GLOBAL COMMISSION ON HIV and the LAW

SELECTED BIBLIOGRAPHY

RISK + STIGMA: MEN WHO HAVE SEX WITH MEN
Selected Bibliography

Risk + Stigma: MEM WHO HAVE SEX WITH MEN

HIV and the Law: Risks, Rights & Health

September 2012
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Available at: http://hivlawcommission.org/index.php/report-working-papers?task=document.viewdoc&id=95

There is evidence from multiple reports that HIV epidemics among men who have sex with men (MSM) in many countries are a severe, expanding and underappreciated component of global HIV. Essential services for these men remain grossly limited in resources and are insufficient in scale.

This paper looks at the discriminatory laws, policies and practices that lead to reduced access to health care services for MSM. It explores the legal environment for MSM across the world and examines data on HIV among MSM, where it exists. It notes the repeal of India’s sodomy law in 2009 which, while rarely applied, allowed police to harass and beat MSM and transgender (TG) workers with impunity, spread a climate of fear and abuse, and served as a barrier for some marginalized MSM and TG groups to access healthcare services. The paper also looks at the situation in Botswana, Malawi and Namibia, all of which have legal frameworks criminalizing homosexuality, and undertakes an analysis of the associations between fear of and actual discrimination and the use of healthcare services relevant for HIV and other sexually transmitted infections.

Because HIV infection rates related to multiple factors it is not possible to draw simple conclusions between the legal status of MSM and HIV infection rates among this population, but MSM laws is a key parameter for understanding social tolerance. In order to examine the legal and human rights contexts of the HIV epidemic among MSM, the paper examines the diverse laws and MSM policies in Peru, Thailand, Kenya and Ukraine. These case studies highlight that laws are important but MSM can still face hostility, discrimination and police brutality and that policies and practices which limit the HIV response can continue, even where legal frameworks are supportive.

Amnesty International (AI) makes a clear cut human rights base argument calling for the decriminalization of homosexuality where such legislation remains, including the repeal of “sodomy” laws outlawing sexual conduct between people of same-sex or transgender individuals. The paper suggests that the Commission should strongly consider endorsing AI’s position and may wish to consider identifying people held in detention base solely on their sexual orientation or calling for a multilateral task force to undertake this project.

The paper concludes with several fundamental policy and Commission recommendations, calling for the repeal of laws criminalizing same sex behaviour and for law enforcement programs and policies to move from harassment to protection. Evidence from public health programmes demonstrates that MSM remain at high risk for HIV infection and that HIV prevention for MSM is an urgent global public health priority.


Studying homosexuality across the legal codes of various Arab countries is no easy undertaking. Information about laws pertaining to homosexuality readily available; information about actual court cases and verdicts, however, is rather scarce. As of now, court proceedings and the work of security agencies are accessible only through media outlets.

Previous studies on homosexuality and legislation are few and far between; moreover, what exists can largely be found only in universities’ unpublished academic records. References were largely obtained from the rare few written legal sources on homosexuality available. Due to the shortage of such sources, however, it was necessary to look at non-academic sources, mostly consisting of articles and other essays published in traditional media sources (e.g. newspapers, magazines, etc.) or on the internet; this was especially necessary in order to obtain information regarding court cases and rulings.

In spite of these methodological impediments, the importance of addressing homosexuality from a legal perspective, especially with regard to Arab countries, cannot be undermined. Looking at the legislation in the various Arab countries we had the opportunity to study (Mauritania, Algeria, Tunisia, Libya, Egypt, Palestine, Lebanon, Syria, Jordan, Iraq, Saudi Arabia, Qatar, United Arab Emirates, Bahrain, Kuwait, Yemen, Somalia and Sudan), we find that the majority either explicitly criminalize homosexuality in their penal codes or have interpreted other, vaguely defined criminal acts so as to have homosexual interactions fall within their scope.

The study of homosexuality in legislation of Arab states, and examining whether this legislation is applied fairly and judicially, requires scrutinizing available sentences and proceedings that reflect a discrepancy in the attitudes of Arab legislation towards homosexual acts. In spite of these discrepancies there remains a dominant tone of deterrence, which leads to negative consequences for this criminalization on individuals and society.

**Nature & Scope of Authority**
Non-binding communication to the government of Egypt by the Working Group on Arbitrary Detention, established by the former UN Commission on Human Rights. The Working Group’s mandate is to investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the UDHR or the International Covenant on Civil and Political Rights (ICCPR), and to act on information submitted to it regarding cases of arbitrary detention by sending urgent appeals and communications to concerned governments.

**Facts & Background Law**
- The Working Group received a report that 55 Egyptian men had been arrested in Cairo on grounds of their sexual orientation. The men were detained for several weeks then charged with crimes including habitually engaging in immoral acts with men, and contempt of religion. The criminal prosecutions were pending at the time this opinion was issued.
- The ICCPR requires states parties, including Egypt, to ensure to all individuals the rights recognized in the Covenant without discrimination on particular grounds, including sex and ‘other status.’

**Issue**
Is sexual orientation included in the definition of ‘sex’ under ICCPR Article 2(1), so that the prosecution at issue would violate this protection?

**Holding**
Yes, sexual orientation is an impermissible ground of discrimination under ICCPR Article 2(1). Egypt failed to protect its citizens against arbitrary deprivation of liberty and thereby violated provisions of the UDHR and ICCPR. The Working Group requests that Egypt consider the possibility of amending its legislation to bring it into line with the relevant international instruments.

**Rule, Application, and Judgment**
The interpretation of similar provisions by other treaty bodies and working groups strongly indicates that sexual orientation is an impermissible ground of discrimination under modern international human rights law. Egypt may not discriminate against persons on grounds of their sexual orientation.

**Notes**
The opinion is available at: [http://www1.umn.edu/humanrts/wgad/7-2002.html](http://www1.umn.edu/humanrts/wgad/7-2002.html)


**Nature & Scope of Authority**
This decision constitutes an interpretation by the African Commission on Human and Peoples’ Rights of the equality provision in the African Charter on Human and Peoples' Rights (ACHPR) (dicta).

**Facts & Background Law**
- The communication arose out of the alleged action by the Zanu-PF party, led by incumbent President Robert Mugabe, against the opposition party following the
- The Zimbabwe NGO Human Rights Forum submitted a communication to the African Court on Human and Peoples' Rights, alleging that the actions, including beatings, sexual violence and murder, were not only supported by the Zimbabwean government but that government agents and supporters participated in the attacks and singled out victims on account of their political beliefs and affiliation.
- The communication contends that this support and participation amounts to a violation of various provisions of the Charter, including Art. 2 which guarantees equal treatment and prohibits discrimination on specified grounds.

| Issue | Did the actions of Zimbabwe violate ACHPR rights held by those affected by the attack? |
| Holding | Yes, Zimbabwe is responsible for the attacks against the Zanu PF opponents, and the actions violate the ACHPR, Arts. 1 and 7. The Commission calls upon the government of Zimbabwe to establish a commission of inquiry. |
| Rule, Application, and Judgment | In the course of the decision, the court states that 'the aim of this principle [of anti-discrimination in Article 2] is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation' (emphasis added). |

**Case**


| Nature & Scope of Authority | Rulings of the European Court of Human Rights interpreting the European Convention for the Protection of Human Rights and Fundamental Freedoms are binding on signatories to the Convention and are enforceable by the Council of Europe. |
| Facts & Background Law | During a police search of Applicant Dudgeon’s home on suspicion of drug activity, personal property including correspondence and diaries describing homosexual activity were seized. Dudgeon was taken to a police station and questioned extensively about his sexual life. The prosecutor considered but eventually declined to prosecute Dudgeon under a statute prohibiting 'gross indecency' between males. Applicant, a citizen of Northern Ireland, sought a decision from the court as to whether Northern Ireland’s laws criminalizing homosexual acts between consenting adult males constitute breaches by the U.K. of its obligations under Arts. 8 and 14 of the Convention. |
| Issue | Do statutes criminalizing anal sex and ‘gross indecency’ between male persons violate the Convention’s protections of privacy and equal protection? |
| Holding | Yes, the legislation violates the Convention. |
| Rule, Application, and Judgment | The very existence of the legislation constitutes a continuing interference with Applicant’s right to respect for his private life (including his sexual life), in violation of Art. 8, and the government failed to meet its burden of demonstrating that the legislation is necessary to ‘protect morals’ or to protect the rights and freedoms of others. The court notes that in most European States ‘it is no longer considered to be
necessary or appropriate to treat homosexual practices... as in themselves a matter
to which the sanctions of the criminal law should be applied.’ In light of this ruling, the
court does not reach the issue of discrimination under Art. 14.

Case  

**Kansas v. Limon, 122 P.3d 22 (Kan. 2005).**

<table>
<thead>
<tr>
<th>Nature &amp; Scope of Authority</th>
<th>Decision of the Supreme Court of Kansas; binding law in the U.S. state of Kansas.</th>
</tr>
</thead>
</table>
| Facts & Background Law      | • Defendant was 18 years old when he engaged in consensual oral sex with a 14 year-old boy. He was charged under a criminal sodomy statute.  
  • A ‘Romeo & Juliet’ exception to Kansas statutory rape law provides for reduced penalties for sexual acts with a minor when the defendant is under 19 and the minor is less than four years younger. This exception, however, is only available in cases of heterosexual sex.  
  • The age gap between the defendant and the boy falls within the exception, but the trial judge did not apply exception because the act was a same-sex sexual act.  
  • Defendant was sentenced to 206 months’ imprisonment and was required to register as a ‘persistent sexual offender.’  
  • After the conviction was upheld by the state courts, the U.S. Supreme Court granted Defendant’s petition for certiorari and vacated the judgment, directing the Kansas courts to reconsider the decision in light of the recent decision in *Lawrence v. Texas*, in which the Supreme Court held unconstitutional a state statute criminalizing adult homosexual conduct. |
| Issue                       | Does a Kansas law providing a Romeo and Juliet clause for heterosexual but not homosexual sex with a minor violate the equal protection clauses of the U.S. Constitution and state constitution of Kansas? |
| Holding                     | Yes, this statute violates equal protection. |
| Rule, Application, and Judgment | The court finds that the statute establishes a discriminatory classification, and no rational basis for the harshly disparate sentencing treatment of same-sex persons as compared with heterosexual defendants, whether on grounds of public morality, public health or protection of children. In light of the holding that the statute fails a ‘rational basis’ test, the court does not reach the issue argued by Defendant that strict scrutiny should apply to the classification. The court orders the offending language stricken from the statute and holds that Limon’s conviction under the statute violates his right to equal protection of the laws. |

Case  


<table>
<thead>
<tr>
<th>Nature &amp; Scope of Authority</th>
<th>Decision of a Malawi Chief Resident Magistrate is binding on the parties, although they may appeal the ruling to the High Court.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facts &amp; Background</td>
<td>• Two men began a romantic and sexual relationship. They began living together</td>
</tr>
</tbody>
</table>
and became engaged. They referred to each other as man and wife.

- Friends and community members heard them refer to each other as such, knew that they were cohabitating, and after confronting them saw that the biological male referred to as the ‘wife’ had male genitalia.
- Defendants were charged under Malawi Penal Code Sec. 153, which prohibits carnal knowledge against the order of nature, and Sec. 156, which prohibits gross indecency between male persons.

**Issue**
Is an engagement or cohabitation between two biological males who hold themselves out as a romantic couple a violation of Malawi law?

**Holding**
Yes, two men cohabitating as man and wife and holding themselves out as an engaged couple is an act of gross indecency and there a violation of Malawi Penal Code § 156.

**Rule, Application, and Judgment**
*Rule:* “Gross indecency,” as used in Malawi penal law, is defined according to its dictionary meaning, “being indecent or doing indecent behavior” and 'indecent' is defined as something offending accepted standards of morality. Two men cohabitating and becoming engaged as man and wife violates ‘accepted standards of morality’ and is grossly indecent.

Both Defendants were sentenced to 14 years imprisonment with hard labor, the maximum sentence allowed under the law.

**Notes**
- The President of Malawi issued a pardon for both Defendants and ordered their immediate release, during a visit to Malawi in May 2010 by UN Secretary-General Ban Ki-moon.

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**Case**

**Nature & Scope of Authority**
This decision constitutes an official interpretation of the meaning of terms used in the International Convention on Civil and Political Rights (ICCPR), by the United Nations treaty body mandated under ICCPR to monitor States’ compliance with its provisions.

**Facts & Background Law**
- Toonen lives in Tasmania, one of the six constitutive states in Australia. Tasmania criminalizes homosexual sexual conduct under its criminal code, and is the only province in Australia to do so.
- Toonen brought a communication before the Human Rights Committee, alleging that the Tasmanian laws violate Arts. 2, 17 and 26 of the ICCPR.
- Art. 2, par. 1 of the ICCPR requires each State Party to ensure to all individuals subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind on grounds of ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’
- Art. 17 states that no one shall be subjected to arbitrary or unlawful interference
with his privacy, family, home or correspondence, nor to unlawful attacks on his
honour and reputation; and everyone has the right to the protection of the law
against such interference or attacks.
• Art. 26 of protects equality for all persons and provides that laws should prohibit
discrimination and positively guarantee freedom from discrimination on grounds
of ‘race, colour, sex, language, religion, political or other opinion, national or social
origin, property, birth or other status.’

<table>
<thead>
<tr>
<th>Issue</th>
<th>Is sexual orientation a protected class or status under the ICCPR?</th>
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<tbody>
<tr>
<td>Holding</td>
<td>Yes, sexual orientation forms part of the definition of ‘sex,’ as used in Articles 2 and 26 of the ICCPR, and consensual sexual activity is an activity protected under the definition of ‘privacy,’ as used under Article 17.</td>
</tr>
<tr>
<td>Rule, Application, and Judgment</td>
<td>The existence of laws criminalizing sexual conduct, regardless of promises by past and/or present officials to not enforce them, are violations of the human right of personal privacy. In light of this ruling, the Committee declines to address the issue of violation of equality under Art. 26. The HRC says that under the ICCPR the plaintiff has a right to a remedy and that an “effective remedy would be the repeal” of the challenged laws; as it cannot order such, it asks Australia to report back on what remedy it has provided to Toonen.</td>
</tr>
<tr>
<td>Notes</td>
<td>Decision available at: <a href="http://www.unhcr.org/refworld/docid/48298b8d2.html">http://www.unhcr.org/refworld/docid/48298b8d2.html</a></td>
</tr>
</tbody>
</table>

| Nature & Scope of Authority | Individual petitions complaining of violations of the American Convention on Human Rights (ACHR) begin at the Inter-American Commission on Human Rights. The Commission makes a determination whether to admit the case for investigation, and may thereafter refer cases to the Inter-American Court of Human Rights for a final decision legally binding on parties to the Convention. In this case, the Commission declared admissible (i.e., agreed to investigate) a complaint by a lesbian prisoner regarding same-sex conjugal visits. |
| Facts & Background Law | • Petitioner, serving a sentence in a women’s prison, requested permission from prison officials for a conjugal visit by her female life partner. The request was denied by the prison director on the basis of petitioner’s sexual orientation. After Petitioner’s appeals to domestic courts were unsuccessful, she filed a complaint with the Commission, alleging that Colombia’s policy of forbidding prison conjugal visits to same-sex couples violates her rights under Articles 5, 11 and 24 of the ACHR.
• Article 11 of the ACHR guarantees a right to privacy and provides that everyone has the right to be legally protected from ‘arbitrary or abusive interference with his private life.’ Art. 5 guarantees the right to humane treatment and states that all persons deprived of their liberty shall be treated with respect for the inherent
dignity of the human person. Art. 24 guarantees equal protection and non-discrimination.

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<thead>
<tr>
<th>Issue</th>
<th>Is a policy forbidding prison conjugal visits between same-sex partners a violation of the ACHR?</th>
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</thead>
<tbody>
<tr>
<td>Holding</td>
<td>In finding the case admissible, the Commission held that Petitioner demonstrated a ‘colourable claim of violation’ of Art. 11 of the Convention, in that the actions of government officials could constitute an arbitrary or abusive interference with Petitioner’s private life.</td>
</tr>
<tr>
<td>Rule, Application, and Judgment</td>
<td>The case was not decided on the merits, as the Colombian Constitutional Court later held that prisons must permit conjugal visits by same-sex partners.</td>
</tr>
<tr>
<td>Notes</td>
<td>A copy of the decision is available at: <a href="http://www1.umn.edu/humanrts/cases/71-99.html">http://www1.umn.edu/humanrts/cases/71-99.html</a></td>
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<tr>
<td>Nature &amp; Scope of Authority</td>
<td>Decisions of the Supreme Court of Canada, Canada’s highest court, are binding law across the nation.</td>
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</table>
| Facts & Background Law | - Two MSM lived as partners for over 45 years, creating a relationship which Canada conceded has all the elements of a spousal relationship.  
- One partner became eligible for old age social security benefits, and the other partner applied for spousal benefits. This request was denied because the partners are of the same sex, which according to the definition of ‘spouse’ under the law disqualifies them from spousal benefits.  
- The partners sue the federal government, alleging that the definition of ‘spouse’ under the act unconstitutionally discriminates on the basis of sexual orientation. After losing in the lower courts, they appeal to the Supreme Court. |
| Issue | Whether the Old Age Security Act’s definition of ‘spouse,’ which excludes same-sex couples, contravenes section 15 of the Canadian Charter of Rights and Freedoms by discriminating on the basis of sexual orientation. |
| Holding | In this split decision, a majority of five judges holds that, while sexual orientation is not explicitly listed in section 15 as a prohibited ground of discrimination, it is analogous to specifically enumerated grounds and therefore protected by section 15.  
However, the appeal is dismissed, as four judges find the provision not discriminatory and one judge finds there is discrimination but it is justified by a legitimate legislative purpose. Nevertheless, the decision stands for the principle that discrimination on grounds of sexual orientation violates the Canadian bill of rights. |
| Rule, Application, and Judgment | Sexual orientation is analogous to the enumerated grounds in section 15 (e.g., race, national or ethnic origin, colour, sex, religion) in that it represents a deeply personal |
characteristic that is either immutable, or changeable only at unacceptable cost to personal identity.


Case  
**Minister for Immigration and Citizenship v SZMDS, (2010) 240 CLR 611 (Austl.)**

**Nature & Scope of Authority**  
The High Court is the final court of appeal of Australia. Its decisions are binding law in Australia.

**Facts & Background Law**
- In August 2007, a Pakistani man claimed asylum (applied for a ‘protection visa’) in Australia, citing fear of persecution in Pakistan due to his sexual orientation (MSM).
- The Immigration and Citizenship Ministry refused his asylum application. The Refugee Review Tribunal, which hears all initial appeals in asylum-application decisions, affirmed the ministry’s decision on grounds it was not satisfied that the man was in fact a homosexual who feared persecution. The Tribunal cited the fact that the man had lived in the United Arab Emirates from 2004, visited Pakistan for three weeks in May-June 2007, and failed to seek asylum when he briefly visited the UK in 2006.
- On appeal by the applicant, the Federal Court overturned the Tribunal’s ruling, and the Ministry appealed to the High Court.

**Issue**  
Did the Tribunal commit jurisdictional error by deciding the asylum application on unreasonable grounds, including the applicant’s failure to seek asylum despite a previous opportunity to do so and his voluntary visit to the site of the alleged persecution.

**Holding**  
The Tribunal properly rejected the application for asylum; the Federal Court’s decision is vacated and the Tribunal’s denial of asylum is affirmed.

**Rule, Application, and Judgment**  
A decision by the Tribunal approving or denying an asylum application necessarily gives the Court power over the decision, and any decision based on irrational or illogical grounds, defined as grounds on which no rational decision-maker could arrive, amounts to a jurisdictional error that voids that application decision. The High Court holds that the Tribunal’s decision was based on rational grounds, including the applicant’s past refusal to claim asylum and his visitation to the site of the persecution. Although reasonable minds could differ on the issue of whether the applicant’s conduct was consistent with his claimed fear of persecution, the Tribunal did not unreasonably reject his claim. The decision to deny the application is affirmed.

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<tr>
<td><strong>Nature &amp; Scope of Authority</strong></td>
<td>European Court of Human Rights (ECtHR) decisions are, at least in theory, binding on signatories to the European Convention of Human Rights (ECHR).</td>
</tr>
</tbody>
</table>
| **Facts & Background Law** | - Applicants are two former Royal Air Force personnel who claim they were discharged solely on account of their same-sex sexual orientation.  
- Applicants assert that their discharges violated ECHR Art. 8, which recognizes a ‘right to private and family life’ and which governments cannot infringe except on grounds of public health, public order and specific other exceptions, and Art. 14 (all ECHR rights may not be infringed on the basis of ‘sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’).  
- Plaintiffs also allege that there is a Ministry of Defence policy against homosexuals in the armed forces, which violates ECHR Art. 3 (prohibition against degrading treatment or punishment) and Art. 10 (the right to freedom of expression). |
| **Issue** | Does the ECHR proscribe termination of employment in the armed forces on the basis of sexual orientation? |
| **Holding** | Yes. Sexual orientation is not a valid ground under the ECHR to refuse MSM and WSW national service. |
| **Rule, Application, and Judgment** | The court found that the investigations by military police into the Applicants’ private sexual lives, including detailed interviews with each of them and with third parties on matters relating to their sexual orientation and practices, together with preparation of final report to authorities on these matters, constituted a direct interference with the Applicants’ right to respect for their private lives, as guaranteed under Art. 8 of the ECHR. The Applicants’ subsequent administrative discharge on the sole ground of sexual orientation constituted a further violation of Art. 8. Both the investigations and the discharges were performed under a policy of the Ministry of Defence barring homosexuals in the armed forces.  

The court rejected the government’s assertion that the policy, and the actions taken thereunder, were justified by the need to maintain morale in the armed forces so as to maximize fighting power and operational effectiveness. While a margin of appreciation is open to the State in matters of national security, particularly convincing and weighty reasons must be given to justify interference with an individual’s right to respect for his private life. The reasons proffered here – i.e., the negative attitudes of heterosexual personnel toward those of homosexual orientation – are not sufficient justification for the intrusive investigations and discharges.  

The court also finds a violation of Art. 13, which guarantees the availability of a domestic remedy to enforce the substance of rights and freedoms under the ECHR. No other provisions of the ECHR were found to be violated. |
| **Notes** | The decision available at: [http://www.unhcr.org/refworld/docid/47fdfac80.html](http://www.unhcr.org/refworld/docid/47fdfac80.html) |
### Case \textit{Lawrence v. Texas, 539 U.S. 558 (2003)}

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<thead>
<tr>
<th>Nature &amp; Scope of Authority</th>
<th>Decision of the nation’s highest court, binding on all U.S. states.</th>
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<tr>
<td>Facts &amp; Background Law</td>
<td>Local police officers entered a private residence in response to a report of a disturbance and came upon two men engaged in a sexual act. The two were arrested for violation of a state criminal statute prohibiting ‘deviate sexual intercourse [defined as oral or anal sex] with another individual of the same sex.’ The defendants contended that the statute was unconstitutional. After their argument was rejected and their convictions sustained on appeal, defendants sought and were granted certiorari in the U.S. Supreme Court.</td>
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<tr>
<td>Issue</td>
<td>Does the Texas sodomy law, which criminalizes private, consensual homosexual behaviour between adults, violate the due process clause of the Fourteenth Amendment to the U.S. Constitution?</td>
</tr>
<tr>
<td>Holding</td>
<td>Yes, the provision is unconstitutional.</td>
</tr>
<tr>
<td>Rule, Application, and Judgment</td>
<td>The Court overrules \textit{Bowers v. Hardwick}, a 1986 case that upheld the sodomy statute of the state of Georgia. The Court points out that, since the \textit{Bowers} decision was rendered, a number of U.S. states have repealed or invalidated similar sodomy statutes and notes further that many other nations affirm the right of homosexual adults to engage in intimate, consensual conduct. The Court holds that individual decisions by adults concerning the intimacies of their physical relationship are a form of liberty protected by the due process clause of the Fourteenth Amendment to the U.S. Constitution, and the Texas statute furthers no legitimate state interest justifying interference with that liberty interest.</td>
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<tr>
<th>Nature &amp; Scope of Authority</th>
<th>Decision of the Hong Kong Court of Appeal of the High Court.</th>
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<tr>
<td>Facts &amp; Background Law</td>
<td>Applicant, a homosexual man under the age of 21, brings a civil action challenging the constitutionality of the Crimes Ordinance provision which prohibits consensual homosexual sex until a man reaches the age of 21. Applicant has not been charged with any criminal offense but seeks a declaration that the ordinance violates the equality and privacy provisions of the Basic Law and Hong Kong Bill of Rights, as it makes a distinction between homosexuals and heterosexuals, for whom the age of consent is 16.</td>
</tr>
<tr>
<td>Issue</td>
<td>Does the age-of-consent provision for same-sex sexual acts between males violate constitutional protections of privacy and equality and, if so, can it be justified as rationally connected to a legitimate purpose?</td>
</tr>
<tr>
<td>Holding</td>
<td>The statute is unconstitutional.</td>
</tr>
</tbody>
</table>
### Rule, Application, and Judgment

The court finds, first, that it has jurisdiction to render a declaratory judgment on the constitutionality of a criminal provision even in the absence of a criminal prosecution, as the statute in question ‘affects the dignity of a section of society in a significant way’ and the issue is of considerable public interest.

The court next finds that the challenged statute significantly affects homosexual men in an adverse way compared to heterosexuals and therefore violates the constitutional right to equality. The court finds further that the government failed to meet its burden of showing a legitimate justification for the distinction between homosexual and heterosexual behaviour.

The court rejects the argument that a margin of appreciation should be given to the legislation, as no such deference is given in cases involving breach of rights based on race, sex or sexual orientation.

### Notes


### Case


#### Nature & Scope of Authority

Decision of the High Court of Fiji at Suva, under its appellate jurisdiction.

#### Facts & Background Law

- Appellant McCoskar is an Australian man who went to Fiji on holiday and there engaged in what the parties agree to be ‘consensual, intimate, [and] private’ conduct with Appellant Nadan, a Fijian male.
- Nadan was arrested by police on other charges and admitted sexual relations with plaintiff. Both were convicted under Fijian laws outlawing carnal knowledge ‘against the order of nature’ and acts of ‘gross indecency’ and were sentenced to two years imprisonment. They appeal their convictions and sentences.
- Fiji criminal law section 175 states that ‘[a]ny person who (a) has carnal knowledge of any person against the order of nature; or... (c) permits a male person to have carnal knowledge of him or her against the order of nature is guilty of a felony,’ and can be imprisoned for up to 14 years. Section 177 states that any male who publicly or privately commits ‘any act of gross indecency’ is guilty of a felony and can be imprisoned for up to five years.
- Appellants argue that their rights under the Fiji Constitution to privacy, equality and freedom from degrading treatment were violated.

#### Issue

Do Sections 175 and 177 of Fiji Penal Law violate the Fijian constitutional rights of privacy, equality and freedom from degrading treatment?

#### Holding

Yes. Section 177, which applies only to male persons, violates on its face the Fiji Constitution. Section 175, which is gender and sexual orientation neutral, violates the Fiji Constitution as applied to consensual sexual acts between adult males, the court noting the statute had never been used to prosecute a heterosexual couple.
Section 37 of the Fiji Constitution guarantees the right of personal privacy. The court cites international law, which the constitution explicitly states shall be an aid in interpreting its provisions, in holding that the right to privacy extends beyond freedom from unwarranted state intrusion to include the positive right to establish and nurture human relationships free of criminal or community sanction. The court finds that Section 175 violates Appellants’ constitutional right to privacy, that Section 177 violates a male’s right to equality before the law, and that the state failed to show that criminalizing private sexual intimacy between consenting adult males is a proportionate and necessary limitation to these rights.

Both sections of the Penal Code are invalid as applied to private consensual sexual conduct between adults. Convictions and sentences quashed.

Notes

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Case **Naz Foundation v. Gov’t of NCT of Delhi (2009)**, 160 DLT 277, WP(C) No. 7455/2001 (Delhi High Court)

<table>
<thead>
<tr>
<th>Nature &amp; Scope of Authority</th>
<th>Judgments of the Delhi High Court are binding within the National Capital Territory of Delhi.</th>
</tr>
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<tbody>
<tr>
<td>Facts &amp; Background Law</td>
<td>This decision resulted from public interest litigation brought by an NGO, challenging Section 377 of the Indian Penal Code which criminalizes “unnatural offences” including consensual sexual acts between adults in private. Section 377 was introduced in British India in 1861. Britain repealed its laws punishing homosexual conduct in 1967, but this legacy of colonial rule remained in force in India. The Delhi High Court initially dismissed the petition as calling for an academic challenge to the constitutionality of the legislation, but the Supreme Court of India overruled the dismissal and remitted the case for decision.</td>
</tr>
<tr>
<td>Issue</td>
<td>Does Section 377 of the Penal Code infringe fundamental rights to life, liberty and privacy guaranteed under the Indian Constitution?</td>
</tr>
<tr>
<td>Holding</td>
<td>Yes; to the extent the statute outlaws consensual sexual acts between adults in public, it violates constitutional guarantees of liberty, equality, privacy and dignity.</td>
</tr>
<tr>
<td>Rule, Application, and Judgment</td>
<td>The challenge was based on several articles of the Indian Constitution. Art. 21 protects the right to ‘personal liberty’ and has been judicially interpreted to include a variety of related rights. Arts. 14 and 15 guarantee the right to equality and non-discrimination. The Preamble to the constitution protects the ‘dignity of the individual’ and forms part of India’s constitutional culture. In addition, a right to privacy has been found by the courts to arise from other constitutional protections, including the right to life, freedom of speech and expression, and the right to freedom of movement. The court makes extensive reference to foreign and international law in reaching its decision.</td>
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conclusion that Section 377 infringes the constitutional rights to privacy and liberty. The court rejects the government’s arguments that the statute is supported by a legitimate governmental interest in public health or popular morality. The court further holds that Art. 15, the constitutional provision prohibiting discrimination based on ‘sex,’ applies to sexual orientation.

Notes

<table>
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<tr>
<th>Case</th>
<th>Romer v. Evans, 517 U.S. 620 (1996)</th>
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<tbody>
<tr>
<td>Nature &amp; Scope of Authority</td>
<td>Decision of the nation’s highest court, binding on all U.S. states.</td>
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</table>
| Facts & Background Law | • Various municipalities in Colorado enacted ordinances barring discrimination in housing, employment and other areas on grounds of sexual orientation.  

• Colorado voters thereafter adopted by referendum an amendment to the state constitution prohibiting the state or any political subdivision from enacting or enforcing any law granting protected status to persons of homosexual, lesbian or bisexual orientation.  

• The Colorado Supreme Court enjoined enforcement of the amendment, and the state and public officials appealed to the U.S. Supreme Court. |
| Issue | Does the Colorado constitutional provision banning laws and ordinances guaranteeing equal protection for homosexuals violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution? |
| Holding | The Colorado constitutional provision violates the U.S. Constitution. |
| Rule, Application, and Judgment | The immediate effect of the state constitutional amendment is to repeal all existing laws and policies which ban discrimination on the basis of sexual orientation and to prohibit enactment of any such protective measures in the future. The provision thus imposes a broad disability on homosexual and bisexual persons, and no others, barring them from seeking redress for discrimination.  

The amendment disqualifies a class of persons from the right to obtain specific protection from the law and therefore deprives them of equal protection as guaranteed by the Fourteenth Amendment to the U.S. Constitution. Colorado fails to demonstrate that the classification bears any rational relationship to a legitimate government purpose; indeed, the Court finds that the amendment “raise[s] the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected.” The U.S. Supreme Court affirms the decision of the state supreme court, striking down the amendment. |
<table>
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<tr>
<th>Case</th>
<th>Sec’y for Justice v. Yau Yuk Lung Zigo  [2007] 3 H.K.C. 545 (C.F.A.) (Hong Kong)</th>
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<tr>
<td>Nature &amp; Scope of Authority</td>
<td>Decision of the Court of Final Appeal, the highest appellate court in Hong Kong.</td>
</tr>
<tr>
<td>Facts &amp; Background Law</td>
<td>Two males engaged in a sex act in a private car parked beside a public road. They were charged with violation of the Crimes Ordinance provision making it a criminal offense for a man to ‘commit buggery with another man otherwise than in private.’ The trial Magistrate dismissed the charges, upholding defendants’ constitutional challenge. The government appealed the ruling, and the Court of Appeal affirmed the Magistrate’s ruling and dismissed the appeal. The government then appealed to the Court of Final Appeal.</td>
</tr>
<tr>
<td>Issue</td>
<td>Is the Crimes Ordinance provision under which these men were charged inconsistent with the Basic Law and the Hong Kong Bill of Rights?</td>
</tr>
<tr>
<td>Holding</td>
<td>Yes, the statute is unconstitutional.</td>
</tr>
</tbody>
</table>
| Rule, Application, and Judgment | Art. 25 of the Basic Law provides that “All Hong Kong residents shall be equal before the law.” Art. 22 of the Hong Kong Bill of Rights, which implements the ICCPR, provides for equality under the law and prohibits discrimination on grounds such as race, sex or other status. The court holds that sexual orientation falls within the phrase ‘other status.’ When differential treatment is based on grounds such as race, sex or sexual orientation, the court will scrutinize ‘with intensity’ whether the differential treatment is justified. 

While all persons are subject to the common law offense of committing an act outraging public decency, only homosexuals are subject to the statutory offense of committing anal sex otherwise than in private. The court finds that the government failed to meet its burden of showing that this differential treatment is supported by a legitimate governmental purpose. |
### Legislative Materials

<table>
<thead>
<tr>
<th>Statute</th>
<th>Jamaica, Offences Against the Person Act, Arts. 76, 77 and 79</th>
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<tbody>
<tr>
<td><strong>Nature, Scope &amp; Source of Authority</strong></td>
<td>National law, effective throughout Jamaica.</td>
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</table>
| **Substance** | Criminalizes attempts by any man to procure the commission of any act of gross indecency with another man; note that punishment includes labour as well as imprisonment.  
- 76. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.  
- 77. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.  
- 79. Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour. |

<table>
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<tr>
<th>Statute</th>
<th>Belize: Belize Criminal Code, Rev. ed. 2000, Ch. 101, Sec. 53.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Nature, Scope &amp; Source of Authority</strong></td>
<td>Binding national legislation.</td>
</tr>
<tr>
<td><strong>Substance</strong></td>
<td>Provides that any person “who has carnal intercourse against the order of nature with any person or animal” is subject to 10 years’ imprisonment.</td>
</tr>
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### Basic Documents of International Law


The African (Banjul) Charter on Human and Peoples’ Rights is an international treaty setting forth the rights and duties of individuals and peoples on the African continent. Art. 2 prohibits discrimination on a number of listed grounds including race, ethnic group, colour, sex and other grounds. The list of non-discrimination grounds in the African Charter, like that in the UDHR, concludes with ‘other status,’ indicating the list is illustrative, not exhaustive.

The European Convention is an international treaty to which all member states of the Council of Europe are parties. It sets forth basic human rights applicable to all peoples in Europe and establishes the European Court of Human Rights.

Art. 14 of the Convention guarantees that all ‘rights and freedoms set forth in this Convention’ shall be secured without discrimination on any ground such as race, color, religion (and other specifically enumerated grounds); the list concludes with the category ‘or other status,’ indicating that the list is not intended to be exhaustive.

Protocol No. 12 expands the coverage of Art. 14 by providing that the enjoyment of ‘any right set forth by law’ shall be secured without discrimination on any ground listed in Art. 14, including ‘other status.’ The Explanatory Report to Protocol No. 12 notes that it was not necessary to include additional specified grounds such as disability, sexual orientation or age when the Protocol was drafted, because the list of non-discrimination grounds was not intended to be exhaustive and because the European Court of Human Rights had already ruled that the non-discrimination provision of Art. 14 is applicable to distinctions based on sexual orientation.


The Universal Declaration of Human Rights (UDHR) was taken up at the first meeting of the UN General Assembly. Drafted by an international committee chaired by Eleanor Roosevelt and adopted by the General Assembly in 1948, the UDHR represents the first statement of basic civil, political, economic, social and cultural rights that all people should enjoy and has become widely accepted as the fundamental statement of international human rights norms.

Art. 2 of UDHR provides that everyone is entitled to all rights and freedoms set forth in the Declaration and that distinctions shall not be made on bases ‘such as’ race, colour, sex, language or other specifically listed grounds. The Article concludes with ‘other status’ as the final prohibited ground, demonstrating that the list is not exhaustive.


The Yogyakarta Principles is a document drafted by an international group of legal experts who met in Yogyakarta, Indonesia in 2006 under the guidance of the International Commission of Jurists and the International Service for Human Rights. The Principles bring together in one document and affirm binding international legal standards applicable to issues of sexual orientation and gender identity.

Principle 17 provides that everyone has the right to the highest attainable standard of physical and mental health, including sexual and reproductive health, without discrimination on the basis of sexual orientation or gender identity. Under Principle 17, States are advised to take all necessary legislative, administrative and other measures to ensure that all persons have access to health care services without discrimination and that medical records of sexual minorities are treated with confidentiality.

This version of the International Guidelines consolidates the version first published in 1998 with revised Guideline 6 first published in 2002. The Guidelines initially resulted from a request by the Commission on Human Rights for a means of providing guidance to policymakers, as well as assistance to states in creating a positive, human rights-based response that is effective in reducing the transmission and impact of HIV and AIDS and is consistent with human rights and fundamental freedoms.

The document consists of three parts: Guidelines for state action on measures to be employed by governments in the areas of law, administrative policy and practice that will protect human rights while promoting HIV-related public health goals; recommendations for dissemination and implementation of the Guidelines; and a description of the human rights principles underlying a positive response to HIV. The Guidelines recommend review, with a view toward repeal, of laws criminalizing sex between consenting adults in private.


This document provides a link to the Committee of Ministers’ 2010 Recommendation regarding discrimination on grounds of sexual orientation and gender identity, explains the context of the Recommendation and suggests ways in which European States can implement the Recommendation.

The recommendations are wide ranging, covering right to life and security; hate crimes and hate speech; freedom of association, expression and assembly; right to respect for private and family life; discrimination in employment, education, health, housing and sports; and right to seek asylum.

With respect to health, the Council of Ministers recommends that States work to protect the specific needs of vulnerable populations such as transgender people by ensuring through laws, policies and practices that the right to the highest attainable standard of health is enjoyed by all; that official government communications refrain from classifying, per WHO guidelines, homosexuality as an illness; that transgender people have the ‘effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements’; and that any legal or policy decisions restricting public reimbursement for gender assignment procedures be permitted only if they are reasonable and proportionate.

This report reviews the scope of criminalization of same-sex sexual acts across the world and provides an analytical overview. The report addresses explicit criminalization, which persists despite numerous recent successes by the international community to repeal punitive national laws; implicit criminalization, through laws that criminalize ‘loitering,’ ‘unruly behaviour,’ ‘habitual debauchery,’ and ‘disorderly conduct’; and criminalization through enforcement, or use of police power to regulate the public and private expression of sexuality beyond sexual acts.

The report additionally addresses the dearth of punitive laws and public discourse addressing same-sex sexual acts between women. While many countries do not criminalize sexual conduct between females, the report notes that often such laws are not necessary as there already exists extensive legislation aimed at limiting, policing and controlling women’s sexual autonomy. In addition, the ‘social invisibility’ of lesbianism leads some lawmakers to deny that it even exists. This the ‘mixed blessing’ of freedom from prosecution also carries with it denial of female same-sex sexuality as legally, socially and personally significant.


This report analyzes laws and policies affecting sexual diversity in 155 low- and middle-income countries according to basic categories of prohibitive, neutral and protective legal regimes. The report finds that by percentage of countries, the regions of South Asia, MENA and the Caribbean are the most punitive. Perhaps most importantly, almost half of the countries analyzed (74) have prohibitive legal regimes criminalizing sexual acts and otherwise restricting sexual identity. The authors note that even countries that have decriminalized sexual acts and enacted anti-discrimination laws may restrict the rights of MSM and other sexual minorities in other ways, such as curtailing their rights of association and free speech. The study cites Iran as one example: sex-reassignment surgery is ‘tolerated’in Iran, but many forms of speech and association are not.

Each of the human rights implicated by punitive laws, policies and practices that restrict sexual diversity is then discussed at length, with the report providing additional content on these rights and specific examples from the nations under study of what constitutes a rights violation. The report also provides a ‘human rights matrix,’ a table contrasting state actions which variously infringe, respect, or fulfill individual human rights.


This article reports on a 2009 meeting held jointly by WHO, UNDP and UNAIDS to address the growing problem of HIV infection among MSM in Asia. The groups found that political and social denial of homosexuality in the region, along with widespread adherence to colonial laws criminalizing same-sex relations, may lead to a worsening of the epidemic among MSM. Research indicates widespread HIV infection in the region among MSM and transgender individuals, but there is a lack of solid information and several ‘knowledge gaps’ due to lack of surveillance.
One primary response issue is the lack of respect for the severity of HIV/AIDS. In China, advocates state that HIV/AIDS is not as feared as other infectious diseases that are less fatal (most notably avian flu and SARS), and one expert reports ‘safe sex fatigue’ in Bangkok. Another important factor is the existence of criminal sanctions against homosexuality which impede HIV/AIDS surveillance, management and prevention programs.


This report synthesizes presentations made in February 2002 at USAID by four experts on HIV prevention in Africa. The report notes that as of 2002, HIV prevalence had declined significantly in Uganda. Key elements in this success story include: high-level political support; decentralized implementation of behaviour change communication; interventions directed at women and youth, as well as stigma and discrimination; active support by religious leaders and faith-based organizations; establishment of the first AIDS information center in Africa providing confidential voluntary counseling and testing; increased condom use; increased emphasis on control and prevention programs for sexually transmitted infections; and a decrease in multiple sexual partnerships and networks.

The report also looks at costs, and concludes that the Ugandan pattern can be replicated in other countries with a combination of a comprehensive behavior change-based strategy, high-level political commitment, and a diverse spectrum of community-based participation.


This report reviews the current state of international law as it relates to the criminalization of sexual activity between same-sex adults and provides overviews of several internationally significant cases involving these rights.

The report notes that the issue of gender identity and sexual orientation as international human rights remains a contentious one, and much of the debate arises in the context of laws that criminalize same-sex activity. While a 2008 UN declaration signed by 66 States affirms that these are protected human rights, a counter-statement signed by 57 States indicates dissatisfaction with ‘the attempt to introduce to the United Nations some notions that have no legal foundations in any international human rights instrument.’ The report also notes, however, that the committees respectively administering the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the International Convention on Economic, Social and Cultural Rights have all stated that sexual orientation is a status protected in the relevant anti-discrimination articles. Furthermore, most domestic courts interpreting anti-discrimination and privacy provisions in domestic constitutions legislation have held that international law requires decriminalization of same-sex sexual conduct. Examples of bodies so holding include the European Court of Human Rights, the UN Human Rights Committee and the High Court of Delhi (India).


This is the sixth annual report by ILGA, ‘the only international non-governmental community-based association fighting discrimination on grounds of sexual orientation and gender identity as a global issue.’
The report provides a global overview of developments in LGBTI rights, under headings such as criminalization of homosexual acts, age of consent issues, discrimination in employment based on sexual orientation and gender identity, hate crimes as an aggravating circumstance, marriage and adoption rights of same-sex couples, and gender recognition after gender reassignment treatment. The report also presents a country-by-country rundown of legislation related to these topics; countries are grouped into regions, with each region accompanied by a narrative report summarizing legal developments in the area.


This study reviews the influence of social factors on the HIV/AIDS epidemic in Bangladesh, which has a low HIV/AIDS incidence in its general population (<1%) but high prevalence in several stigmatized populations, including female IDUs, sex workers, MSM and hijra, or MTF transgenders. Sex acts between MSM face an explicit legal barrier: Section 377 of the Penal Code criminalizes homosexuality, which carries with it a sentence of “imprisonment for life, or with imprisonment of either description for a term which may be extended to ten years, and shall also be liable to fine.” The study further notes that police need not obtain an arrest warrant, and can arrest individuals based solely on third-party information. Finally, because of the speed of the judicial process, it can take up to two years to obtain a bail sentence from a judge, the exact amount of which is under a judge's discretion anyway. These factors severely curtail MSM access to condoms, STI treatment, and counseling and testing services.


This third annual report by ILGA, ‘the only international non-governmental community-based association fighting discrimination on grounds of sexual orientation and gender identity as a global issue.’ The report includes a country-by-country report on legislation affecting LGBTI people, with a focus on criminalization of same-sex activity, as well as a global overview of national legislation, organized by topic.


This paper presents a study of attempts by local human rights organizations to influence media coverage of the Ugandan Anti-Homosexuality Bill of October 2009. The author performed a quantitative content analysis of articles from October 2009 to June 2010 in the two main daily newspapers in Uganda and conducted qualitative interviews with human rights advocates. The conclusion: newspaper coverage only marginally reflected the organizations’ efforts to highlight the potentially adverse effects of the bill.

Dr. Tamale is an associate professor at Makerere University School of Law and a Commissioner on the Global Commission on HIV and the Law. She was invited by the Makerere University’s Human Rights and Peace Center to engage in a public dialogue at the university with Member of Parliament David Bahati on the Anti-Homosexuality Bill introduced in the Ugandan Parliament.

Dr. Tamale’s remarks include a historical summary of various forms of discrimination in Uganda, concluding that homosexual persons are currently a focus of discriminatory attack. She notes that homosexuality was first criminalized in Uganda through laws that were imported from Britain during colonial rule. She outlines the social implications of the Anti-Homosexuality Bill, which requires family members to “spy” on one another and obligates priests, doctors, teachers and other to report homosexual persons.

She then turns to a legal analysis of the bill, noting that most of the provisions in the bill simply duplicate law already on the books. Of the new legal provisions, she identifies five as problematic in that they violate Uganda’s constitution and other regional and international instruments that Uganda has ratified. She notes that the bill includes an overly broad definition of the term “homosexual act,” threatens freedom of speech and association, violates the right to privacy, confers extraterritorial jurisdiction permitting arrest of Ugandan citizens who engage in homosexual acts outside the borders of Uganda, and requires Uganda to opt out of any previously-ratified international treaty that goes against the spirit of the bill. She urges parliamentarians and the public to reject the bill.


News report issued by the United Nations. Both the UN Special Rapporteur on Health and the UN High Commissioner for Human Rights voiced concerns about a bill introduced in the Uganda Parliament which would prohibit any form of sexual relations between people of the same sex, would forbid promotion or recognition in public institutions of homosexual relationships as an acceptable lifestyle, and would compel teachers, health workers and others to report violations of the legislation. The bill also provides for the death penalty for ‘serial offenders’ and those living with AIDS.

The UN officials stated that the legislation, if passed, would be blatantly discriminatory, violate established international human rights standards and represent a step backward in fighting the HIV epidemic.


The Foundation for AIDS Research (amfAR), an NGO founded in 1985 and working toward ending the global AIDS epidemic through innovative research, reports on Uganda’s proposed legislation which would penalize homosexuality with life imprisonment and impose the death penalty on anyone committing ‘aggravated homosexuality.’ Director of amfAR’s MSM Initiative warned that MSM are one of the most vulnerable groups in Uganda and that passage of the bill would threaten the work and lives of AIDS activists in that country.

This report consists of a literature review and analysis and is intended as the first comprehensive scientific assessment and epidemiological synthesis of the spread of HIV in the Middle East and North Africa (MENA). The report finds that HIV infections are occurring throughout the MENA region, principally in priority populations including injecting drug users, MSM, and female sex workers.

With MENA being a major source, route and destination for the global drug trade, injecting drug use is a growing problem in the region. MSM constitute the most hidden and stigmatized risk group within MENA, and HIV appears to be spreading among this group, with a possibility of concentrated HIV epidemics among MSM in MENA over the next decade. The level of commercial sex in MENA is somewhat low compared to other regions; nevertheless, commercial sex networks are the largest of the three priority populations in the region. While HIV prevalence is higher among female sex workers than in the general population, HIV spread does not appear to be well established in commercial sex networks at this point; one reason for this may be the near universality of male circumcision in the region.

There is a very low level of HIV prevalence in the general MENA population. However, an apparent increase in sexual risk behaviours, particularly among young people, presents a limited potential for a sustainable HIV epidemic in the general population.

The report’s recommendations include increased epidemiological surveillance of priority populations, expansion of scientific research and formulation of evidence-based policies, focus on risk and vulnerability rather than law enforcement, strengthening civil society contributions to HIV efforts, and employing interventions that capitalize on the strengths represented by cultural traditions.


Drawing on 2008 country reports on HIV/AIDS to the UN General Assembly Special Session on HIV Declaration of Commitment (UNGASS), the authors demonstrate the effect of insufficient global HIV/AIDS data collection policy on the global response.

Focusing specifically on the 147 lower-middle-income countries (LMICs), the authors note that only 35% of countries break out MSM HIV/AIDS data from general data, only 25% report on HIV knowledge among MSMs, and only 40% report on condom use by MSMs. The authors also state that reporting strength varies by region: Latin America, Asia and Europe contained the highest-reporting regions and nations, while Africa and the Pacific (Oceania) contained the lowest-reporting regions and nations. Finally, the authors note that their results are limited, because several country reports included data that was incomparable in format to that of other countries or untrustworthy because of small sample sizes or unlabeled samples.

The authors confirm the importance of obtaining standardized and weighted information regarding the prevalence of HIV-related knowledge, HIV testing, and sexual behaviors, primarily condom use, among MSM in LMICs, in order to adequately inform and monitor prevention policies and responses.
This report assesses the progress toward UN member States’ declared goal of achieving universal access to HIV/AIDS programs by 2010, an issue especially relevant for MSM, ‘one of the most marginalized and neglected populations in the context of HIV/AIDS.’ While MSM throughout the world face a significantly higher risk of HIV infection than does the general population, MSM-targeted HIV programs have not kept pace with the risk. In many countries, homophobia and criminalization of homosexual activity hamper efforts to provide treatment and prevention services, thus facilitating the spread of HIV.

Since the first UN General Assembly Special Session on HIV/AIDS (UNGASS) in 2001, UN member States are required to measure their progress periodically against a set of indicators and report their findings to the General Assembly. In 2008, almost half of the 128 countries reviewed failed to report any findings, and nearly two-thirds those countries provided no information on the extent of HIV/AIDS among their MSM residents. Without data on the extent of the HIV epidemic among MSM, governments cannot determine the need for MSM-specific HIV programs. In addition, the study found that donor nations and international organizations fail to make funds available to MSM-specific programs.

AmfAR finds that the AIDS crisis persists among MSM worldwide, and it recommends that all countries develop evidence-based programs to scale up access to culturally appropriate HIV programs specifically targeted at MSM; develop indicators for reporting progress in providing such programs; identify best practice models for ensuring universal access; conduct baseline and ongoing surveys; and decriminalize same-sex sexual behavior. In addition, amfAR encourages the international funding community to earmark funds specifically for programs aimed at MSM; organize regional consultations on the issue; and encourage recipient countries to decriminalize same-sex sexual behavior.

Drawing on regionally focused research on Asia and the Pacific, this report highlights several evidence gaps and general recommendations for establishing a regional response agenda for MSM-related HIV/AIDS. This report notes that the MSM population in the Asia and Pacific region has not been fully mapped: the Asian Epidemic Model estimates the Asian MSM population at 10 million, but this figure is at best an estimate. The Model also notes, however, that unless its figures overstate the MSM population, MSM HIV transmission will become the leading method of HIV/AIDS transmission in Asia within the coming years.

There is also insufficient MSM-specific information on adequacy of services, availability of services, and best practices on how to reach specific geographically remote and/or socially invisible populations. For example, the report relies on 2005 data on the availability of HIV treatment and care services for MSM. Similarly, the report cites a recent UNAIDS study of 20 Asian countries that found that 60% of countries UNAIDS neglect MSM in their national surveillance mechanisms. Analysis of the 2008 UNGASS reports also notes that 44% of countries reported on none of the five MSM-specific indicators, and another 26% reported only on one to three indicators.

Among the general recommendations that the report issues is determining the proper service model for MSM HIV/AIDS treatment and care. The report identifies three possible models: full integration into general HIV/AIDS treatment services, separate MSM service sites and staff, or a hybrid model of integration with general treatment services but a discrete MSM-specific identity.

This document is intended as a resource for NGOs and community-based organizations in understanding how gender and sexuality determine vulnerability to AIDS, and a reference tool of major international human rights documents for use by individuals and associations in advocacy activities. The authors are concerned that in many countries, gender and sexuality-based determinants of HIV risk are often overlooked by decision makers and ignored in HIV programs. Four thematic areas are covered: socio-cultural factors, economic factors, political factors and access to programs and services by sexual minorities.

One focus of the paper is the problem of gender-based violence against women and ‘feminine’ MSM. The authors note that feminine MSM experience levels of gender-based violence, whether verbal, physical or sexual, equal to those experienced by females. In addition, feminine MSM also face problems in housing, health care and other life necessities have lower negotiating power in terms of condom use and are likely to engage in sexual practices that expose them to risk of HIV infection.


This article is a systemic literature review and analysis of national HIV prevalence studies for MSM populations. The authors reviewed in total 133 HIV prevalence studies from 50 countries, and analyzed study data to develop a classificatory algorithm that presents the following four sub-categories of HIV epidemics for MSM low and middle-income countries:

- Settings where MSM are the predominant contributor to HIV cases;
- Settings where HIV transmission among men who have sex with men occurs in the context of epidemics driven by persons who inject drugs (IDUs);
- Settings where HIV transmission among MSM occurs in the context of well-established HIV transmission among heterosexuals; and
- Settings where both sexual and drug-injection modes contribute significantly to HIV transmission.

The authors focus on four nations as epidemic paradigms – Peru, Ukraine, Kenya, and Thailand – to contrast and compare these four classifications, demonstrating that integrated and comprehensive HIV/AIDS treatment and care services for MSM can reduce incidence among MSM, IDUs and the general population.


The World Bank describes this work as the first global economic analysis exploring the epidemics of HIV among MSM in low- and middle-income countries. The authors present reviews of epidemiology and HIV prevention literature and employ a mathematical model to assess the impact of interventions in specific countries, focusing on Kenya, Peru, Thailand and Ukraine as examples. Greater investment in prevention, treatment and care is shown to improve control of the HIV epidemic.
Carlos F. Cáceres, et al., *Epidemiology of Male Same-Sex Behaviour and Associated Sexual Health Indicators in Low- and Middle-Income Countries: 2003-2007 Estimates*, 84 Sexually Transmitted Infections i49 (2008), available at: [http://bmj-sti.highwire.org/content/84/Suppl_1/i49.full](http://bmj-sti.highwire.org/content/84/Suppl_1/i49.full)

This paper is an update of an initial review commissioned by UNAIDS in 2004-2005 to assess the role of male same-sex sexual behaviour in the HIV epidemic in low- and middle-income countries. The countries were classified into nine regions: three regions in Asia, two in Africa, Eastern Europe/Central Asia, Middle East/North Africa, Latin America, and the Caribbean.

The study notes a re-emerging focus on MSM as a key component in the effort to achieve universal access to HIV prevention and care. The challenge remains to ensure that this increased attention in fact leads to renewed interventions for prevention, treatment and care of HIV-affected MSM in most countries, in accordance with their needs. Further evidence is needed on: the numbers of MSM in each country; the frequency of specific practices associated with different transmission possibilities; the degree of participation of MSM in heterosexual sex and unions; data on the proportion of MSM who are male-female transgender or sex workers, two populations thought to be at higher risk for HIV; data on HIV prevalence, incidence and trends among MSM; data on HIV-related knowledge, beliefs and practices; the level of community organizing and individual participation; and data on legal frameworks and the occurrence of hate crimes and discrimination.


A 1998-1999 study of Latino MSM in three United States cities that shows a strong positive correlation between social discrimination factors (racism, homophobia and poverty-based discrimination) and HIV/AIDS positive status.

The authors found that men in the “high-risk” group – that is, men who reported having unprotected anal sex with a non-monogamous recent partner – also reported more experiences of homophobia, racism and poverty than their “low-risk” counterparts. For example, more men in the high-risk group reported experiences of homophobia in childhood, in the form of verbal abuse, physical abuse, and feelings that their homosexuality hurt and embarrassed their families. Men in the high-risk group also reported more experiences of racism in both childhood and adulthood, such as the experience of rude mistreatment and police harassment due to race, ethnicity, or skin colour. As hypothesized, men in the high-risk group reported more instances of financial hardship in the form of running out of money for basic necessities, and having to look for work more than two times in the last year.

The authors conclude that HIV prevention programs will be effective only when they also target the social contexts of sexual risk that are created wholly or in part by stigma and discrimination. Thus, prevention work should geared toward helping MSM understand this social dynamic and how they can respond to it to protect themselves from HIV transmission; this includes social situations, social and political institutions, and the response mechanisms that individuals employ to deal with these circumstances.


This study aims to provide a thorough analysis of existing information about MSM, their sexual networks and sexual behaviours, and HIV transmission in four Asian countries: India, Bangladesh, Indonesia and Thailand. These countries
were selected because of their commitment to collection of data about MSM and HIV/AIDS, and because they represent a range of economic sophistication and vary in their response to the epidemic.

Bangladesh is classified as a low HIV prevalence country, in the early stages of an HIV epidemic. However, the review found some worrying trends, including the fact that sex between men, and sex work, are both illegal; consistent condom use is among the lowest in the region; needle-sharing among injecting drug users is common; blood supply is mostly unscreened; there is limited knowledge among the general population about HIV/AIDS and how it is transmitted; and Bangladesh is surrounded by countries with significant HIV epidemics.

India is classified as a moderate HIV prevalence country, where the epidemic is focused in a few states while most of the country has a very low rate of infection. The government has established a national AIDS control program to coordinate preventive activities. ARV therapy has become more affordable in India over recent years but still remains out of reach for most Indians. There is a larger range of opportunities for men to pursue sex with other men in India than there is in Bangladesh and evidence of denser networks of MSM.

Thailand was categorized by WHO in 2001 as one of the three high HIV prevalence countries in the Asia/Pacific region (along with Cambodia and Myanmar). AIDS was the leading cause of death in Thailand at the time of this report. The government instituted a national AIDS program and although prostitution remains illegal in Thailand, the government has worked with brothel owners to enforce 100% condom use in commercial sex establishments. There are more gaps in understanding the position of MSM in Thailand than comprehension of it, and more study is needed.

Indonesia is a low HIV prevalence country, with the epidemic concentrated among injecting drug users. After a slow start, Indonesia is now experiencing an ‘explosive epidemic,’ primarily among injecting drug users and sex workers. Recent political and social upheaval has opened a door to rapid spread of HIV. Sodomy, homosexuality and commercial sex work were not illegal in Indonesia at the time of this report.

Of the four countries included in this report, there is the least information on MSM in Indonesia; indeed, the report notes that there are no data available, in any of the material reviewed, on HIV incidence rates among MSM. The varieties of gender and sexual expression in Indonesia make it difficult to categorize people as MSM. The report concludes that there is a need for expansion of the research effort in Indonesia in order to situate MSM meaningfully within the HIV/AIDS epidemic.


This review article focuses on continuing transmission of HIV, risk factors for HIV-negative MSM, risk reduction behaviour among HIV-positive MSM, other sexually transmitted infections, HIV and aging, and new and emerging populations of MSM communities.

The authors find that strategies other than exclusive condom use have emerged in communities of MSM to reduce the risk of HIV transmission. A combination of social structure, behavioural and biomedical approaches could reduce the risk of transmission between HIV-positive MSM and their sexual partners.

This study, conducted in seven U.S. cities, evaluates the use of social networks to reach persons with undiagnosed HIV infection in ethnic minority communities and to offer medical care and prevention services. HIV-positive persons were enlisted to refer others from their social, sexual or drug-using networks for HIV testing, counseling and referral services.

The authors found that the HIV prevalence of 5.6 percent among those recruited in this project was significantly higher than the 1 percent identified in other CDC sites and concluded that such a peer-driven approach is highly effective in identifying persons with undiagnosed HIV infections and linking them with medical care and counseling.


This article provides a review of biological, behavioural and other data on HIV and MSM in the MENA region. The authors state that, because of widespread stigma in the region towards male same-sex sexual behaviour, MSM are the most hidden HIV risk group in MENA, and researchers therefore assumed a virtual lack of any data regarding infection transmission patterns among MSM in the region. However, the authors reviewed online sources, international organization reports, governmental and NGO publications and other institutional documents, and determined that considerable data on MSM and HIV in MENA are, in fact, available.

The review revealed that HIV epidemics appear to be emerging in at least a few countries in MENA. By 2008, MSM transmission was on the increase and exceeded 25 percent in several countries. Potential for further spread is indicated by high levels of risk behaviour, biomarkers of risk such as herpes simplex, an overall low rate of consistent condom use, the relative frequency of male sex work, and the substantial overlap between heterosexual risk behaviour and injecting drug use. MSM could become a pivotal risk group for HIV transmission in MENA in the next decade.

The authors conclude that there is an urgent need to expand HIV surveillance and access to testing, prevention and treatment services in what has become a narrowing window of opportunity to prevent more extensive HIV transmission among MSM in MENA.


This article helps confirm the impact on women and girls of repressive laws, policies and practices affecting MSM. The study involves a sample of 357 men recruited from hamams (bath houses) and who reported engaging in same-sex sexual acts. Of these men, 41% also had heterosexual sex in the last year (the authors refer to them as men who have sex with men and women, or MSMW), and 14 percent stated that they were currently married. Only two of the married men told their wives about having sex with men. In the group studied, condom use was ‘very inconsistent’ with male partners, and 98 percent of the married men reported have unprotected vaginal sex with their wives. MSMW reported lower rates of risky behaviour, such as selling sex or receptive anal sex with non-commercial partners, than did men who have sex only with other men. Nevertheless, the study concluded that
because bisexual behavior among the MSM studied was common, inconsistent condom use with both male and female partners indicated a potential means of HIV transmission into the general population.


Based on the 2008 UNAIDS report on the status of the global epidemic, the authors show a positive correlation between national anti-discrimination laws and regulations and coverage rates of prevention services among MSM. The median percentage of MSM who reported receiving condoms and knowing where they could be tested was almost 60% in countries with protective laws or regulations; where such laws did not exist, the rate was 38%.

The article also highlights several problems with MSM HIV-prevention funding. Primarily, funding data reported to UNAIDS at least of 2006 is frequently (i.e., 54 out of 109 reporting countries) not disaggregated by population group served. Moreover, of the 55 low- and middle-income countries that did disaggregate data, these data demonstrate that only 0.6% of national prevention expenditures were dedicated to MSM-targeted prevention efforts. Taking into account the 38 countries that had reported to UNAIDS national HIV-prevention efforts by the 2008 conference date, ‘just 1.2% of prevention expenditures were aimed at MSM, with 1% aimed at commercial sex workers, and 2% at harm reduction programs and injecting drug users. The remaining 96% of prevention expenditures were dedicated to non-targeted prevention efforts.’


In many countries around the world, MSM are an important target population for the public health response to the HIV/AIDS. This is not true in sub-Saharan Africa, where the most devastating HIV epidemics have occurred, because MSM have been largely overlooked and face substantial political and social hostility.

Among this study's primary findings are that, mirroring most other global regions, HIV prevalence among African MSM is higher than that of African heterosexual men. However, MSM-specific interventions are lacking in African nations, creating the further stigmatization and an unrecognized epidemic among MSM. The report is also useful for providing a concise rebuttal to the popular misconception that same-sex sexual acts are a recent phenomenon in Africa. For example, the study notes that the fulfillment of some traditional practices requires MSM sexual acts.

The study concludes by noting that the lack of data arising from cultural, political and religious unwillingness to accept MSM as equal members of society has denied African MSM effective HIV/AIDS prevention and care. The challenge now is to break the silence, recognize the problem, and begin to develop and implement appropriate prevention and care programs.


This report compiles data from 147 countries on national progress in implementing the 2001 Declaration of Commitment on HIV/AIDS. It comes at the halfway mark between the 2001 Declaration and the Millennium Development Goals target of reversing the AIDS epidemic by 2015.
Findings indicate that although the global percentage of people living with HIV has stabilized since 2000, the number of people living with HIV has increased. This is due not only to new infections, but also to increased availability of life-prolonging ART. Sub-Saharan Africa is the region most heavily affected.

The report details trends in infection in groups ranging from pregnant women to children under the age of 15, drug users, MSM and sex workers. It concludes that success in responding to the AIDS epidemic will depend on progress in reducing human rights violations, reducing gender inequality, strengthening legal protections against discrimination, preventing new infections by providing accurate, comprehensive information on HIV, and increasing access to treatment and care.

The report also stresses the need for governments to work together with civil society groups in the development, implementation and evaluation of national HIV strategies, and calls for enhanced technical support by multinational agencies.


UNAIDS reported in 2010 a renewed focus on its goal of ‘zero discrimination, zero new AIDS infections, and zero AIDS-related deaths.’ The report notes a 19 percent decrease in the number of new infections since 1999, and an increase in access to treatment for those living with AIDS in low- and middle-income countries. It generally concludes that steady progress has been made toward achieving universal access to HIV prevention, treatment, care and support.

The report describes efforts underway to implement a new platform, ‘Treatment 2.0,’ which could avert an additional 10 million deaths by 2025. While recent years have seen a general global trend toward decrease in HIV incidence, the incidence is increasing in certain regions including Eastern Europe and central Asia, and problems remain with stigma and discrimination, lack of access to services and ‘bad laws.’

The report further notes that virtual elimination of mother-to-child transmission by 2015 is a realistic aim; that protections against gender-based violence must be strengthened; that human rights are increasingly becoming part of nations’ response to the AIDS epidemic, although criminalization and discriminatory laws are still a problem; and that despite extensive progress, many countries will fail to meet MDG Goal 6: halting and reversing the spread of HIV.


This is a consolidated regional analysis of Country and Territory Reports submitted in 2008 by the 18 countries and territories in the Caribbean region, in response to the Declaration of Commitment made by member states at the 2001 United National General Assembly Special Session on HIV/AIDS UNGASS).

The report highlights progress made in the Caribbean region in response to the HIV epidemic and provides a comparative analysis of developments since the initial report, Keeping Score I, was published in 2006. It further outlines the challenges still facing the region.
Prior to the Declaration of Commitment, the Caribbean had already established a regional organization, the Pan-Caribbean Partnership against HIV/AIDS (PANCAP), made up of regional institutions, international agencies, and bilateral donors. PANCAP has worked with UNAIDS and regional institutions to develop Caribbean measurement tools for monitoring the epidemic and the response to it.

Achievements in the region during the period under study include improvement in laws, greater allocation of resources, an increase in HIV testing of pregnant women, a decrease in the number of children living with AIDS, more extensive access to treatment, greater knowledge of prevention measures among young people, and an increase in condom use among vulnerable population groups and in access to testing and counseling services. The study further found that political will and domestic and international support generally increased in the region during 2008. Gains have been made in prevention of mother-to-child transmission. Most countries in the region have a 100% HIV screening rate for donated blood units.

Remaining challenges in the Caribbean include the need to devise and implement strategies addressing the most vulnerable population groups: MSM, male and female sex workers, young women and prisoners. Prevention programs have targeted primarily the general population and have had little impact. Civil society participation is relatively strong in the region; however, the organizations need assistance with capacity building. While the number of people on ART has increased from 4,000 in 2003 to 30,000 in 2007, treatment coverage remains low in most countries. Widespread stigma and discrimination against those infected with and affected by AIDS constitute major barriers to access to prevention, testing and treatment.

**UNAIDS, UNAIDS Action Framework: Universal Access for Men Who Have Sex With Men and Transgender People (2009), available at:**

This report finds that the failure to respond adequately to the human rights and public health needs of MSM and transgender people, two groups with the highest rates of HIV infection, has fallen far short of what is required to ensure universal access to services for HIV prevention, treatment, care and support.

The report notes that the global HIV epidemic among MSM contributes to the wider HIV epidemic, as the majority of MSM also have sex with women. In addition, the report states that in some contexts, MSM and transgender people are also involved in sex work and/or inject drugs. Therefore, addressing the epidemic among marginalized groups is important not only for members of those groups but also is an effective strategy to avert a larger epidemic among the general population.

Pointing out that all people, including MSM and transgender people, have the right to the highest available standard of health and equality before the law, the report notes further that there is a strong public health rationale for prevention of transmission between MSM and transgender people.

The strategy outlined in the Framework is based on three key guiding principles: Action must be grounded in a commitment to human rights; action must be informed by evidence; and action is required by a broad range of partners, including affected communities, governments, the private sector, and the UN family.

This is the third annual report following the 2006 United Nations General Assembly High-Level Meeting on AIDS, at which world leaders committed to scaling up toward the goal of universal access to HIV prevention, treatment, care and support services by 2010. The report details the efforts made in 2008 to meet these goals and assesses the current achievements and ongoing challenges in achieving universal access to HIV prevention, treatment and care.

Positive findings include the fact that, by December 2008, an additional 1 million people were receiving ART in low- and middle-income countries, bringing the total to 4 million; an increase in people being counseled and tested for HIV; improvement in care of children living with HIV; and an increased number of countries phasing in ARV regimens for prevention of mother-to-child transmission.

Nevertheless, the report further notes that many low- and middle-income countries are far from achieving the goal of universal access. It concludes that the desired scaling-up will require heightened political commitment and an increase in financial resources to the health systems in these countries.


Commissioned by WHO, this report analyzes interviews with civil society representatives from 27 countries and 5 continents to present MSM and transgender (TG) perspectives and preferences on HIV testing and treatment. The results are broadly organized into two themes: access barriers, and preferences in delivery organization. Issues addressed include the consequences of stigma in the health care setting, and the need for comprehensive and holistic health care services for MSM and TGs. Stigma in health care settings drives MSM and TG fear and reticence in accessing these services. When combined with fragmented and/or incomplete delivery of health care services, stigma thus erodes MSM and TG health, as many related conditions and statuses are not addressed at HIV-specific health care delivery sites.

The report lists five primary barriers to accessing HIV prevention and treatment services: homophobia, HIV stigma, criminalization of transmission and other repressive laws and policies, safety issues, and insensitivity among service providers; and three primary concerns with comprehensive and holistic care: integrated services, comprehensive services, and community engagement in improving services.


This study focuses on legal and political factors beyond explicitly punitive law and policies, most significantly the lack of protection for hate crimes against sexual and other minorities, which can drive vulnerable populations such as transgender persons ‘underground,’ especially where those crimes are committed by government agents. Social exclusion presents further challenges to the struggle for equality and the realization of health. Additionally, lack of awareness or insensitivity to cultural diversity can limit an HIV/AIDS response. Strategies to understand and confront social vulnerability are urgently needed, including improving understanding of the characteristics and HIV burden among sexual minorities; creatively confronting legal, social and cultural factors leading to exclusion; ensuring provision of broad-based and effective HIV prevention programs; offering adequate care and treatment; and confronting special challenges arising in lower and middle-income countries.

The authors attempt to demonstrate that societal attitudes toward homosexuals may influence male homosexual behaviour which may, in turn, affect the dynamics of the HIV/AIDS epidemic. To test their theory they use two measures of intolerance toward homosexuality: responses to the national General Social Survey (GSS), and state bans on gay marriage and civil unions. The paper demonstrates a negative and statistically significant correlation between tolerance as measured by the GSS and HIV incidence among American MSM. The authors also report that the marriage ban variable is positively, though not always significantly, associated with the HIV rate.

The authors posit two theories explaining these correlations. First, greater tolerance toward MSM may raise the number of men who ‘come out of the closet’ and enter the pool of homosexual partners, leading to lower incidences of HIV among the total number of MSM in a geographical area. Second, an intolerant social environment may drive homosexual behaviour undergrounds, whereas greater tolerance may induce men to interact in open and socially mediated venues associated with less risky sexual behaviours.

The authors also explored the association between tolerance and variables not directly related to risky male-to-male sexual activity, including hemophilia HIV, gonorrhea, and heterosexual HIV. They found that tolerance is unrelated to the hemophilia rate and the gonorrhea rate, but that tolerance may affect the spread of HIV among heterosexuals by altering the behaviour of bisexual persons, although this effect should be smaller than among MSM. These findings indicate that tolerance is an issue specific and significant to MSM.


This APCOM/UNDP study presents an overview of the status of laws directly and indirectly affecting MSM and transgender persons in 48 Asia-Pacific countries. The paper highlights the punitive nature of most legal regimes in the area, ranging from criminalization of sexual acts to censorship and civil society registration laws that prevent grassroots organization and communication. It also focuses on the role of civil society, government and multilateral organizations in reforming punitive and detrimental laws, policies and practices.

The study notes that epidemiological studies of MSM and transgender persons in Asia and the Pacific are crucial because at current infection rates, by 2020 close to half of all new HIV infections in Asia will be among MSM. Even currently, when Papua New Guinea is excluded, one-third of recorded HIV cases in Pacific island countries result from male-to-male sex.

Legally, the study notes that 19 of the 48 countries in the region criminalize male same-sex sexual acts, and several other countries target MSM and transgender persons through punitive laws related to public order and sex work.


Human Rights Watch reports that an epidemic of homophobic violence is hampering efforts to stem the HIV/AIDS epidemic in Jamaica. Gay men and people living with AIDS are subject to violent attacks and widespread discrimination. Police extort money and sex from gay men and sex workers, and use Jamaica’s sodomy laws to
arrest peer educators who provide HIV/AIDS information and condoms to gay men. These abusive practices and discrimination prevent many from seeking health services.

In June 2004, the Jamaican government began an ambitious program designed to provide ARV drugs to people living with AIDS and to address the human rights violations that are contributing to the epidemic. The study concludes, however, that the program is bound to fail unless the government repeals discriminatory laws criminalizing consensual sex among adult men, ensures protection for HIV/AIDS outreach workers, and protects people living with AIDS against discrimination.


Stigmatization and discrimination of persons engaging in same-sex sexual practices, lack of support among donors and ‘mainstream’ human rights groups, and lack of resources and skills among local LGBT organizations all drive the poor state of HIV/AIDS treatment and support services for African LGBTs. To help reverse and overcome these barriers, this study recommends that African nations promulgate and enforce policies that prevent acts of stigmatization and discrimination by private persons, including physical and verbal harassment and discrimination in education and housing; end stigmatizing and discriminating acts committed by law enforcement agents and other public officials; and extend constitutional protection of equality to sexual orientation. The report also contains specific recommendations for foreign donors, including instituting funding bans against organizations that openly discriminate against LGBTs and allocating funds for better understanding same-sex transmission among African WSW.

The study is also useful for detailing some of the exact ways through which same-sex interactions in Africa are hidden. One indication of the dominance of heterosexual relations in the HIV response is the fact that HIV prevention interventions that target gay men and sex workers are often primarily intended to protect the health of heterosexual men and sex work clients. Sex workers and gay men are viewed as worthy of attention mainly for their role in spreading HIV rather than because of their innate humanity.


This handbook was prepared by the Inter-Parliamentary Union’s Advisory Group on HIV/AIDS, established in 2006 by a global group of legislators who are leaders in their home countries in addressing AIDS and related issues. The group seeks to facilitate a global exchange of information and to keep the AIDS epidemic high on the legislative agendas of parliaments throughout the world. The objective of the handbook, an update of a 1999 edition published by UNAIDS and IPU, is to provide parliamentarians around the world with information they need to initiate and promote evidence-based and rights-focused responses to the HIV/AIDS crisis. In addition to offering useful background information on HIV and AIDS and a discussion of the crucial role of human rights considerations in formulating legislative policy, the handbook also provides concrete examples of legislation and other parliamentary action that advance evidence-informed and rights-based prevention and treatment. Issues addressed include the importance of HIV testing and counseling, prevention of discrimination and stigma, appropriate modes of HIV prevention, national budgetary issues, reform of intellectual property legislation in order to promote wider access to HIV pharmaceuticals, legislative and policy changes for protection of the rights of women, and reducing vulnerability among children, young people and other populations at risk.
This article argues that the African Charter on Human and Peoples’ Rights (ACHPR) and its administering commission can and should include sexual orientation as a protected category under the ACHR anti-discrimination provision. The authors point out that the drafters of the ACHPR relied explicitly on the International Convention on Economic, Social and Cultural Rights and the American Convention on Human Rights, both of which do not explicitly include sexual orientation as a protected category, but which have both been held by their respective administering bodies to implicitly proscribe discrimination on the basis of sexual orientation. The European Court of Human Rights also has a similarly worded anti-discrimination provision and extends the same protection.

Additionally, although these holdings were based on a broad right to privacy that is not explicitly included within the ACHPR, decisions of the Commission on other human rights cases suggest that a ‘right to privacy’ can been read into the ACHPR as implied in the right to ‘respect for his life and the integrity of his person,’ the right to ‘respect of the dignity inherent in a human being,’ and the right to ‘liberty and security of his person.’ The authors argue that sexual orientation is a fundamental part of one’s personality and personhood, and discrimination on the basis of sexual orientation violates rights to privacy, liberty and dignity and should fall within the protections of the Convention.

Citing the Special Rapporteur on Torture, the article notes that sexual minorities such as MSM and transgender persons are ‘disproportionately subjected’ to violence by (among others) state actors, and that the penalty for same sex sexual behaviour often includes public humiliation, hard labour, confinement, torture, harassment, blackmail, and spurious trials with the death penalty or no right to appeal. The article then reviews relevant international law protecting sexual minorities, including the International Convention on Civil and Political Rights (ICCPR). The Human Rights Committee monitors compliance with the ICCPR and has issued several recommendations to States on their laws, policies and practices regarding sexual minorities. The committee has generally not been successful in persuading State to reform laws, policies and practices because their recommendations are general, and because they are only recommendations.

The article also relates the current criminal laws to colonization through historical analysis and examination of stated legislative intent. For instance, it notes that States have claimed to criminalize homosexuality as a way of controlling the spread of HIV/AIDS, or in the case of postwar Russia, criminalized it on the grounds of an unsatisfactorily low birth rate. The article concludes with a discussion of how the UN and NGOs can assist in advancing human rights for GLBT individuals, with a focus on the Brazil's proposed resolution on human rights for sexual minorities.

Senegal has an escalating rate of HIV prevalence among MSM. In late 2008, nine HIV prevention workers there were imprisoned for violation of Senegalese law prohibiting ‘acts against nature.’ This paper reports on a study of the
effects of these arrests and the attendant publicity. In-depth interviews and focus group discussions revealed that the arrests resulted in increased scrutiny and stigma of MSM, heightened fear and hiding, and decrease in both provision and uptake of HIV prevention and treatment services.


This news article describes the proposed Ugandan bill designed to increase penalties, up to and including the death penalty, for homosexual acts, and the international outcry generated by the bill. At the date of the article, the Ugandan parliament had adjourned without debating the bill.


The Global Forum on MSM and HIV (MSMGF) conducted a global online survey of MSM and their health care providers in June-August 2010, to obtain information on access to and participation in HIV prevention services, knowledge and attitudes about novel biomedical HIV prevention strategies including PrEP (pre-exposure prophylaxis), and perceptions about external and internalized homophobia.

The survey revealed a widespread lack of access to basic HIV prevention services (including free condoms and lubricants, and HIV behavioural and education interventions) among MSM; lack of access to and gaps in knowledge about prevention strategies among young MSM; feelings of apprehension and lack of clarity around emerging HIV prevention strategies; and a significant association between high rates of homophobia and low access by MSM to basic HIV prevention strategies.

The MSMGF survey resulted in four key recommendations: Greater effort must be made toward universal access to basic HIV prevention strategies among MSM in all parts of the world, particularly in the Middle East and Asia-Pacific; targeted information campaigns are needed to promote awareness among MSM and their health care providers of PrEP and other emerging strategies; homophobia and stigma must be addressed in order to promote unrestricted access to HIV prevention services; and attention must be focused on the HIV prevention needs of young MSM.


The UN Secretary-General addressed the Human Rights Council meeting, noting that sexual orientation and gender identity are often seen as sensitive issues and were simply not discussed when he was growing up. However, he says he learned to speak out because lives are at stake and it is the duty of the UN under the UDHR to protect the rights of everyone, everywhere.

Ban Ki-moon pointed to patterns of violence and discrimination directed at people solely because of their sexual identity; widespread discrimination in employment, schools and hospitals; and imprisonment, torture and murder of gay, lesbian, bisexual and transgender persons. These actions are violations of international law, Ban said, and he called upon the UN Human Rights Council and national governments to tackle the violence, decriminalize consensual same-sex relationships, ban discrimination and educate the public.

On the occasion of International Human Rights Day 2011, the U.S. Secretary of State takes note of global progress in protection of human rights in the 63 years since adoption of the Universal Declaration of Human Rights but says there is much more to be done. She points specifically to widespread discrimination against gay, lesbian, bisexual and transgender people.

Secretary Clinton notes further that protection of gay rights is not only an issue for Western nations. Throughout the world, people are beaten or killed because of their sexual orientation; governments declare homosexuality illegal and permit those who commit violent acts against gay people to go unpunished; lesbian and transgendered women are subjected to so-called corrective rape; and life-saving care and equal access to justice are withheld from people because of their sexual orientation;

She points out that legal protections often precede, rather than follow, broader recognition of rights, and she urges all people to work toward protection of human rights for sexual minorities.


The independent Commission on AIDS in Asia was established in June 2006 by the Joint UN Programme on HIV/AIDS (UNAIDS), to study and assess the impact of AIDS in Asia and recommend strategies for a stronger response.

The Commission found that, while the HIV epidemics vary from country to country in the region, they share some important characteristics in that epidemics in all countries are centered around unprotected paid sex, sharing of contaminated needles and syringes by injecting drug users, and unprotected sex between men. Men who buy sex, many of whom are married, constitute the largest infected population group; this raises the chances of infection for otherwise low-risk women, an issue not yet adequately addressed in the region.

The Commission further found that HIV-related stigma and discrimination have undermined Asia’s ability to respond to the epidemics and have prevented people from utilizing available services. Discrimination against people living with AIDS affects their ability to access employment and social services, and the groups most at risk of HIV infection are those already discriminated against, marginalized and in some countries, criminalized.

The response by most countries in the region has been slow, the commission reported, although there are examples of effective and focused HIV responses in Cambodia, Thailand, and some states in India. All of the 14 Asian countries included in the study have national strategic plans; however, most of the programs in place lack key planning components for the management and financing of the response.

Many Asian cities have seen a rapid rise in HIV prevalence among MSM, and social taboos and discrimination mean that many MSM also have sex with women and may be married. However, the Commission also found that when HIV prevention services are offered to this group, the uptake is impressive.
This report focuses on the relationship between the international human right to the highest attainable standard of health, and criminalization of three forms of adult, consensual sexual behavior: sexual orientation/same-sex conduct, sex work, and HIV transmission. The Special Rapporteur concludes that the right to health requires decriminalization in each of these three areas and that it should occur in conjunction with human rights education and efforts to reduce stigma and discrimination against members of the groups in question.

The report explains that punitive laws and policies in these areas violate the right to health by causing deterioration of mental health, engagement in sexual and non-sexual behavior that risks HIV transmission and other negative health consequences, and restrictions on access to effective medical services, including both general and targeted health services. Punitive laws and policies violate the rights of bodily integrity and protection against arbitrary deprivation of life. Finally, punitive laws and policies affect economic, social and cultural rights by fostering an environment of hostility toward members of these groups which impacts their access to housing, employment, and cultural and political participation.


The author, an academic, writer, editor, translator, and novelist, edited and introduced this two-volume collection of essays by 20 experts. The collection includes narratives on the experiences of homosexual minorities throughout the Muslim world, as well as essays exploring such topics as the roots of homophobia in Islamic theology and the potential scriptural basis for including gay, lesbian and transgendered persons in the Muslim community.


This news report describes a discussion organized by Arus Pelangi, a national LGBT organization in Indonesia, at which several moderate Muslim scholars expressed the view that condemnation of homosexuality by many Muslims is based on narrow-minded interpretations of Islamic teachings. One scholar stated that the essence of Islam is to respect and dignify humans and that God will judge people based on their piety rather than on their sexual orientation. Another contributor stated that, as is true with gender bias or patriarchy, heterosexual bias is a social construct. Opposing views were presented by representatives of conservative Muslim groups, offering their interpretation that homosexuality is a sin under Islam.


The author is Chairperson of the Indonesian Conference on Religion and Peace. This paper was prepared for the Second Sexuality Institute, organized by the Coalition for Sexual and Bodily Rights in Muslim Societies (CSBR), an international solidarity network of organizations, researchers and academics working to promote sexual, bodily and reproductive rights as human rights in Muslim societies.

The author discusses the attitude of Islam toward sexual expression and homosexuality and proposes new methodologies in reinterpretation, aiming to eliminate all forms of bias toward LGBT people. She concludes that
inequality and discrimination against LGBT people derive not from the text of the Qur'an itself, but from the interpretation of the text.

She points out that Islamic teaching promotes appreciation of human dignity, and she proposes three solutions to the problem of bias in Muslim societies: establishment of networking among groups of LGBT people from many nations; education in formal and nonformal settings, aimed at creating tolerant and inclusive cultures; and leadership by LGBT people in proposing a new interpretation of religious teaching more compatible with human rights.


Aids-Free World, an organization ‘advocating for more urgent and effective global responses to HIV and AIDS,’ reports that it filed a legal petition with the Inter-American Commission on Human Rights contending that Jamaican legislation criminalizing homosexuality is in violation of international human rights law.


At an event at UN headquarters in conjunction with Human Rights Day 2010, Secretary-General Ban Ki-moon called for the complete and universal decriminalization of homosexuality. Ban stated that criminalization leads to discrimination and encourages violence, and he emphasized the collective responsibility to stand against discrimination and to defend fellow human beings and fundamental principles. At another event in Geneva the same day, UN High Commissioner for Human Rights Navanethem Pillay also called for legislative reform and education initiatives aiming to protect the rights of lesbian, gay, bisexual and transgender persons.