

Ensuring human and sexual rights for men who have sex with men living with HIV

Kevin Moody^a

In December 2008, Senegal hosted the International Conference on AIDS and Sexually Transmitted Infections in Africa, a prestigious regional conference affiliated with the biannual International AIDS Conference, highlighting advances in HIV prevention, treatment and support in Africa. After the conference, on 22 December, the Senegalese government arrested nine members of AIDES Senegal, a nongovernmental organization that works on HIV prevention and support for people living with HIV. In January 2009, all nine were convicted as homosexuals and received the full 5 years' imprisonment allowable by law for that charge plus an additional 3 years for "criminal association".¹ Following significant international pressure, the convictions were ultimately overturned on appeal, after the men had spent almost 3 months in jail.

When countries sign declarations of rights – human, health, workplace – there are no exemption clauses stating: "These rights apply to everyone except men who have sex with men (MSM) and people living with HIV". However, in practice, HIV-positive MSM are not able to access their full rights, either due to repressive laws or discrimination practices. Violations of rights are not reported due to fear of reprisals and, in the rare cases that reports are made, they are not taken seriously. The Yogyakarta Principles unequivocally demonstrate that the application of rights is universal and that MSM living with HIV should have universal enjoyment of human rights; the right to equality and non-discrimination; the right to recognition before the law; the right to life; the right to the security of the person; the right to privacy; the right to freedom from arbitrary deprivation of liberty and 22 further named rights, including the right to health.²

With the exception of very few countries, however, the experiences of

MSM include discrimination, imprisonment and, in some countries, death.³ Being HIV positive compounds stigma and discrimination because of fear and ignorance surrounding HIV transmission and the social attitudes and perceptions towards MSM. HIV-positive MSM experience discrimination both due to their sexuality and their HIV status. In some countries, the transmission of HIV, irrelevant of sexual orientation or gender, can lead to convictions. The Global Network of People Living with HIV (GNP+) and the Terrence Higgins Trust are collaborating on the Global Criminalization Scan, which documents country laws that penalize HIV transmission and exposure.⁴ This will be expanded to include laws that contribute to hindering the HIV/AIDS response, including laws that criminalize MSM. Laws that penalize HIV transmission and homosexuality contribute to stigma and discrimination for people living with HIV and MSM.

This double stigma can cause MSM – both HIV-positive and negative – to avoid or fear accessing health services, including counselling and testing, treatment, prevention and support. GNP+ will launch in the coming months the Human Rights Count!, an online database that will allow for the confidential reporting of human rights violations against people living with HIV, including MSM. Even in the Netherlands, where their rights and freedoms are protected, stigma prevails and can be a deterrent to learning one's HIV status.⁵

It is critical to collect evidence in countries where the environment for MSM and people living with HIV is more inhospitable, to evaluate the effect of stigma on public health and determine mechanisms to fight it. Threat of arrest, conviction or even stigma alone may convince MSM to hide. This means that, even though they may be most at risk of HIV infection, they will not seek

health services that would help them to deal with HIV, including information, education, testing, counselling, treatment and support.

GNP+, along with the International Community of Women Living with HIV, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the International Planned Parenthood Federation are currently implementing a mechanism – the HIV stigma index – to document the way in which people living with HIV (including MSM and other key populations) experience and are affected by stigma and discrimination. The aim is to inform and improve policies and programmes in countries, including decriminalization of homosexuality and HIV transmission. In spite of this, it is evident that decriminalization alone will not necessarily lead to reduced discrimination. In South Africa, where MSM are protected by the most robust constitution in the world and where same-sex couples have the same rights and freedoms – including marriage – as anyone else, a study showed that perceptions of MSM are still negative, even more than 10 years after the adoption of the current constitution. Changing laws is the first step. Changing minds will take much longer.⁶

MSM living with HIV have the same desires and aspirations as other people. They want to contribute to society through their work and their spiritual lives. However, many feel that they need to hide their sexuality from their colleagues, friends and congregations. MSM living with HIV may consider having children. Whereas in the past it was not possible to think about genetic offspring, they now have various child-bearing options using strategies including prevention of vertical transmission, pre- and post-exposure prophylaxis, promising research into antiretroviral-based microbicides and treatment. In spite of this, it is not legal

^a Global Network of People Living with HIV (GNP+), PO Box 11726, 1001 GS, Amsterdam, Netherlands.

Correspondence to Kevin Moody (e-mail: kmoody@gnpplus.net).

(Submitted: 27 March 2009 – Revised version received: 25 August 2009 – Accepted: 28 August 2009)

in many countries for MSM living with HIV to have children, either through reproductive technologies or adoption.

For many cultures, sex is publicly expressed as a means to an end: reproduction. However, most humans don't consider sex just as a means to have children but also as a means of enjoying satisfying and pleasurable experiences that strengthen their relationships. MSM want and expect the same from their sex lives.

In December 2007, GNP+, the International Community of Women Living with HIV and Young Positives, supported by partners from the United Nations and civil society, brought together people living with HIV from around the globe and from various perspectives, including MSM, transgender people, sex workers and young people to discuss sex and sexuality and how this relates to people living with HIV. Recommendations highlighted in the Amsterdam Statement demonstrate clearly that sexual minorities (including MSM) are an important part of the community of people living with HIV and that measures must be taken to ensure that

they enjoy full rights equal to those in the majority or who are HIV-negative.⁷

*Advancing the sexual and reproductive health and human rights of people living with HIV: a guidance package*⁸ is a four-part paper that served as the basis for the Global Consultation on the Sexual and Reproductive Rights of People Living with HIV in Amsterdam in December 2007 and in a more advanced form for LIVING 2008: Positive Leadership Summit which took place in Mexico City in August 2008. Among the many recommendations, it was clear that access to prevention, treatment and care services for people living with HIV – including MSM – requires an enabling environment free of punitive laws and stigma and discrimination.

Ask any diverse gathering of people if they have ever experienced discrimination based on their gender, ethnicity, religion or sexuality. Most will say “yes” – discrimination is not unique to HIV-positive MSM. One would think that the misery of experiencing discrimination would lead to a universal understanding that would result in less suffering, not more. Unfortunately

this is not the case. The individual and public health consequences of this discrimination for MSM living with HIV, if not addressed, can lead to increased HIV infections and reduced access to adequate treatment, care and support.

Laws, perceptions and practices need to change quickly to ensure that HIV-positive MSM benefit from prevention, treatment, care and support services. They must be able to exercise their full rights as citizens, including the right to life, the right to form families and the right to health. Prosecutions of the kind made in Senegal need to end. Stigma and discrimination, even in countries that fully protect the rights of HIV-positive MSM, must be investigated and addressed. Unless human rights are honoured and stigma and discrimination are adequately fought, the efforts to prevent HIV transmission and treat and support those living with the virus will be in vain for those who have the most to gain. ■

Competing interests:

None declared.

References

1. Carter M. Leading human rights organisation calls for release of HIV workers in Senegal. *Aidsmap*, 12 January 2009. Available from: <http://aidsmap.com/en/news/58AB5370-BF22-4BE4-8045-36A4811F7735.asp> [accessed on 16 September 2009].
2. *The Yogyakarta Principles: the application of international human rights law in relation to sexual orientation and gender identity* [Internet site]. Available from: <http://www.yogyakartaprinciples.org/> [accessed on 16 September 2009].
3. LGBT rights by country or territory. *Wikipedia*. Available from: http://en.wikipedia.org/wiki/LGBT_rights_by_country_or_territory [accessed on 16 September 2009].
4. Global Criminalization Scan. Amsterdam: Global Network of People Living with HIV (GNP+); 2009. Available from: <http://www.gnpplus.net/criminalisation/> [accessed on 16 September 2009].
5. Stutterheim SE, Bos AER, Schaalma HP. *Positive living under stigma*. Enschede: AIDS Fonds; 2008.
6. Roberts B, Reddy V. Pride and prejudice: Public attitudes toward homosexuality. *HSRC Review*. 2008;6:9-11. Available from: <http://www.hsra.ac.za/index.php?module=pagesetter&type=file&func=get&tid=25&fid=pdf&pid=26> [accessed on 22 September 2009].
7. *Global consultation on sexual and reproductive rights and health for people living with HIV, Amsterdam Statement*. Amsterdam: Global Network of People Living with HIV (GNP+); 2007. Available from: http://www.gnpplus.net/component/option,com_docman/task,cat_view/gid,254/Itemid,53/ [accessed on 16 September 2009].
8. *Advancing the sexual and reproductive health and human rights of people living with HIV: a guidance package*. Amsterdam: Global Network of People Living with HIV (GNP+); 2009. Available from: http://www.gnpplus.net/component/option,com_docman/task,cat_view/gid,245/Itemid,53/ [accessed on 16 September 2009].