

# MSM law in francophone Africa and the fight against AIDS: the hypocrisy of certain countries

**In addition to being the targets of frequent discrimination and violence, African men who have sex with men (MSM) are being hit hard by the HIV/AIDS epidemic. Although there is still insufficient research regarding the methods of HIV transmission in sub-Saharan Africa, several studies show that the prevalence of HIV infection among MSM is more than ten times higher than among the general population.**

Moreover, in a socio-cultural context characterized by a denial of homosexuality or even by homophobia, and reinforced in several African states by laws criminalizing sex between men, MSM are highly stigmatized.

This stigmatization of MSM dramatically hampers their access to HIV/AIDS, hepatitis and sexually transmitted infection (STI) prevention and care. Paradoxically, and likely under pressure from international donors, almost all African countries recognize a specific right to public health and have agreed to include actions and/or priorities geared toward MSM constituencies in their national AIDS strategies and in their proposals to The Global Fund to Fight AIDS, Tuberculosis and Malaria.

Hypocritically, some countries have pledged to fight discrimination while continuing to support legislation that criminalizes homosexuality.

Drawing on the testimony of local MSM organizations, this analysis of criminal legislation concerning MSM and priorities related to MSM in four francophone sub-Saharan African countries (Cameroon, Côte d'Ivoire, Mali and Senegal) seeks to show the disconnect of government health

strategies directed toward MSM in countries where homosexuality is illegal.

The aim is to help develop an advocacy strategy that highlights the incoherence of criminal laws against homosexuality and to fight more effectively against them, especially in countries that receive foreign aid. We will also consider the relationship between religion, homosexuality and criminalization, since these appear to be key factors in understanding the policies of countries that criminalize homosexuality.

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We have chosen to consider four francophone African countries with ties to the French association

AIDES.<sup>1</sup> This choice was made not only because of their existing partnerships, but also because the countries have different political and legal positions on homosexuality: two of them (Cameroon and Senegal) prohibit homosexuality and two (Côte d'Ivoire and Mali) do not.

The testimony quoted in this article was obtained from semi-directive interviews (approximately ten per country) with MSM. The individuals were approached in various ways: via associations based on identity, the fight against AIDS or human rights; through social connections (using the “snowball effect”); or over the Internet. The information from concerned actors is not held out to be representative of all MSM who live in these countries. The use of various outreach methods helped yield the greatest possible diversity of interviewee profiles. The men in question are 18–45 years old. Half of them are single. Most of the others are in a relationship with a man, and a small number are married or in a relationship with a woman. Most participants are not activists with an association, but many are, and this might explain why quite a few of our respondents self-identify as “gay” or “homosexual”, unlike most MSM in

Africa. Hence, this article will go beyond an analysis of current legislation and will consider the individual experiences of African MSM.

### Existing laws on homosexuality and “real life” under those laws

In Cameroon and Senegal, legislation prohibiting non-heterosexual relations has been on the books for a long time. In the former country, Article 347 bis of the Penal Code (*Law No. 65-LF-24 of 12 November 1965* and *Law No. 67-LF-1 of 12 June 1967*) states that “any person who has sexual relations with a person of the same gender is liable to imprisonment for a term of six months to five years and to a fine of 20 000 to 200 000 CFA francs [approximately CAN\$40 to \$407].” In Senegal, Article 319:3 of the Penal Code (*Law No. 66-16 of 12 February 1966*) says that “any act considered to be against nature, including a sexual act between persons of the same gender, is liable to imprisonment for a term of one to five years and to a fine of 100 000 to 1.5 million CFA francs [approximately CAN\$204 to \$3,057]. If the act is committed with a minor 21 years of age or younger, the maximum sentence shall be mandatory.”

It is worth clarifying that all of these laws punish the practice of homosexuality; that is to say, sexual relations with a person of the same gender. However, in reality, men and women are not arrested and convicted on this ground, because they are not generally caught in the act, as “S” explains: “Even though it is the act that is punished by article 347 bis, arrests for homosexuality in Cameroon are arbitrary. You can wind up in prison based on false evidence or false statements from neighbours or others.” (S., 23 and single, Cameroon).

In addition, most Cameroonians and Senegalese say that filing a complaint is impossible and that an exclusion process kicks in when homosexuality becomes a factor in the justice system:

“You can file a complaint for theft or assault, but as soon as the word ‘homosexual’ is heard, you become the accused.” (D., 29, in a relationship with a man, Senegal).

“I do everything to make sure nobody knows, and the legislation is also the reason for this.” (S., 25, single parent, Cameroon).

“I must always avoid doing certain things in public.” (G., 29, single, Cameroon).

“Since my release from jail, everything has changed. People don’t look at me the same way.” (A., 29, in a relationship with a man, Senegal).

Côte d’Ivoire does not directly prohibit homosexuality, but the Penal Code refers to it in defining the crime of “public indecency”. According to Article 360 (Penal Code of 31 August 1981):

Any person who commits public indecency is liable to imprisonment for a term of three months to two years and a fine of 50 000 to 500 000 CFA francs [approximately CAN\$102 to \$1020].

If the public indecency is an indecent act or act against nature with an individual of the same gender, the term of imprisonment shall be six months to two years and the amount of the fine shall be 50 000 to 300 000 CFA francs [approximately CAN\$102 to \$610].

Public indecency is punishable regardless of whether it involves violence, according to Articles 355

to 357 of the Penal Code, but there is a provision specifically punishing indecent acts involving a minor of the same gender as the perpetrator.

In Cameroon and Senegal, legislation prohibiting non-heterosexual relations has been on the books for a long time.

According to Article 358 (Penal Code of 31 August 1981), “A person who commits an indecent act or an act against nature with a minor of the same gender who is 16 or 17 years of age is liable to imprisonment for a term of six months to two years and to a fine of 10 000 to 100 000 CFA francs [approximately CAN\$20 to C\$202]. Although there is no formal prohibition of homosexuality in Côte d’Ivoire, the fact that certain provisions refer to homosexuality could cause law enforcement to apply them in a way that they do not specifically contemplate: “The absence of a law enables us to live freely, but we can be prosecuted on other grounds, such as public indecency and the like.” (B., 27, in a relationship with a man, Côte d’Ivoire).

Mali does not have any specific legislation prohibiting or authorizing homosexuality, nor are there aggravated sentences for offences involving a person of the same gen-

der. However, the Malian Penal Code contains “classical” provisions against sexual offences (indecent, immorality, etc.) that are regularly cited in the event of flagrant offences or simply where homosexuality is suspected. Two Malians declared:

“I had a problem with my friend, and I had to pay some money to avoid going to jail.” (N., 23, in a relationship with a man and with a woman, Mali).

“If they find two guys together having sex, it’s straight to the lockup.” (C., 27, single, Mali).

### The role of religion

Religion is another key to understanding the challenges and stakes associated with laws that criminalize homosexuality or bills that propose to do so. On 22 March 2010, a summit was held in Amsterdam. Approximately 40 Buddhist, Christian, Hindu, Muslim, Jewish and Sikh leaders gathered there, along with Michel Sidibé, Executive Director of UNAIDS. The theme was religious leadership in the response to HIV/AIDS. In his speech, Sidibé felt it important to note that there are concerns beyond social inequality:

As I travel the world, I see increasing evidence of social injustice. Growing economic disparities, inequality and social injustice stalk the earth. The greatest impact is felt by the poorest segments of society, on women and girls and on the marginalized. Social injustice only serves to increase the vulnerability of the vulnerable and push them farther out of reach of HIV services.

Sidibé noted that the hatred toward constituencies that are already “vul-

nerable” compounds exclusion and hampers the fight against HIV/AIDS:

Those who work on the front lines of this global epidemic have been forced to witness not only the ravages of this dreadful disease and its capacity to destroy human lives, but also the seemingly endless capacity for human cruelty and hate. Whether it means turning someone away from a clinic — and life-saving treatment and care — because he or she is a transgendered person or a mob that violently attacks a gay man or woman because they disapprove of whom he or she chooses to love, it is still meanness and hate. And these can kill just as surely as any disease... . People most at risk of HIV infection include men who have sex with men, sex workers and people who use drugs. Incidence is higher among people marginalized and stigmatized in society. This makes it more difficult to reach them with services and compounds their vulnerability.

In the four countries selected for this paper, the most common religions are Islam, Christianity and indigenous beliefs. Schematically, the distribution of religions is as follows: in Mali and Senegal, Islam is largely dominant. (It is practised by more than 90 percent of the population). Côte d’Ivoire and Cameroon are each characterized by a coexistence of two main groups: Muslims and Christians in Côte d’Ivoire, and Christians and practitioners of indigenous religions in Cameroon.<sup>2</sup> However, certain other sects are gaining influence in Cameroon.

There does not appear to be any correlation between the prohibition of homosexuality and the comparative size of any particular religious group within any of the countries studied. Islam is practised by more than

90 percent of the population in Mali and Senegal, yet Mali has no law against homosexuality, while Senegal does have such a law. However, there are certain similarities between Mali and Senegal with regard to religiously inspired discrimination against MSM. In both countries, religious groups, essentially those that practise radical Islam, call for discrimination against MSM.

These groups try, notably during election periods, to secure guarantees from the government that it will fight homosexuality. Homosexuality is portrayed as a typical example of societal decadence attributable to a lack of proper action by the state. Thus, the social homophobia is not directly correlated with religion (since there have been periods of relative tranquility even though religion has always been important and its presence has always been felt). Rather, the homophobia is more closely attributable to the exploitation of religion in political manoeuvring. Governments appear to be more sensitive to such political pressures these days.

### MSM and health policy

Overall, studies regarding this population in Africa prior to the late 1990s are extremely rare. The first article describing the homosexual population of a sub-Saharan African country was published in 1984 in *Les Cahiers internationaux de sociologie*.<sup>3</sup> This was followed by historical studies published in 2004<sup>4</sup> and 2006,<sup>5</sup> and by investigations of AIDS-related behaviour in 2003<sup>6</sup> and 2006.<sup>7</sup>

The first epidemiologic data regarding MSM in French-speaking Africa were only published in 2002. They were obtained from an investigation in Senegal, funded by a major non-governmental organiza-

tion.<sup>8</sup> This was followed in 2005<sup>9</sup> by an article in the journal *AIDS* about a 2004 investigation in Senegal. Currently, we have epidemiologic data regarding ten African countries.<sup>10</sup>

The data were often obtained from studies of the general population, but later research focussed on MSM, notably in Cameroon and Senegal.<sup>11</sup> Most published research about MSM in Africa, regardless of the country, comes to the same conclusion: unprotected sex between men is very frequent<sup>12</sup> and the prevalence of HIV among a given country's MSM is almost systematically higher than that of its general population.<sup>13</sup>

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The responses proposed by the Global Fund countries show that projects involving sexual “minorities” are underrepresented in applications for funding, but that there has been a notable increase in the last two calls for proposals (Rounds 8 and 9). However, with regard to these last two rounds, the Global Fund report notes that 57 percent of countries that submit projects do not make any express reference to projects geared toward MSM, transgender persons or sex workers.

In March 2010, the Global Fund, as part of its Third Replenishment (2010–2013), published policy guidelines entitled *The Global Fund, HIV and Sexual Orientation / Gender Identities*.<sup>14</sup> The document clearly refers to the prioritized constituencies: “Sex workers, men who have sex with men, transgender people and other sexual minorities are among the groups and communities most affected by HIV and AIDS around the world.”

It also notes the funding priorities: “In recent years, the Board and Secretariat have recognized the need to strengthen efforts to ensure that most-affected populations, including sex workers, men who have sex with men, transgender people and other sexual minorities be given appropriate priority in Global Fund policies, processes and funding.”

These elements refer to the Global Fund's May 2009 “Sexual Orientation and Gender Identities” strategy, which “seeks to ensure an environment that is supportive of strengthened programming targeting sex workers, men who have sex with men, transgender people and/or other sexual minorities.”

### The example of Senegal

Senegal is a particularly significant example of how funding mechanisms can be used to press for changes to laws and public health policies because it recognizes MSM as a population vulnerable to HIV and as a priority in its 2007–2011 AIDS strategy. This means that actors in the fight against AIDS have the benefit of national support that can “facilitate” action geared toward MSM.

Senegal and Mali are the only countries that have included an MSM component in their proposal to The

Global Fund.<sup>15</sup> Côte d'Ivoire recently proposed such a component, but it has still not been formally approved.

The Senegalese authorities' approach is particularly telling. It shows the contradictions that the country is experiencing and is a remarkable example of existing leverage for advocacy because:

- Senegal criminalizes homosexuality;
- Senegal includes actions specifically directed toward MSM in its proposal to the Global Fund and in its national AIDS plan; and
- Senegal's proposal to the Global Fund<sup>16</sup> includes a paragraph on the fight against stigmatization and discrimination. The paragraph states that the actions being taken “help the struggle against the exclusion and discrimination experienced by people suffering from HIV/AIDS” and that “the decision-makers who have an influence on the rights of this population group will foster the emergence of more positive attitudes that are more respectful of the principles of fairness and equality.”

Although this discusses HIV-positive people and does not specifically mention MSM, the elements outlined above show that the Senegal is strongly ambivalent or, at the very least, that there is a contradiction between its laws and what it claims to be its public health policy.

### The best leverage for advocacy?

The inclusion of MSM in public health policies is a decisive advantage in advocacy, in helping people and in fighting discrimination. The Global

Fund's priorities are an essential asset in this regard. However, explicit language regarding the fight against anti-gay discrimination, in particular the criminalization of homosexuality, has still not been included.

International organizations now unanimously agree that human rights are a necessary dimension of health strategy. The task ahead is to convince the most conservative elements of society (who are sometimes the majority and might be influenced by religious radicals and the populist politicians) that human rights are an essential element.

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Yves Yomb, Michel Bourrelly and Nicolas Lorente of AIDES, under the direction of Alice Nkom, a Cameroonian lawyer who defends the rights of LGBT in her country.

<sup>1</sup> AIDES provides coordination and support for two major networks in Africa: Afrique 2000 and Africagay contre le sida.

<sup>2</sup> Central Intelligence Agency, *The World Factbook 2009*, on-line: <https://www.cia.gov/library/publications/the-world-factbook/index.com>.

<sup>3</sup> M. Le Pape and C. Vidal, "Libéralisme et vécus sexuels à Abidjan," *Cahiers internationaux de sociologie* 76 (1984): pp. 111-118.

<sup>4</sup> M. Epprecht, *Hungochani: The History of a Dissident Sexuality in Southern Africa* (Montréal: McGill-Queen's University Press, 2004).

<sup>5</sup> M. Epprecht, *Heterosexual Africa? The History of an Idea from the Age of Exploration to the Age of AIDS*. (Athens: Ohio University Press, 2006).

<sup>6</sup> C.I. Niang et al., "It's raining stones: stigma, violence and HIV vulnerability among men who have sex with men in Dakar, Senegal," *Culture, Health and Sexuality* 5(6) (2003): pp. 499-512.

<sup>7</sup> R. Lorway, "Dispelling heterosexual African AIDS in Namibia: Same-sex sexuality in the Township of Katutura," *Culture, Health and Sexuality* 8(5) (2006): pp. 435-449; B. Luirink, *Moffies: Gay Life in Southern Africa* (Cape Town: Ink Inc., 2000).

<sup>8</sup> C.I. Niang et al., *Satisfaire aux besoins de santé des hommes qui ont des rapports sexuels avec d'autres hommes au Sénégal*, The Population Council, 2002.

<sup>9</sup> A.S. Wade et al., "HIV infection and sexually transmitted infections among men having sex with men in Senegal," *AIDS* 19 (2005): pp. 2133-40.

<sup>10</sup> A. Smith et al., "Men who have sex with men and HIV/AIDS in sub-Saharan Africa," *The Lancet* 374 (2009): pp. 416-422.

<sup>11</sup> Larmarange J., "Homosexuels masculins : une épidémie sous estimée" *Transcriptases* 138 (2008): pp. 61-62.

<sup>12</sup> Cáceres, C. et al., "Epidemiology of male same sex behaviour and associated health indicators in low- and middle-income countries: 2003-2007 estimates," *Sexually Transmitted Infections* 84 (2008): pp. 149-156.

<sup>13</sup> Wilson, D., "Overview of MSM epidemiology in the Global South," *The invisible Men: Gay Men and Other MSM in the Global HIV/AIDS Epidemic*, MSM pre-conference to AIDS 2008, on-line: [www.msmandhiv.org/documents/Wilson.pdf](http://www.msmandhiv.org/documents/Wilson.pdf).

<sup>14</sup> On-line: [www.theglobalfund.org/documents/replenishment/2010/The%20Global%20FUND%20SOGI%20Strategy%20Update.pdf](http://www.theglobalfund.org/documents/replenishment/2010/The%20Global%20FUND%20SOGI%20Strategy%20Update.pdf).

<sup>15</sup> The Global Fund to Fight AIDS, Tuberculosis and Malaria, *Proposal Form, Round 8: Republic of Mali*. August 2008. On-line: [www.theglobalfund.org/grantdocuments/8MALH\\_1714\\_0\\_full.pdf](http://www.theglobalfund.org/grantdocuments/8MALH_1714_0_full.pdf); The Global Fund to Fight AIDS, Tuberculosis and Malaria, *Senegal Proposal: Global Fund Round 9*, June 2009. On-line: [www.theglobalfund.org/grantdocuments/9SNGH\\_1911\\_0\\_full.pdf](http://www.theglobalfund.org/grantdocuments/9SNGH_1911_0_full.pdf).

<sup>16</sup> The Global Fund to Fight AIDS, Tuberculosis and Malaria, *Proposal Form, Round 6: Republic of Senegal*. August 2006. On-line: [www.theglobalfund.org/grantdocuments/6SNGH\\_1411\\_0\\_full.pdf](http://www.theglobalfund.org/grantdocuments/6SNGH_1411_0_full.pdf).