



LEADERSHIP STATEMENT
Males who have sex with Males
XV International AIDS Conference, Bangkok Thailand, 11-16 July 2004.

SUMMARY

Concerned with the pervasive environment of abuse and violence, which deny the basic human rights of males who have sex with males **and transgendered people**, increase their vulnerability to HIV infection, and impact their ability to protect themselves from HIV, we commit ourselves to work towards realising:

From States, the discharge of its responsibility towards:

- The basic human rights of males who have sex with males **and transgendered people** including non-discrimination in law and policy, and decriminalisation of consensual same-sex sexual activities.
- Address violence, abuse, and harassment by both state and non-state **actors including men as vectors of both violence and HIV transmission**.
- Acknowledgement of the existence of male-to-male sex **and transgendered people**, and provision of adequate resources to address the specific concerns of those involved in such consensual sexual activities to seek information, services and resources that protect them from HIV infection.
- Actualisation of its commitment to a rights based approach.

From Donors/Funders, the discharge of their responsibility towards:

- Providing adequate resources for HIV intervention work with males who have sex with males **and transgendered people**, care and support for HIV positive males who have sex with males **and transgendered people**, research into the sociological and epidemiological aspects of HIV as it pertains to males who have sex with males and other sexual minorities, and legislative and policy development advocacy work.

From Civil Society, the discharge of their responsibility towards:

- Taking on board issues that relate to male to male sex, **transgendered people** and HIV/AIDS and address these concerns within their own organisations and in their service delivery, and collaborate with and work in partnership with males who have sex with males sexual health community-based organisations, affected communities, and the organisations that represent and work with them, towards promoting an enabling environment for all.

(The Leadership Forum on this issue was facilitated by Naz Foundation International, Australia Federation of AIDS Organisations, Gaya Nasantara and the Rainbow Sky Organisation of Thailand.)

LEADERSHIP STATEMENT
Males who have sex with Males (MSM¹)
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Any person engaging in Male-to-Male consensual sex, including transgendered people has a right to live with dignity, health, and wellbeing, where equality of rights and social justice is assured, and where such persons are free from abuse, harassment and violence.

DEEPLY CONCERNED that at this critical juncture in the fight against AIDS, world over persons engaged in consensual male-to-male sex, and those who are transgendered, are constantly faced with the challenge of denial of rights and human dignity, invisibility leading to non availability of resources to protect against the spread of HIV and other health problems, and repression from state and non state actors;

DEEPLY CONCERNED that the strides that persons engaged in consensual male-to-male sex, along with those with different sexual and/or gender orientation, have taken to claim their rights, wellbeing, dignity, and health, are often compromised by social, legal, economic, and political circumstances, thus directly impacting their ability to protect themselves from HIV infection, and/or from contributing effectively to or support prevention programs, and/or to ensure for themselves a healthy and dignified life, which includes treatment and care for those MSM who are HIV positive;

DEEPLY CONCERNED about the worldwide lack of options appropriate to the needs of MSM, including those with different sexual and/or gender orientation, amongst whom HIV/AIDS is rapidly increasing, including prevention options like availability of services pertaining to voluntary counseling and testing and adequate supply and access to quality and affordable condoms and lubricants, treatment options including for OI and ART, and care services for those who are HIV positive and suffer from HIV related complications;

DEEPLY CONCERNED that the ever increasing levels of HIV infections amongst MSM, including those with different sexual and/or gender orientations, is directly attributable to human rights violations and/or abuse, stigma and discrimination, invisibilisation of male to male sex and therefore of the epidemic amongst MSM, and lack of social and epidemiological research amongst MSM, all of which take away from the capacity of MSM to choose their own physical, emotional, and sexual destinies, and protect themselves from the spread of HIV infection;

DEEPLY CONCERNED about the double discrimination faced by those who are both HIV positive and are engaged in consensual male-to-male sex;

DEEPLY CONCERNED that because of prejudice and marginalization, HIV infections among MSM and those with differing sexual and/or gender orientation, will be ignored and made invisible in comparison to attention paid to HIV infections among heterosexuals and other groups;

AWARE that as equal human beings, a life with dignity, health, wellbeing, and happiness is the basic human right of persons engaged in consensual male-to-male sex of whatever sexual and/or gender orientation as per the norms and standards of such rights agreed upon universally;

AWARE that circumstances, often artificially created, deny persons engaged in consensual male-to-male sex the full enjoyment of their rights, and that therefore there is an urgent need to reclaim those rights so as to ensure that all MSM, including those of different sexual and/or gender orientation, have access to appropriate and adequate HIV/AIDS prevention and sexual health services;

¹ While we will use the acronym MSM for brevity in this statement, its use does not imply that MSM is an identity term referring to an identifiable community that can be segregated and so labeled. Within the framework of male-to-male sex, there are a range of diverse sexual/gender identities, communities, networks, collectivities, as well as just behaviors without any sense of affiliation to an identity or community. This statement addresses the concerns of all these diversities within the framework of males who have sex with males. It needs to be noted that the mandate of this statement is narrow and confined to MSM, but in reality there are many other sexualities [e.g. lesbianism] and gender identities [e.g. hijra, bakla, waria, fafafi, moffi, et al] who are equally oppressed and whose rights and concerns are of equal importance.

ASSERTING that like any other segment vulnerable to HIV infection and belonging to stigmatised populations, for an effective mobilisation to respond to the HIV epidemic, all male to male sex, **including those of different sexual and gender orientation**, need the protection of law, and all laws and policies which prescribe discrimination against male to male sex therefore need to be reversed and repealed. Regardless of the cultural meanings which attach to male-to male sex **and sexual or gender orientation**, it is accepted today that stigmatisation and discrimination towards target populations impair the effectiveness of health promotion initiatives by and with those populations, thereby creating an urgent need to advocate for the reform of laws and policies which stigmatise or discriminate against male-to-male sex. These include laws which criminalize male-to-male sex, or provide for a higher age of consent for sex between males than for heterosexual sex;

REAFFIRMING that impediments to the full enjoyment of basic human rights should be cleared so that all MSM **and those with different sexual and/or gender orientation** are empowered to take control of their own physical, emotional, and sexual destinies, make viable choices for their own safety and health, and become true equal partners in the fight against the global pandemic of HIV and AIDS;

ASSERTING that the health, dignity, happiness, and wellbeing, of all persons engaged in consensual male-to-male sex is a reflection of their nation's health, dignity, happiness, and wellbeing, and that its realisation is a milestone for social justice and equity;

ASSERTING that successful HIV responses have identified MSM **along with those with different sexual and/or gender orientation as vulnerable populations** and that any national response to HIV can be most effective only when it works with vulnerable populations that are directly affected;

ASSERTING that nations will not be able to prevent HIV infections among MSM **and those with different sexual or gender orientation** unless they are made partners in the response;

ENCOURAGED AND ENTHUSED BY the many commitments made by states to abide by a range of international human rights instruments, and other United Nations declarations, policies and guidelines addressing those affected, infected, and vulnerable to HIV/AIDS, including MSM **as well as those with different sexual and/or gender orientation**;

CONVINCED of the urgent need for a coordinated and sustained response to the HIV/AIDS epidemic the world over as it affects MSM, **including those with different sexual and/or gender orientation**, who too often have been invisibilised through ignorance, prejudice, and discrimination, ignored in the resources allocated to fight the epidemic, marginalized from access to prevention and treatment, and criminalised for unscientific value judgements;

CALLING FOR the creation of a supportive social, policy, and legal environment to enable MSM, **as well as those with differing sexual and/or gender orientation**, to more effectively respond to the HIV/AIDS epidemics in their own respective settings as equal partners in the struggle against the spread of AIDS, requiring respect and dignity for all MSM, irrespective of their specific gender and/or sexual identity/orientation, or the lack thereof, and including in it the realization by all, irrespective of gender and sexual choices, the following rights:

- The right to equality before the law and non-discrimination.
- The right to life, liberty and security of person
- The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, arbitrary arrest, detention or exile, or the creation of such circumstances that force one to adopt exile.
- The right to work, with free choice of employment, to just and favourable conditions of work
- The right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information and ideas²
- The right not to be subjected to arbitrary interference with our privacy, family, home or correspondence, nor to attacks upon our honour and reputation

RECOGNISING that different institutions, peoples, groups, and agencies hold different responsibilities for building such an enabling environment, including:

- Governments for initiating, changing, and implementing laws and policies to ensure equality, equity and social justice for everybody including MSM, **and those of different sexual and/or gender orientation**.
- Donors for supporting sexual health and rights initiatives led and owned by males who have sex with males themselves and actively supporting advocacy for enjoyment of human rights by all.

² In the context of HIV/AIDS, such right includes access to appropriate HIV/AIDS and sexual health related information regarding prevention, treatment, care and support.

- Non-government organisations, and other civil society institutions and the private sector for working in partnership with MSM initiatives and supporting social justice for all.
- Institutions, organisations, and groups working with MSM, for taking on the onus of working for themselves for prevention work against the spread of HIV/AIDS, care and support of those males who have sex with males affected and infected with HIV, and for securing for all males who have sex with males equality, equity and social justice.

THE LEADERS FOR MSM [CONCERNING MALE TO MALE SEX] INCLUDING THOSE WITH DIFFERENT SEXUAL AND/OR GENDER ORIENTATION CALL UPON:

1. STATES: TO BE ACCOUNTABLE AND RESPONSIBLE

As members of the United Nations and as states parties to the said international human rights instruments, states have obligations to *respect protect* and *fulfil* human rights.³

The obligation to *respect* requires states to refrain from interfering directly or indirectly with the enjoyment of human rights.⁴ The obligation to *protect* requires states to take measures that prevent third parties from interfering with human rights⁵ and the obligation to *fulfil* requires states to adopt appropriate legislative, budgetary, judicial, promotional and other measures for the full realisation of human rights.⁶

States have also willingly made political commitment to implementing human rights in the context of HIV/AIDS.⁷ States must be held accountable and responsible for these legal and political commitments.

Bearing in mind the legal obligation and commitments that states have entered into, we resolve to work towards ensuring that states:

- 1.1 Recognise the rights of all its citizens, irrespective of their gender and/or sexual identity/**orientation** or practice, and enact laws that protect the right to privacy, decriminalize sex between males or females, and ending all policy that prohibit or restrict diverse forms of sexual or gender expressions.
- 1.2 Enact laws and policies that protect human rights and provide an enabling and empowering environment to MSM and people of other sexual /**gender** diversities.
- 1.3 Enact, repeal or amend laws, regulations and policies to ensure MSM, **along with those of different sexual and/or gender orientations**, have access to sexual health services and are not discriminated against through criminalisation, intimidation, fear, harassment, violence, sexual abuse, denial and the risk of imprisonment.
- 1.4 Address harassment, violence and sexual abuse by both of the state as well as others through the establishment of appropriate accountability mechanisms at local, state and national levels that ensures the ability of victims of such acts to challenge such action and seek redress.
- 1.5 Develop openness in attitude that recognises the existence of male-to-male sex **and sexual as well as gender diversities** so that information on the same can be collected to aid in HIV prevention effort amongst MSM, and support the study and research of male-to-male sexual behaviours and practices without value judgement and in line with the principles of good science.
- 1.6 Provide adequate investment and support that is commensurate with and proportionate to research based data on the actual prevalence of HIV amongst MSM, **including those of different sexual and/or gender orientation**,

³ See Committee on Economic Social and Cultural Rights, General Comment 14. The right to the highest attainable standard of health adopted 11th August 200, E/C.12/2000/4, paragraphs 34-37
See also <http://www.unhcr.ch/html/menu2/6/cescr.htm>

⁴ For example, refraining from identifying or limiting equal access of all persons, including MSM, preventive and curative HIV/AIDS health services and care or abstaining from enforcing discriminatory practices as State policy.

⁵ For example, adopting of legislation to ensure the equal access to health care and health related services provided by third parties; to control the marketing of medicines and medical equipment and to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct.

⁶ For example, adoption of a national health policy with a detailed plan; promotion of HIV/AIDS education, as well as information campaigns and vaccine research.

⁷ For example, recent relevant political commitments have been made in the United Nations Millennium Declaration (2001), the UN General Assembly Special Session Declaration on HIV/AIDS (2002), The Declaration and Program of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001) and The Declaration from the World Summit for Social Development (2002).

- for the development of peer-led community-based MSM sexual health service providers **as well as those focusing on sexual and/or gender orientation**, in order for their constituents to access appropriate services that promote their well-being.
- 1.7 Ensure that all state and national level agencies, including the police and the judiciary are appropriately trained and sensitised to treat all, **including MSM and those of different sexual and/or gender orientation/identity**, equally before the law, and to respect their human rights, including their sexual rights.
 - 1.8 Enact laws and adopt policies that promote and protect the health and well-being of all persons infected with, affected by, and vulnerable to HIV/AIDS, by assuring them of appropriate prevention, care, support, and access to HIV/AIDS related treatment
 - 1.9 Enact laws that promote the rights of and protect all HIV positive persons from discrimination and that ensure the full enjoyment of their civil, political and economic, social and cultural rights and allow them full participation in every sphere of their societies.

DONORS AND FUNDING SUPPORT ORGANISATIONS: TO BE LIBERAL, EQUITABLE, AND GENEROUS

Donors and funding support organisations have an obligation to be liberal and generous to make **an impact in** the rate of infection and to alleviate the suffering of anyone infected and affected. We commit ourselves to encourage and engage donors and funding support organisations in this endeavour and strongly urge them to:

- 2.1 Support HIV/AIDS prevention, care and treatment by and for MSM **including those of different sexual and/or gender orientation/identity** across the world that are grounded in rights based approaches.
- 2.2 Invest in the significant increase of coverage of community-based sexual health service providers focusing on the needs of MSM **as well as those with specific sexual and/or gender orientation** across the world and provide appropriate technical assistance.
- 2.3 Support legislative, policy development and advocacy work on MSM **and sexual and/or gender orientation** issues at local, national, regional and international levels.
- 2.4 Support research in the sociological and epidemiological aspects of HIV as it affects MSM, **including those of different sexual and/or gender orientation**, so that evidence based intervention can be actualised by states that either by design or by neglect, invisibilises male to male sex.

CIVIL SOCIETY: TO DISCHARGE THEIR RESPONSIBILITIES TOWARDS MSM

Aware that civil society plays a vital role in bringing about social and attitudinal changes, **and** also better the conditions of those that they touch with their activities, we commit ourselves to engaging with civil society and strongly urge:

- 3.1 Local, national, regional and international organisations working in the field of sexual and reproductive health take on board issues relating to male to male sex, **as well as sexual and/or gender orientation**, and address these concerns within their own organisations and in their service delivery and collaborate with and work in partnership with MSM sexual health community-based organisations, affected communities, and the organisations that represent and work with them, towards promoting an enabling environment for all.
- 3.2 Non-governmental organisations to recognise the sexual health concerns and needs of MSM, **including those of differing sexual and/or gender orientation**, and incorporate them into their work and activities.
- 3.3 Groups and organisations that work with and represent MSM, **as well as those with different sexual and gender/orientation**, should accept and take on the responsibility of working for the health and other rights of all MSM so as to ensure for them their basic dignity, social justice, equity, and equality, and enable them to protect themselves from HIV/AIDS and other sexually transmitted infections.

AND WE COMMIT OURSELVES TO UNDERTAKING ALL SUCH ACTION NECESSARY TO COLLABORATING WITH THE VARIOUS STAKEHOLDERS IN REALISING THE ABOVE EXPRESSED GOALS.

APPENDIX

The framework

International human rights law protects all persons equally, without distinction or discrimination. The broad range of human rights; civil, political, economic, social and cultural, should be equally enjoyed by all individuals. The protection of the basic human rights of MSM are therefore grounded in a human rights framework, that all people are worthy of equal respect and dignity whatever their situation.

The core international human rights treaties and conventions adopted by the General Assembly, *inter-alia*, the Universal Declaration on Human Rights,ⁱ Convention Against Torture, Inhuman and Degrading Treatment,ⁱⁱ International Covenant on Civil and Political Rights,ⁱⁱⁱ the International Covenant on Economic, Social and Cultural Rights^{iv}, the International Convention on Elimination of All Forms of Discrimination Against Women^v, and the Convention on the Rights of the Child^{vi} guarantee all human beings freedom from discrimination on many grounds, including sex, colour, language, religion, political opinion, birth, national or social origin, property, civil, political and social or other status.

The principle of non-discrimination has also been adopted in regional human rights instruments such as the African Charter on Human and People's Rights,^{vii} the American Convention on Human Rights^{viii}, and the European Convention on Human Rights.^{ix}

Further, the Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights, has addressed the issue of the right to privacy, noting that Article 17^x of the International Covenant on Civil and Political Rights is violated by laws which criminalise private homosexual acts between consenting adults.^{xi}

The Committee has also resolved that the term "sex" in article 26 of the Covenant on Civil and Political Rights, which prohibits discrimination on various grounds,^{xii} includes sexual orientation.^{xiii} Furthermore, the Human Rights Committee has also confirmed that the prohibition against discrimination requires states to review and, if necessary, repeal or amend their laws, policies and practices to proscribe differential treatment that is based on arbitrary HIV-related criteria.^{xiv}

Discrimination against MSM and other disadvantaged groups^{xv} increases such person's vulnerability to the risk of HIV infection, as well as the likelihood that they will be targeted for coercive measures, such as mandatory testing, arbitrary arrest, segregation, detention and deportation.^{xvi}

Such discrimination also compromises the health of the general population as those affected, actively avoid detection and contact with health and social services. The result is that those most needing information and, education and counselling are driven underground. Here, specifically in the context of HIV/AIDS, the Human Rights Committee has found that the "criminalisation of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV/AIDS ... by driving underground many of the people at risk of infection ... [it] would appear to run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention."^{xvii}

Safeguarding human rights in the context of HIV/AIDS is, therefore, not only vital in itself as a principle, but it is also pragmatic. Its aim is to encourage those who are infected to cooperate with the authorities so as to slow down the epidemic. This can be achieved only if people have assurances that their rights will be respected.

ⁱ Adopted by the General Assembly on 10th December 1948 under Resolution 217 A (III)

ⁱⁱ Adopted by the General Assembly on 10th December 1984 under Resolution 39/46 of December 1984. Entered into force on the 26th June 1987.

ⁱⁱⁱ Adopted by the General Assembly under G.A resolution 2200 (XXI), UN GAOR, 21st session, Supplement No. 16, UN Doc. A/6316 (1966). Entered into force 23 March 1976.

^{iv} Adopted by the General Assembly on 16 December 1966 under G.A. Res. 2200 (XXI); UN GAOR, 21st Session, Supplement No. 16 at 49, UN Doc. A/6316 (1966).

^v Adopted by the General Assembly under GA Resolution 34/180 of 18 December 1979. Entered into force 3rd September 1981

^{vi} Adopted by the General assembly under GA res. 4/25 of 20th November 1989. Entered into force 2nd September 1990

^{vii} Adopted on 26th June 1981. Entered into force 21st October 1986

^{viii} Adopted 22nd November 1969. Entered into force 18th July 1978

^{ix} Adopted 4th November 1950. Entered into force 3rd September 1953

^x Article 17 states (i) “ 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 (ii) Everyone has the right to the protection of the law against such interference or attacks.

^{xi} Communication No. 488/1992, *Nicholas Toonen V Australia*, (Views adopted on 31st March 1994, fiftieth session). See Report of the Human Rights Committee Volume II General Assembly Official Record Forty-ninth session (Geneva, 18th October to 5th November 1993); Fiftieth session (United Nations Headquarters, 21st March to 8th April 1994) Fifty-first session (Geneva, 4th to 29th July 1994), (A/49/40) . <http://www.unhchr.ch/tbs/doc.nsf/Pages/226-237>, paragraph 8.2

^{xii} “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

^{xiii} *ibid*, paragraph 8.7

^{xiv} *ibid*, paragraph 11

^{xv} Such groups may also include women, children, minorities and indigenous populations, those living in poverty, migrants and other aliens and injecting drug users.

^{xvi} See examples of HIV/AIDS related litigation <http://www.tac.org.za/>; Carrasco E (2000); and Access to Treatment as a Right to Life and Health. Canadian HIV and AIDS Policy Law Review; 5:4. Available at:

<http://www.aidslaw.ca/maincontent/otherdocs/Newsletter/vol5no42000/carrascodurban.htm>

^{xvii} Communication No. 488/1992, *Nicholas Toonen V Australia*, (Views adopted on 31st March 1994, fiftieth session). See Report of the Human Rights Committee Volume II General Assembly Official Record Forty-ninth session (Geneva, 18th October to 5th November 1993); Fiftieth session (United Nations Headquarters, 21st March to 8th April 1994) Fifty-first session (Geneva, 4th to 29th July 1994), (A/49/40) . <http://www.unhchr.ch/tbs/doc.nsf/Pages/226-237>, paragraph 8.5