Human Rights Violations for MSM and Other Sexual Minorities

a) Violence, and torture and other inhumane and degrading treatment and punishment

In Kenya, sexual minorities such as MSMS are tortured at the hands of the police on account of their sexual identity. This pattern of abuse includes cruel, inhumane and degrading punishment for consensual same-sex relationships or transgender behaviour, and ill-treatment in prisons.

Torture, and other cruel, inhumane and degrading treatment and punishment is part of a wider pattern of violence against sexual minorities, which is instigated within their homes, workplaces, schools or communities. Sexual minorities are at particular risk of violence on account of the stigma and discrimination associated with the sexual orientation. Torture and violence are violations of international human rights law. The relationship between torture and violence on the one hand and the right to health on the other is clear.

b) Forced medical treatment

All human beings have a right to be free from non-consensual medical treatment and experimentation. This prohibition is found in the International Covenant on Civil and Political Rights, and the UN Principles on the Protection of Persons with Mental Illnesses and the Improvement of Mental Healthcare, and it is also referred to in General Comment 14 on the Right to Health.

MSMS, Lesbians and transsexuals may be subjected to psychiatric treatment on account of the misperception that their sexual orientation can or should be treated or cured. Sexual minorities report on how their families, upon finding out about their sexual orientation, try to talk them into “treatment”. However, medical opinion accepts that psychotherapy to encourage sexual minorities to conform to a heterosexual norm is not effective and is ethically unacceptable. It is also contrary to their human rights.

c) Stigma and Discrimination

Sexual minorities face discrimination and stigmatisation. Discrimination and stigma are multifaceted and may exist even at the lowest levels of our community – family, household, workplaces, schools, health facilities and community in general. Widespread stigma and discrimination often prevent MSM and transgender individuals from seeking or receiving essential health including HIV prevention, care and treatment services.

Because many countries have not established appropriate health messages, support, and services for sexual minorities, HIV infection rates and prevalence remain disproportionately high among MSM and transgender individuals in both developed and developing countries, undermining progress on universal access targets.

Religious organizations in Kenya and other countries have also been reported to have intolerant attitudes to transgender and intersex persons. Non-conforming sexual

orientations, gender identities and unidentifiable gender at birth are a challenge to the religious scriptures that states that humans are created as man and woman. Religious beliefs about gender and sexual orientations may have an affect even on modern medicine and non-religious persons.

As a result, the general attitude in society towards MSMS is characterised by non-recognition, ignorance and disrespect.

d) Appropriate STI/HIV awareness

Kenya is the most affected country in Africa. According to sero-prevalence studies among small groups of MSM in Nairobi and Mombassa, done by the International AIDS Vaccine Initiative (IAVI), the Population Council, and others last year, Kenya has documented up to a 40 percent HIV prevalence rate among men who have sex with men, the highest reported rate in Africa followed by Senegal at 22 percent prevalence.

The high prevalence rates in Kenya and other developing countries can be blamed on lack of appropriate health messages and support which makes many men who have sex with men unknowingly engage in behavior that increases their risk of infection.

In Kenya up to half the men who engage in MSM do not use condoms and most of them have no access to HIV prevention, treatment and care services as well as information and they are largely ignored by the government because it is illegal. Those that seek for Voluntary Counseling and Testing services (VCT) are not advised because the curriculum used to train counselors does not include specialized advice for sex between men.

The government of Kenya has not fully acknowledged that sex between men happens and that unprotected sex contributes to transmission of HIV thus denying their programmes funding. As a result, the country there is no adequate provision of appropriate STI/HIV awareness and preventive methods such as condoms in sufficient data on the HIV/AIDS prevalence among sexual minorities, lack of counseling services to addresses safer sex with both male and female sexual partners.

e) Inadequate information on MSMS

One of the impediments on research on sex between men is criminalization and stigmatization of the act in many African countries including Kenya. The research has been further made difficult by personal bias, socio-cultural, political and religious beliefs and attitudes.

f) Unfriendly health and HIV&AIDS services

The existing health and HIV&AIDS programmes are not friendly to MSMS in Kenya. As a result many of sexual minorities delay seeking treatment for STI from clinics fearing possible embarrassment and stigmatization because of their evident no normative sexual behavior. Some MSMS do not like volunteering for HIV counseling and testing because they face more than one stigma - in this case - the homosexual stigma and the HIV stigma.

In addition sexual minorities do not have the necessary resources to deal with HIV positive results. Most of them fear that they will die psychologically or literally out of stress and fear and that it would be a lonely death - no one there to help you as the community including ones family, friends, religious institutions and employers reject sexual minorities particularly if they are also suffering from AIDS.

Kenya's health sector is ill prepared to manage the health of sexual minorities. There are no clinical guidelines on managing emerging cases or are the health care provided trained to deal with sexual minorities.

g) Lack of confidentiality

MSMS are less tolerated in the Kenyan community. They face a lot of resistance and ridicule from all quarters of the community. Their confidentiality is not maintained by those they interact including health care providers. This is because their sexual orientation is not appreciated in the community.

Conclusion

Men who have sex with men, remains the least understood of the most-at-risk groups. Some of the reasons include the reluctance of these men to be identified as such (even in a medical context). Criminalization of homosexuality, stigma and physical violence have hindered research and generation of data.

Without a positive recognition of MSMS, it is virtually impossible to claim and fight for the protection and exercise of their human rights in Kenya. For MSMS and other sexual minorities to be recognized as individuals with full human rights in a non-discriminatory way, they must have the opportunities to participate and be visible at all levels of the economy and be able to speak in public and in decision-making instances.

Legal barriers, stigma and discrimination must be tackled as part of national AIDS responses as vulnerability to HIV infection is increased where men are either excluded from, or exclude themselves from, sexual health programmes and services out of fear.