, that these are exceptional developments, and that examples of high-level political action to address repressive legal environments through legislative reform are rare.

Against the background of legal, cultural, and societal barriers, it is not surprising that, globally, only one in 20 men who have sex with men gain adequate access to HIV prevention and care. Recent policy and programme guidance from UNAIDS acknowledges that to prevent and control HIV, there is an urgent need to empower men who have sex with men, sex workers, and transgender people to protect themselves from HIV infection and to seek testing and retroviral treatment as necessary. The UNAIDS Action Framework *Universal Access for Men who have Sex with Men and Transgender People and Joint Action for Results 2009-11* recommends better access to comprehensive and appropriate packages of HIV prevention, treatment, care, and support services, and that law enforcement agencies and the judicial system protect the rights of these vulnerable groups.



HIV training for businesses aimed at men who have sex with men in China

Lack of proportionate funding adds a further layer of complexity that impedes access to comprehensive HIV services. Global estimates indicate that sex between men accounts for between 5% and 10% of HIV infections worldwide, yet only 1-2% of all HIV prevention funding is targeted toward this at-risk group. Recent policy guidance from both the Commission on AIDS in Asia (2008) and in the Pacific (2010) highlights a major gap between policy and practice. "This is especially striking when one compares this to the recent experience of the response to H1N1 in the USA, where the response was pretty immediate in terms of allocating resources to those most at risk—pregnant women, children, and health workers", comments Traore. One useful lever is to work through HIV donors, including the Global Fund to Fight AIDS, Tuberculosis and Malaria, the UN system, the World Bank, bilateral donors (eg, AusAID, the UK Department for International Development, and USAID), and other players who can push for the inclusion of men who have sex with men and transgender people in country programmes. "The reality is the funding for lesbian, gay, bisexual, and transgender rights is tiny globally, but HIV funding is comparatively huge (by at least several orders of magnitude), so this has much more traction with governments", concluded Beyrer.

Kathryn Senior