



13 November 2009

The Hon Kevin Rudd MP
Prime Minister
Parliament House
CANBERRA ACT 2600

AUSTRALIAN
FEDERATION OF AIDS
ORGANISATIONS INC.
ABN 91 708 310 631

PO Box 51
Newtown NSW
2042 AUSTRALIA

Ph +61 2 9557-9399
Fax +61 2 9557-9867

Email afao@afao.org.au

Web: <http://www.afao.org.au>

Dear Prime Minister

Re: CHOGM meeting and the proposed Ugandan laws to criminalise lesbian, gay, bisexual and transgender (LGBT) people

I am writing on behalf of the Australian Federation of AIDS Organisations (AFAO), in advance of the Commonwealth Heads of Government Meeting (CHOGM) later this month, regarding proposed legislation in Uganda to expand criminalisation laws against lesbian, gay, bisexual and transgender (LGBT) people.

I also write in my capacity as one of the Co-Chairs of the Global Forum on MSM and HIV [MSM = Men who have Sex with other Men, the now standard international phraseology used to encompass homosexually-active men.]

As you may be aware the Australian Federation of AIDS organisations is the national federation for the HIV community response in Australia. The Global Forum on MSM & HIV is an internationally representative body, comprised of people primarily from the global south, formed to address the severely disproportionate impact the HIV epidemic is having on men who have sex with other men, including in the global south – a fact only belatedly recognised and still resisted by many governments, particularly those in Africa, the Caribbean and Eastern Europe.

In both capacities I urge the Australian Government to swiftly condemn proposed legislation in Uganda to expand criminalisation laws against lesbian, gay, bisexual and transgender (LGBT) people. The Anti Homosexuality Bill 2009 will not only violate the human rights of the LGBT community, its provisions will also seriously undermine HIV prevention, treatment and care efforts in Uganda.

The Bill targets the Ugandan population in the following ways:

- any **parent** who does not denounce their lesbian daughter or gay son to the authorities risks a fine or three years imprisonment;
- any **teacher** who does not report a lesbian or gay pupil to the authorities within 24 hours risks a fine or three years imprisonment;

- any **lessor** who provides housing to a suspected homosexual risks seven years of imprisonment;
- any **Local Council, Chairperson or Executive Member** who does not denounce somebody accused of same-sex attraction or activity risks a fine or imprisonment;
- any **medical doctor** who seeks to prevent the spread of HIV/AIDS through working with men who have sex with men (MSM) risks her or his career;
- all **civil society leaders**, whether in a community based organisation, NGO, or academic institution, if their organisations seek to have a comprehensive position on sexual and reproductive health, they risk seeing their organisations closed down;
- any **human rights activist** who seeks to promote an understanding of the indivisibility and inalienability of human rights would be judged to be promoting homosexuals and homosexuality, and be punished accordingly;
- any **religious leader** who seeks to provide guidance and counselling to people who are unsure of their sexuality would be regarded as promoting homosexuality and punished accordingly; and
- any **person** alleged to be a homosexual is at risk of life imprisonment and, in some circumstances, the death penalty.

The Bill also asserts extra-territorial jurisdiction so that all of the offences can be applied to a Ugandan citizen or permanent resident who allegedly commits them outside the country. It joins treason, misprision of treason, and terrorism as offences subject to extra-territorial jurisdiction.

In addition, to our concern about the fundamental violation of human rights that this Bill represents, AFAO and the Global Forum on MSM & HIV are concerned about the impact that it will have on the HIV epidemic in Uganda. (One of the Global Forum's board members is a medical doctor from Uganda.)

Men who have sex with men (MSM) are one of the most-at-risk groups in the global AIDS epidemic. In low and middle-income countries, MSM are on average 19 times more likely to be infected with HIV than the general population. Due to the fluidity of social and sexual networks, concentrated HIV epidemics in any sub-population have implications for general population prevalence and vice versa. While data on HIV prevalence among MSM specifically in Uganda is weak – due in part to refusal to undertake effective surveillance and reporting, as well as criminal laws that hinder disclosure of same-sex behaviour – data published in the Lancet and other peer reviewed journals increasingly substantiate the need a priority focus on MSM in meaningfully addressing the HIV epidemics of sub-Saharan Africa.

In Uganda and elsewhere, criminal penalties against the LGBT community hinder HIV control efforts by creating a climate of fear and shame, driving sexual minorities underground where they are difficult to reach with HIV-related services. Countries whose laws do not criminalise homosexuality are better able to curb the transmission of the virus. The ability to more effectively address HIV was a pivotal factor in the recent decision of the High Court of New Delhi to repeal section 337 of the Indian penal code outlawing sodomy.

Uganda's own HIV/AIDS prevention experts have identified laws targeting sexual minorities as obstacles to effectively addressing AIDS. A 2009 joint report by the Uganda AIDS Commission and UNAIDS specifically called for a review of legal impediments to the inclusion of most-at-risk-populations - including MSM - in the national AIDS response. The

proposed “anti-homosexuality” legislation flies in the face of these expert public health recommendations. In addition, both UNAIDS and the Global Fund to Fight AIDS, Tuberculosis and Malaria have each recently adopted new action frameworks for addressing HIV among sexual minorities, in reaction to growing evidence of the impact of HIV on sexual minorities globally. Furthermore, both the United Nations and Members of the African Commission on Human and People’s Rights have condemned laws that imprison lesbian, gay, bisexual and transgender (LGBT) individuals on the basis of their sexuality.

We understand from our British colleagues that the UK government is concerned that the Ugandan delegation may be seeing the CHOGM meeting as a possible opportunity to bolster support from African nations in support of their counter-productive approach to men who have sex with men and HIV. We ask that you work with other the UK government and other Commonwealth leaders and act swiftly at the 2009 CHOGM meeting to call for the withdrawal of this and any legislation that threatens the health and human rights of sexual minorities.

Such action is entirely consistent with the praiseworthy moves Australia has taken on such issues. In March of this year, Australia joined 66 other nations by signing on to the UN Statement on Human Rights, Sexual Orientation and Gender Identity. This statement reaffirms the universality of orientation or gender identity, and calls for the repeal of laws criminalising homosexuality. Living up to these commitments will be critical in re-affirming the global community’s perceptions of Australia as a leader in both human rights and the response to HIV/AIDS.

For further information, please do not hesitate to contact me on 0419-223-560.

Yours sincerely,

A handwritten signature in black ink that reads "Don Baxter". The signature is written in a cursive, slightly slanted style.

Don Baxter
Executive Director, Australian Federation of AIDS organisations (AFAO), and
Co-Chair, Global Forum on MSM and HIV