

Criminalisation of LGBT persons creates barriers to accessing HIV services

Overview



The United Nations iterates that States have an obligation to guarantee equal rights to everyone regardless of their sexual orientation, gender identity or other status, including **in the enjoyment of sexual and reproductive health and rights**¹. The greater the severity and volume of human rights violations, the greater the likelihood that **the HIV epidemic will remain one of the world's most significant healthcare challenges**. As part of these efforts, the Alliance manages a Rapid Response Fund, the objective of which is to mitigate specific risks from stigma, discrimination and violence that threaten the provision, access and uptake of HIV services for LGBT people.


www.rapidresponsefund.org

Key Issues

- Criminalisation based on sexual orientation and gender identity creates barriers to public health measures, restricting access to HIV prevention, treatment and care services. This negatively impacts on the effectiveness of the global HIV/AIDS response.
- Criminalization encourages human rights abuses, violence, discrimination, and stigma, which **worsen health disparities** for men who have sex with men and their communities².
- In high-income countries, **HIV is most prevalent among gay and bisexual men and other men who have sex with men**³.
- In low- and middle-income countries, **men who have sex with men are 19 times more likely to be living with HIV** compared with people in the general population and represent an estimated 10% of all new infections each year⁴.

Global figures at a glance¹⁵

76: Number of countries with laws that are used to criminalise and harass people on the basis of their sexual orientation and gender identity

5: Number of countries where consensual same sex activity is punishable by death.

60: Number of countries that have prohibited discrimination on the basis of sexual orientation in employment in the past two decades

40: Number of countries that have decriminalised consensual relations between adults of the same sex in the past two decades

- Even when there have been recent and notable decreases in **new HIV infections, prevalence and incidence is consistently higher and rising among men who have sex with men** compared with other groups⁵.
- Total **global investment in HIV prevention** programs for men who have sex with men is **less than 2%**⁶.
- Many countries have introduced new laws criminalising HIV transmission⁷.
- So-called corrective rape of lesbians and women who have sex with women have **heightened the risk of HIV infection** amongst these often-overlooked groups⁸.

Recommendations

UN human rights bodies have highlighted **five key state obligations** to prevent and address human rights violations related to sexual orientation and gender identity.

- Protect individuals from violence targeting LGBT and intersex people.
- Prevent torture and cruel, inhuman and degrading treatment of LGBT and intersex people.
- Repeal laws criminalizing homosexuality and cross-dressing.
- Prohibit discrimination based on sexual orientation and gender identity and against intersex people.
- Safeguard freedom of expression, association and peaceful assembly for all LGBT and intersex people⁹.

The **International HIV/AIDS Alliance** pledges to advocate for the above, and in addition:

- **Provide emergency funding to the LGBTI community** or men having sex with men for interventions that respond to new or worsening situations that impact on HIV services. **Empower communities** to influence laws and policies and to access the legal system.
- Ensure legal aid services and human rights monitoring **support a community empowerment approach**¹⁰.
- Advocate for donors and partners to **increase funding for programmes**¹¹ aimed at reducing the human rights-related barriers to accessing services by all affected populations, including interventions led by civil society and key population groups and networks themselves.
- Lobby for increased investment in basic human rights initiatives, such as advocacy and participation by **representatives of LGBTI groups and other key populations in national AIDS action frameworks**¹², coordinating authorities, and monitoring and evaluation mechanisms.
- Promote the **provision of safe spaces and social support**, and promotion of community coherence, participation, and inclusion can help to reduce the spread of HIV among men who have sex with men¹³.
- Advocate for governments to reliably and responsibly collect, disaggregate, and **report data on HIV treatment coverage** and effectiveness among men who have sex with men¹⁴.

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¹ A/HRC/19/41, para. 48; E/C.12/DEU/CO/5, para. 26; CEDAW/C/ CRI/CO/5-6, paras. 40-41

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- ² See: Kelly JA, Amirkhanian YA, McAuliffe TL, et al. HIV risk characteristics and prevention needs in a community sample of bisexual men in St. Petersburg, Russia. *AIDS Care*. 2002; 14(1):63-76. Epub 2002/01/19.
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- ³ Beyrer C, Sullivan P, Sanchez J, et al. The increase in global HIV epidemics in MSM. *AIDS*. 2013; 27(17):2665-78. Epub 2013/07/12.
- ⁴ Baral S, Sifakis F, Cleghorn F, Beyrer C. Elevated risk for HIV infection among men who have sex with men in low- and middle- income countries 2000-2006: a systematic review. *PLoS Medicine*. 2007; 4(12):e339. Epub 2007/12/07.
- ⁵ Beyrer C, Sullivan P, Sanchez J, et al. The increase in global HIV epidemics in MSM. *AIDS*. 2013; 27(17):2665-78. Epub 2013/07/12
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- ⁶ Ayala G, Hebert P, Keatley J, Sundararaj M. An analysis of major donor investments targeting men who have sex with men and transgender people in low- and middle-income countries. *The Global Forum on MSM & HIV (MSMGF)*. 2011. Accessed online March 14, 2016; <http://23.91.64.91/~msmgf/wp-content/uploads/2015/09/GlobalFinancingAnalysis.pdf>.
- ⁷ For information on different countries and their legislation see Canadian HIV/AIDS Legal Network (2007) *A Human Rights Analysis of the N'djamena model legislation on AIDS and HIV specific legislation in Benin, Guinea, Guinea Bissau, Mali, Niger, Sierra Leone and Togo*, GNP+ and Terrence Higgins Trust (2005) *Criminalisation of HIV transmission in Europe: A rapid scan of the laws and rates of prosecution for HIV transmission within signatory States of the European Convention of Human Rights*. <http://www.gnpplus.net/criminalisation/rapidscan.pdf> and WHO (2006) *Report of the WHO European Region Technical Consultation, in collaboration with the European AIDS Treatment Group (EATG) and AIDS Action Europe (AAE), on the criminalization of HIV and other sexually transmitted infections*. WHO, Copenhagen
- ⁸ Action Aid (2009) *Hate crimes: the rise of 'corrective' rape in South Africa*: https://www.actionaid.org.uk/sites/default/files/publications/hate_crimes_the_rise_of_corrective_rape_in_south_africa_september_2009.pdf
- ⁹ OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (New York: United Nations, 2012), p.13
- ¹⁰ People living with HIV often do not know about their legal rights or how to claim them through the legal system. Advances in responding to HIV can be made where affected communities have been educated in rights-based approaches and mobilised to claim their rights and influence policy agendas.
- ¹¹ According to UNAIDS, in 2014, only 14 of 45 Sub-Saharan African countries reported any spending for men who have sex with men and only 2 of 45 reported any domestic spending.
- ¹² Exclusion of men who have sex with men from national AIDS planning processes has contributed to inadequately funded, inaccessible, and poorly targeted program
- ¹³ Vogel DL, Wade NG, Wester SR, Larson L, Hackler AH. Seeking help from a mental health professional: the influence of one's social network. *Journal of Clinical Psychology*. 2007; 63(3):233-45. Epub 2007/01/11.
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- ¹⁴ The Foundation for AIDS Research and Johns Hopkins Bloomberg School of Public Health. *Achieving an AIDS-Free Generation for Gay Men and Other MSM: Financing and implementation of HIV programs targeting MSM*. 2012.
- ¹⁵ Figures obtained from: OHCHR Information series on sexual and reproductive health and rights lesbian, gay, bisexual, transgender and intersex people: http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_LGTG_WEB.pdf