



HIV & HUMAN RIGHTS MITIGATION REPORT 2013: PAVING THE ROAD TO ZERO DISCRIMINATION

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Bantu Jangan Menchukum

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PAVING THE ROAD TO ZERO DISCRIMINATION

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Photo: International HIV/AIDS Alliance

Executive Summary

- MAC continues to work with the Ministry of Education on addressing HIV discrimination, working towards the removal of HIV status from application forms.
- People living with HIV continue to face discrimination in the workplace despite the infection having no correlation with losses in productivity.
- People living with HIV and people at risk of HIV continue to have a lack of access to essential medicines in police custody, including methadone and antiretrovirals.

Background

Advancements in HIV science mean that today people living with HIV (PLHIV) can work, study, play and participate in social activities without any impact on their productivity or interaction with others. HIV cannot be transmitted via skin-to-skin contact or through everyday social interaction. Antiretroviral (ARV) medicines to treat HIV are taken every day at the same time and received from doctors at regular intervals.

Yet, stigma and discrimination on basis of HIV status continue to persist not only in Malaysia, but also elsewhere. In Greece, it was found that employers discriminate up to 97.8% of males living with HIV and up to 98.8% of females living with HIV.¹ Multiple studies have proven that HIV-related stigma increases vulnerability, risk of HIV infection, and risk of depression².

Key affected populations such as persons who use drugs and transgender people are targets for harassment by law enforcement entities. This may include sexual harassment, physical and verbal abuse, deprivation of medicines while in custody, and extortion.

¹ Nick Drydakos, 'Labour Discrimination as a Symptom of HIV: Experimental Evaluation - The Greek Case' (2010) 52(2) *The Journal of Industrial Relations* 201-217

² Carmen Logie, LLana James, Wangari Tharao, and Mona Loutfy, 'Associations Between HIV-Related Stigma, Racial Discrimination, Gender Discrimination, and Depression Among HIV-Positive African, Caribbean, and Black Women in Ontario, Canada' (2013) 27(2) *AIDS Patient Care and STDs* 114-122. doi:10.1089/apc.2012.0296.



Methodology

As part of its European Union-funded Asia Action project, the Malaysian AIDS Council (MAC) has compiled a total of 17 discriminatory cases that were reported by PLHIV in 2013. These cases were reported to the MAC Policy Department who interacted with them directly to ensure accuracy of the accounts. Details were noted in a standardised form (see annexure). When transmitted between MAC and government agencies, names and identification details were blacked out. Actions toward mitigation of each case were taken within two weeks of receipt.

Data

	Sex			Age				Nature of Cases							
	M	F	TG	<18	18-25	25-40	>40	Employment	Education	Freedom of movement	Arbitrary Arrest	Access to Medicines	Physical abuse in prison	Harassment of Outreach Workers	Extortion/Corruption
Number of Cases	15	2	0	0	1	11	5	2	2	4	5	1	1	1	1

Progress Report

Education

The two complaints about discrimination by educational institutions concerned diplomas being withheld on account of HIV status and comments made by administrative staff that PLHIV could not obtain scholarships. Complaints were transmitted directly to the (now defunct) Ministry of Higher Education (MOHE) and the current Ministry of Education (MOE).



In regard to the former case, MAC approached the then-Deputy Minister of Higher Education Dato' Saifuddin Abdullah, who expressed concern that these practices were occurring. With MOHE's assistance, the diploma was released. In regard to the latter, on 28 March 2013, MAC received a written response from MOHE stating that no scholarships have ever been denied by the scholarship department on basis of HIV status.

Several problems persist – that these measures, while solving individual cases, do not provide a safety net for the prevention of discrimination on the basis of HIV status in the future. On 20 August 2013, we engaged the current Deputy Minister of Education Mr P. Kamalanathan, who was equally concerned about HIV discrimination in educational settings. MAC continues to work together with MOE to remove HIV from university application forms and scholarship forms. MAC is also working on educating university staff about issues such as confidentiality and discrimination.

Although applicants are also required to fill up history of other diseases, like cancer and diabetes, the stigma and discrimination attached to HIV is distinct and more widespread. Some officials expressed concern that if HIV status is not disclosed in the forms, the government would have difficulty providing medicines to the scholar in question. Given that first-line medication is free and that overseas students can be given a supply of medicines for a stretch of 6 months, this concern, while possibly applicable to cancer and diseases with more expensive medications, is inapplicable to PLHIV.

"Dulu Dekan minta daripada saya satu surat yang menyatakan bagaimana saya mendapat HIV, siapa rakan hostel saya, dan perkara berisiko yang telah saya buat untuk dijangkiti HIV. Dia berkata jika saya tak berjumpa dengan dekan dan pihak atasan, konvokesyen saya ditahan. Ini bermaksud, saya tidak akan dapat diploma saya juga."

"The Dean asked me to write a letter stating how I got HIV, who my hostel mate is, and all the risky behaviours I had participated in to get HIV. He said that if I don't see the Dean and top level management then they would block my convocation. This means I wouldn't get my diploma as well."

~FF, 23, male, university student, Kuala Lumpur

Arbitrary Arrest



Complaints received by MAC in 2013 were predominantly related to the planting of drugs by rank-and-file law enforcement officers on people who use drugs (PWUD). One complaint pertained to an officer requiring the PWUD to sell the drugs in question and return the monies obtained to him. Failure to do so would result in the threat of arrest. The Narcotic Crimes Investigation Department of the Royal Malaysia Police headquarters have worked very closely with MAC in terms of mitigating cases of *belanja*, as these cases are described in street slang. Disciplinary action was taken on the officer in question.

“Masa kena tangkap [dengan polis] tu, kitaorang duduk dua orang. Dia cakap: “nak lepas tak?” Saya cakap, “nak lah.” “So bayar RM8000.” 8000 tu depa nak, nak share 8 orang yang tangkap kami dua orang. Tapi saya tak bodoh. 8000 kalau ada pun baik simpan. Simpan untuk keluar lockup. Tak payah nak bagi kat depa. Kalau bagi pun, satu hari kena jugak.

“When I got arrested by police, we were sitting down, two of us. He said: “Do you wanna get out of this?” I said, “Of course I do.” “So you have to pay RM8000.” They wanted the 8000 to share among the 8 guys who arrested us. But I’m not stupid. Even if I had 8000 it’s better to save it. Save it for when I get out of lockup. There’s no need to give it to them. Even if I had given it, one day I’ll still get locked up.”

~AA, 21, female, began sniffing glue at age 9, Penang

Access to Medicines

Access to medicines in police custody – including antiretrovirals for HIV, epilepsy medication, and methadone for drug treatment – is an issue that MAC takes very seriously. In a study tour to Victoria, Australia in September 2013, three members of the Narcotic Crimes Investigation Department, Royal Malaysia Police, two MAC staff members and one official from The Human Rights Commission of Malaysia (SUHAKAM) met with the Medical Advisory Unit of the Victoria Police, a unit salaried by Victoria Police and stationed in integrated lockup centres.



In Victoria, each individual arrested and brought to the lockup centre will be assessed by a nurse.

This is not the case in Malaysia.

The complaint we received involved the wife of a person living with HIV facing significant difficulty in trying to ensure that her husband had access to his HIV medications in lockup. Because HIV medication must be taken at the exact same time everyday, obstacles like this increase the risk of a person becoming resistant to HIV medication.

Victoria Police consider the deprivation of medicines and potential deaths from deprivation of medicines as detrimental to community confidence in police. Such incidents are dealt with by the Professional Standards Command within Victoria Police as a disciplinary issue.

MAC feels very strongly about the need for health staff and provision of medication within lockup facilities and continue to work with the Ministry of Home Affairs and the Royal Malaysia Police to ensure that healthcare of PLHIV and persons at risk of HIV are brought up to international standards.

"Semasa tahanan, klien ini telah menyatakan dia adalah seorang pesakit HIV dan TB, dan waktu ditahan klien membawa bekalan ubat HAART (HIV). Dalam lockup tidak dibenarkan membawa ubat tersebut dan apabila waktu makan pihak polis tidak memberi klient ini mengambilnya. Selama 12 jam klien tidak makan ubat TB dan HIV."

"During arrest, the client said that he was a HIV and TB patient, and at time of arrest he was carrying the HAART (HIV) medication. He was not allowed to take the medication in and when it was time to take the medicine the police did not allow him to take it. For 12 hours the client did not eat his TB and HIV medication."

~HH, 40, female, outreach worker, Kuala Lumpur



The employment complaints in 2013 both involved private employers dismissing or withholding job contracts on basis of HIV status. MAC wrote letters to the corporations expressing concern of potential discrimination, and explaining that PLHIV do not have increased absenteeism/decreased productivity, and that HIV cannot be spread via normal everyday office interaction. One complaint remains unresolved due to closure of the employer in question, but the other complaint was dealt with promptly, resulting in the complainant being offered a job contract.

MAC continues to work with corporations in ensuring that discrimination does not occur. Although none of the complaints involved civil servants, we remain acutely aware that civil servants could face job security issues if diagnosed with HIV. As such, MAC encourages employers to sign on to the Code of Practice on Prevention and Management of HIV/AIDS at the Workplace, which provides a guideline on how to avoid discriminatory practices. MAC is also open to providing training and educational materials for human resource departments within corporations.

Conclusion

Key goals for 2014

1	Removing HIV status from application and scholarship forms for universities
2	Working with police to get health staff in integrated lockup centres
3	Streamlining procedures and systems for university administration and teaching personnel
4	Increasing the number of corporations to sign on to the Code of Practice on Prevention and Management of HIV/AIDS at the Workplace

Annexed to this document is the MAC human rights incident form, which can be faxed through to **03-40474210**. MAC maintains strict confidentiality of all details given on this form.



Majlis AIDS Malaysia

Laporan Insiden

No. Laporan :		Tarikh :	
Nama Penuh :			
No. KP :		Waktu :	
Jantina :		No. HP :	
Perkerjaan :		Bangsa :	
Orientasi Seksual :		Suntikan Dadah :	Pernah/Tidak Pernah
Laporan			
Tarikh Jangkitan HIV :			
Tarikh Kejadian :			
Lokasi Kejadian :			
Penjelasan Ringkas Tentang Insiden :			
Butir-butir Pemberi Laporan (Klien):	Butir-butir Penerima Laporan:		
Tandatangan:	Tandatangan:		
Nama:	Nama:		
Tarikh:	Tarikh:		
FOR INTERNAL USE ONLY			
Action(s)/Follow-Up Taken: National/State/District Authorities (Circle One)			
Date of Follow-Up Actions :			



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