

Campaign briefing 3 (July 2010)

Governments' failure to protect Barriers for vulnerable and most-at-risk populations¹ to access HIV prevention

This briefing describes the barriers for vulnerable and most-at-risk populations to access HIV prevention. This is one of a number of briefings which have been produced in support of an Alliance campaign which is asking 'what's preventing prevention?'. These briefings are available to download from the Alliance website www.aidsalliance.org

1. Introduction

HIV prevention programmes and services reach less than 10% of those who should receive them.² This is largely due to the lack of funding for HIV treatment and prevention and limited involvement of those most affected by HIV in resource allocation decisions. At times, implementing governments, agencies and organisations lack the necessary expertise or resources to reach the populations that most need HIV services and programmes.

However, often vulnerable and most-at-risk populations, including for instance drug users, men who have sex with men or sex workers, never get the chance to access available HIV prevention services and programmes because they are stigmatised and discriminated against; prosecuted by law; persecuted by law enforcement agencies and subject to violence and harassment. They are also often excluded from decisions that affect them. HIV activists from these communities are often harassed and intimidated by local communities for carrying out prevention activities. Sometimes this violence is endorsed or condoned by governments who often fail to respect, protect, and promote the human rights of vulnerable and most-at-risk populations.

2. Human rights violations committed by the State and institutionalised discrimination

On far too many occasions it is governments who commit human rights violations against groups or individuals, increasing their vulnerability to HIV infection through repressive legislation, policy and practice that distances people from services and undermines their ability to practice safe sex and safe drug use. Human rights violations can also undermine the effectiveness of HIV interventions when HIV activists and service providers are intimidated, harassed and imprisoned. For example:

- **Ukraine** - Illya Podolyan, a Medical Doctor for the Odessa Substitution Maintenance Therapy (methadone) programme - was arrested in June 2010. Methadone programmes have been proven to be highly effective in

Notes:

¹ Vulnerable and most-at-risk populations are part of key populations, who are groups at higher risk of being infected or affected by HIV, who play a key role in how HIV spreads, and whose involvement is vital for an effective and sustainable response to and families, people who sell or buy sex, men who have sex with men, HIV. Key populations vary according to the local context and may include people living with HIV, their partners people who use drugs, orphans and other vulnerable children, certain categories of migrants and displaced people, and prisoners.

² Global HIV Prevention Working Group, *Bringing HIV Prevention to scale: An urgent global priority*, June 2007.

preventing HIV transmission by reducing or stopping the need to inject drugs.³ Dr. Podolyan was charged with allegedly committing 43 premeditated grievous crimes relating to organised narcotic drugs trade. Dr. Podolyan prescribed narcotics according to a series of decrees by the Ukrainian Ministry of Health and the National Programme to Ensure HIV Prevention, Care and Treatment. As a result of the police intervention, the methadone programme virtually stopped and 200 patients could not get their medication.⁴

- **Senegal** - in January 2009, nine young activists from an organisation that works to combat HIV among men having sex with men were sentenced to five years in prison on charges of “indecent and unnatural acts” and “forming associations of criminals”.⁵
- **Uzbekistan** - Maxim Popov, a HIV activist, was sentenced to 7 years in prison in May 2010. Popov was accused by the government of “assaulting minors without violence” for using a text-book entitled “Teachers’ guide to healthy lifestyles”, which advises using condoms to protect oneself from HIV.⁶
- **Botswana** - in 2003 the Court of Appeal agreed with a lower court that pre-employment HIV testing was legal and that a private employer in Botswana was within their rights to deny employment to people living with HIV. This judgment has never been reversed and calls by civil society to pass protective employment legislation have not born fruits. This undoubtedly exposes people living with HIV in a high prevalence country to grave human rights violations.⁷

Every time political leaders make homophobic or transphobic comments, or when they refer to drug use and drug users as a “social evil”, they put pressure on policy makers and law enforcement officers to introduce and implement repressive legislation and policy and hinder efforts to reach drug users, men who have sex with men, transgender people and other sexual minorities through HIV prevention services and programmes. When the Burundian president Nkurunziza, condemned homosexuality as a “curse” on TV, he sent a strong message of institutionalised discrimination against homosexuals. President Museveni of Uganda recently said: “We used to have very few homosexuals traditionally, they were not persecuted but they were not encouraged either because that is not how God arranged things.”

In Kenya, where homosexual conduct is punishable by up to 14 years in prison, violent attacks in 2010 against suspected homosexuals – including at a government health centre providing HIV/AIDS services to men who have sex with men – have seriously undermined HIV outreach and services to this population and increased its HIV vulnerability.⁸

3. Repressive legal frameworks

The legal framework of many countries often represents a significant barrier to accessing HIV prevention services and programmes for vulnerable and most-at-risk populations. Laws in more than 160 countries criminalise specific groups or behaviours. These include laws targeting sex workers, drug users, men who have sex with men, and HIV exposure or transmission.⁹

Notes:

³ World Health Organisation, *Evidence for a action: effectiveness of drug dependence treatment in preventing HIV among injecting drug users*. 2005.

⁴ International HIV/AIDS Alliance in Ukraine, *Ukrainian police exert more pressure on medics and patients*, 3 June 2010.

⁵ HRW, “Vienna: Act on Human Rights Theme of AIDS Conference Protect Vulnerable Populations, Ensure Accountability”, 2 July 2010

⁶ International Aids Society, “IAS calls for stronger support and protection for HIV professionals”. 7 May 2010.

⁷ Ndadi, U. ‘HIV/AIDS and Employment Law in Botswana’, *The Botswana Review of Ethics, Law and HIV/AIDS*, Vol.2, No.1, Gaborone 2008.

⁸ HRW, “Vienna: Act on Human Rights Theme of AIDS Conference Protect Vulnerable Populations, Ensure Accountability”, 2 July 2010

⁹ HRW, “Vienna: Act on Human Rights Theme of AIDS Conference Protect Vulnerable Populations, Ensure Accountability”, 2 July 2010

Criminalising sexual behaviour and HIV transmission

The criminalisation of sex work, sex between men, and other behaviour are examples of barriers for vulnerable and most-at-risk populations who need HIV prevention services. Recently, laws that specifically criminalise HIV transmission and exposure have been enacted in parts of Africa, Asia, Latin America, and the Caribbean. At the same time, particularly in Europe and North America, existing criminal laws are increasingly being used to prosecute people for transmitting HIV or exposing others to HIV.

In April 2009, Burundi introduced a new criminal code which contained a provision making sexual relations between people of the same sex illegal. This was a great blow for the Lesbian, Gay, Bisexual and Transsexual (LGBT) movement in Burundi, which had to stop their education campaign among themselves and others about HIV/AIDS and other sexually transmitted infections and was prevented from denouncing the discrimination they face on a daily basis.¹⁰

“In 1999 I was walking home from a club at 3 am with a friend who is transsexual. On the way, we encountered a group of five thieves. We realized they were coming for us and I worried they would attack us. I ran as fast as I could, but they kept coming. I fell in a drainage ditch and hurt my legs. I was injured and it hurt, but I didn’t move. I listened as they trapped my friend Jimmy. They terrorized him, saying, “We see you often, you dress like a girl.” And then they raped him, saying “If you don’t accept it, we will kill you”.

I waited in the ditch until they left, and went home. The next night I went to see Jimmy and apologized for not being able to save him. I told him to go to the hospital and get an HIV test, because he could have caught it. He said, “How am I going to explain I was raped even though I’m a man? They could realize I’m a homosexual and I could be put in prison.”¹¹

Pascal, 22 years old, Burundi

Criminalization is likely to heighten the risk of violence and abuse of vulnerable and most-at-risk populations. In the case of girls and women in many countries, evidence shows that it can strengthen prevailing gender inequalities in healthcare and family settings; further promote fear and stigma; and increase girls’ and women’s risk and vulnerability to HIV.¹²

86 countries have 'homophobic laws' that force people who are vulnerable or most-at-risk of HIV into hiding, while 52 nations have rules that limit the movement of people living with HIV.¹³

Over 30 countries in sub-Saharan Africa have laws prohibiting same-sex activity between consenting adults. Since 2005, 14 African countries have passed HIV-specific laws that potentially criminalize sexual behaviour among people living with HIV, including those who use condoms, regardless of disclosure and actual risk of transmission.¹⁴

Laws criminalizing homosexual conduct provide a basis for state-sponsored violence and harassment, and keep people from seeking HIV-related information or services out of fear of discrimination and abuse.

Notes:

¹⁰ HRW, Forbidden. Institutionalizing Discrimination Against Gays and Lesbians in Burundi. July 2009.

¹¹ HRW, Forbidden: Institutionalizing Discrimination Against Gays and Lesbians in Burundi. July 2009.

¹² The Athena Network, “10 Reasons why criminalisation of HIV transmission harms women” May 2010. www.athenanetwork.org

¹³ UNDP, UNAIDS, “UN to investigate laws against HIV-infected people”. 24 June 2010.

¹⁴ Ottosson D (2009), *State-sponsored homophobia: a world survey of laws prohibiting same sex activity between consenting adults*, http://ilga.org/Statehomophobia/State_sponsored_homophobia_ILGA_07.pdf

“There is the issue of the legality of same-sex practices in Zimbabwe, and operations of the organization is always questioned and often put to the test. Recently the offices were raided under the suspicion of possessing pornographic materials and drugs. Two members of staff were locked up in cells for two weeks and are now out of bail. On 1 July the organisation was charged with possession of pornographic materials. These materials are actually pamphlets on MSM, HIV and safer sex. As I speak the office is closed, and the LGBT community is scared and in hiding for fear of being persecuted.”

Zimbabwean LGBT-HIV activist, June 2010

Criminalising drug use

As many as one-third of all new HIV infections occur among people who inject drugs. In some countries, in particular Central and Eastern Europe and East Asia, statistics show that injection drug use is the primary driver of HIV epidemics.¹⁵

Criminal laws in many countries result in people who use drugs being reluctant to carry, and therefore use, sterile syringes or injecting equipment. The criminalisation of drug use also leads to people avoiding drug treatment or harm reduction services for fear of arrest.

In many Asian countries, hundreds of thousands of people identified as drug users are detained in locked facilities for months, or even years, without trial or due process, in the name of drug “treatment” or “rehabilitation.” The detention of people who use drugs usually takes place without a clinical assessment of whether the person is, in fact, drug-dependent. Inside the centres, they are often denied evidence-based drug treatment and other basic health services such as HIV treatment, and instead are forced to perform arduous physical exercises, military drills, or forced labour. Many face torture and extreme physical cruelty.¹⁶

In China, approximately half a million people are interned at any given time in compulsory drug detention centres on suspicion of drug use, where they can be detained without trial or due process on suspicion of drug use for up to six years. Detainees are routinely beaten, denied access to effective treatment for drug dependency, and subjected to unpaid forced labour.¹⁷

In Vietnam, between 32,000 and 35,000 people who use drugs are locked in drug detention centres for terms as long as four years, without trial or due process. Detainees in these centres are engaged in what the government calls “therapeutic labour” rather than provided evidence-based treatment for drug dependence. They are forced to work long hours for below-market wages, beaten if they fail to meet work quotas, and subject to solitary confinement for violating centre rules.¹⁸

4. Social stigma, discrimination and violence

“Stigma is a chief reason why the AIDS epidemic continues to devastate societies throughout the world”.

Ban Ki Moon (UN Secretary General)

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¹⁵ HRW, “Vienna: Act on Human Rights Theme of AIDS Conference Protect Vulnerable Populations, Ensure Accountability”, 2 July 2010

¹⁶ HRW, “Vienna: Act on Human Rights Theme of AIDS Conference Protect Vulnerable Populations, Ensure Accountability”, 2 July 2010

¹⁷ HRW, “Vienna: Act on Human Rights Theme of AIDS Conference Protect Vulnerable Populations, Ensure Accountability”, 2 July 2010

¹⁸ HRW, “Vienna: Act on Human Rights Theme of AIDS Conference Protect Vulnerable Populations, Ensure Accountability”, 2 July 2010

Certain sexual practices, gender identity and drug use carry a heavy social burden of stigma and discrimination in many countries leading to widespread rejection and, often, overt aggression.

At the beginning of 2008, photos of a ceremony presented as a homosexual wedding appeared on the Senegalese media. The images stirred an unprecedented surge of homophobia in Senegal which led to acts of violence, intimidation and public exposure of people suspected of homosexuality. People perceived as homosexuals were assaulted by hostile mobs, had stones thrown at them, were attacked in their homes, and were subject to insults and threats, including from the media.¹⁹

There is a growing pattern of violence and intimidation against transgender people worldwide. Just between January 2008 and July 2009, at least 200 transgender people were reported murdered. More than three quarters of all reported cases took place in Latin America (164). Between January and June 2009 alone, 23 transgender people were killed in Brazil, 20 in Venezuela, and 10 in Guatemala.²⁰ These figures represent a sharp increase in murders of transgender people over the past years and are consistent with a growing pattern of violence against the LGBT community. Over 198 LGBT people, 72 of whom were transgender people, were reported murdered in Brazil, in 2009 alone, the highest number since records begun in 1980.²¹

5. Harassment, intimidation and murder of HIV activists

HIV activists are often human rights defenders who fight for the rights of vulnerable and most-at-risk populations to access HIV prevention and treatment services. In the process, they may upset criminal groups for raising the profile of a specific area where they operate, for instance, transgender HIV organisations in Latin America. They may also be subject to violence induced by social rejection of their work.

“As a result of those actions [public denunciation of violence against transgender people] there were more attacks, more threats. Someone tried to kill me. They came very close and started to say ‘it’s her, it’s her’. When I looked at them I realised that one was getting his gun ready to shoot me... I ran off and went into a shop. One of the men complained to the one carrying the gun: ‘You should have shot her, you had her close, why didn’t you do it?’”

Transgender HIV Activist, Guatemala

6. A call on governments and donors

The International HIV/AIDS Alliance calls on governments and donors to address barriers that impede access of vulnerable and most at risk populations to HIV prevention programmes and services. It is now commonly acknowledged that a human rights based approach needs to be at the centre of any HIV programme, however, often such an approach is not funded and implemented systematically. It is only when the human rights of all sections of society are respected, promoted and protected that prevention efforts will bear fruits, resulting in less people becoming infected with HIV and more people living with HIV being able to lead dignified and fulfilling lives.

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Notes:

¹⁹ Alliance nationale contre le sida, NCS, Study on the MSM social environment with a view to strengthening civil society leadership in combating stigma and discrimination, October 2009.

²⁰ Transgender Europe (TGEU) & Liminalis, “Preliminary results of Trans Murder Monitoring Project”, July 2009.

²¹ Grupo Gay da Bahia, 2009 relatório anual de assassinato de homossexuais.

http://luishipolito.blogspot.com/2010_03_05_archive.html, accessed on 17 June 2010.