Global trends in HIV criminalisation

Edwin J Bernard, HIV Justice Network, United Kingdom
Sally Cameron, Policy Analyst / Independent Consultant, Australia

BACKGROUND

HIV criminalisation describes the unjust application of the criminal law to people living with HIV based solely on their HIV status - either via HIV-specific criminal statutes, or by applying general criminal or public health laws.

The Global Commission on HIV and the Law[1], UNAIDS[2], the UN Special Rapporteur on the Right to Health[3] and the World Health Organization[4], amongst others, have raised concerns regarding the harm inherent in the unjust application of criminal law in the context of HIV on both public health and human rights grounds.

METHODS

As part of the research for our *Advancing HIV Justice 2* report, covering a 30-month period, 1 April 2013 to 30 September 2015, laws and cases were analysed by cross-referencing those recorded on the HIV Justice Network website with those documented by civil society organisations keeping records in their own countries, supplemented with data provided to the HIV Justice Network via private message.[5]

Cases in Russia and Belarus were collated retrospectively in March 2016 by a Russian-speaking consultant, based on data published by the Supreme Court of the Russian Federation and the Investigative Committee of the Republic of Belarus, respectively, supplemented by Russian-language media reports.

RESULTS

Seventy-two countries currently have HIV-specific criminal laws, rising to 101 jurisdictions when individual US states are included. Notably, 30 countries in Africa have such laws, including new overly-broad laws in Uganda (2014) and Nigeria (2015).

At least 61 countries have reported HIV-related criminal cases. This total increases to 105 jurisdictions when individual US states and Australian states/territories are counted separately.

However, not all countries have enforced HIV-specific criminal laws and other countries have applied general laws: 32 applied criminal or public health laws, 26 used HIV-specific laws and 3 (Australia, Denmark[6] and United States) have applied both.

During the 30-month period: April 2013 to October 2015, we found reports of at least 313 arrests, prosecutions and/or convictions in 28 countries.

The highest number of cases during this period were reported in:

- Russia (at least 115);
- United States of America (at least 104);
- Belarus (at least 20);
- Canada (at least 17);
- France (at least 7);
- United Kingdom (at least 6);
- Italy (at least 6);
- Australia (at least 5); and
- Germany (at least 5).

CONCLUSIONS

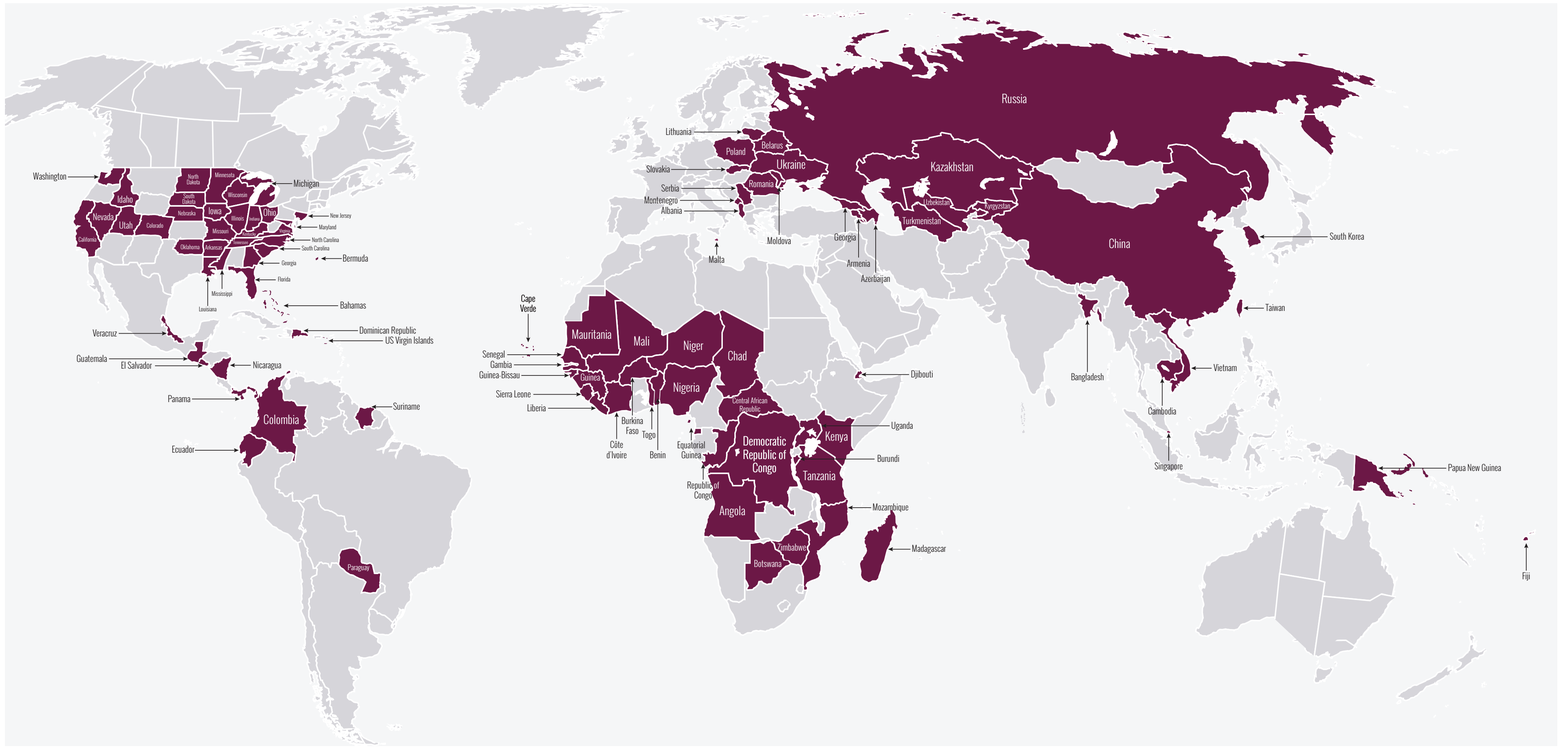
HIV criminalisation is a growing, global phenomenon that is seldom given the attention it deserves considering its impact on both public health and human rights, undermining the HIV response.[7]

In many instances, HIV criminalisation laws are exceedingly broad – either in their explicit wording, or in the way they have been interpreted and applied – making people living with HIV (and those perceived by authorities to be at risk of HIV) extremely vulnerable to a wide range of human rights violations.[8]

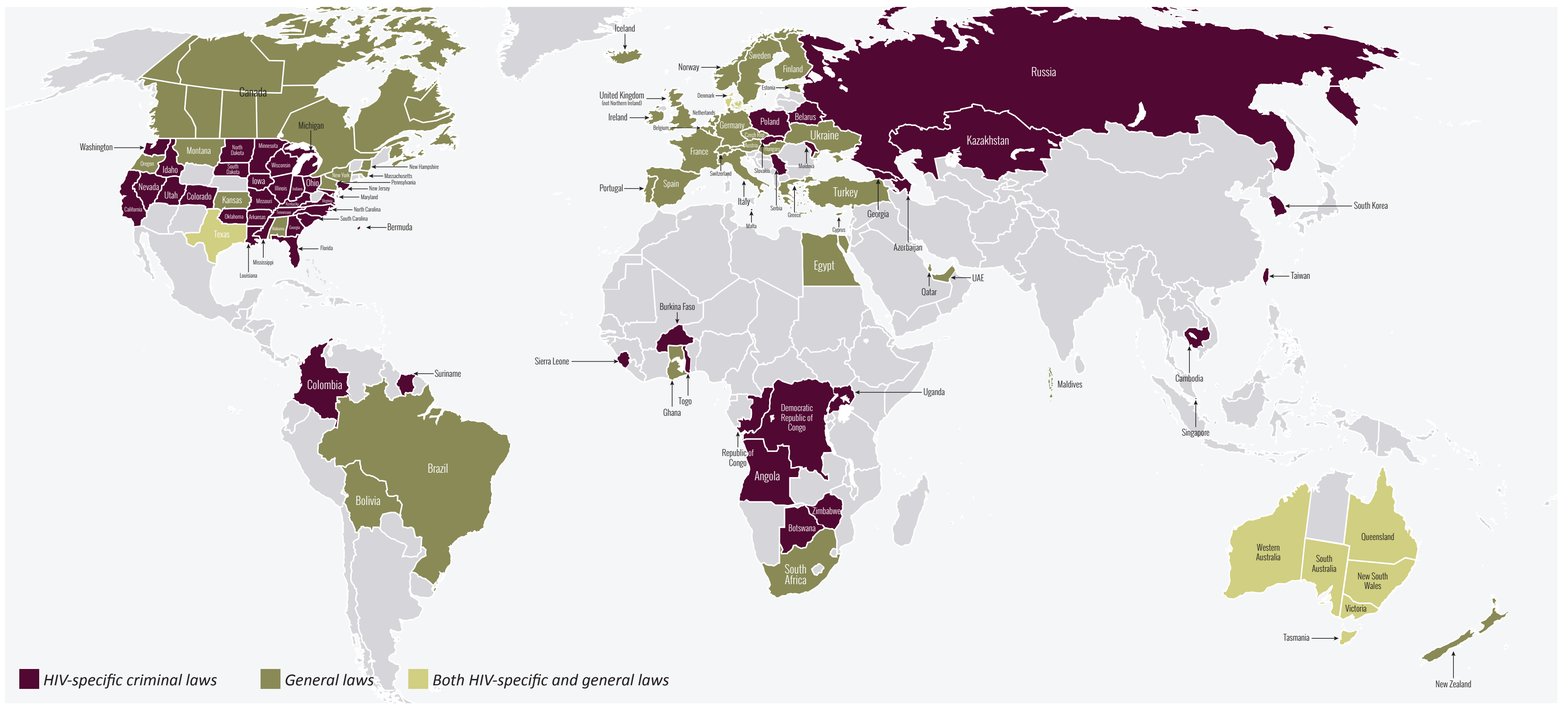
Many allow prosecution for acts that constitute no or very little risk by failing to recognise condom use, low viral load or by criminalising spitting, biting, scratching or oral sex. These laws – and their enforcement – are often based on myths and misconceptions about HIV and its modes of transmission.[9]

Despite increasing advocacy and global normative guidance, more focus and funding is required to end inappropriate laws and prosecutions, involving innovative strategic partnerships amongst multiple stakeholders.

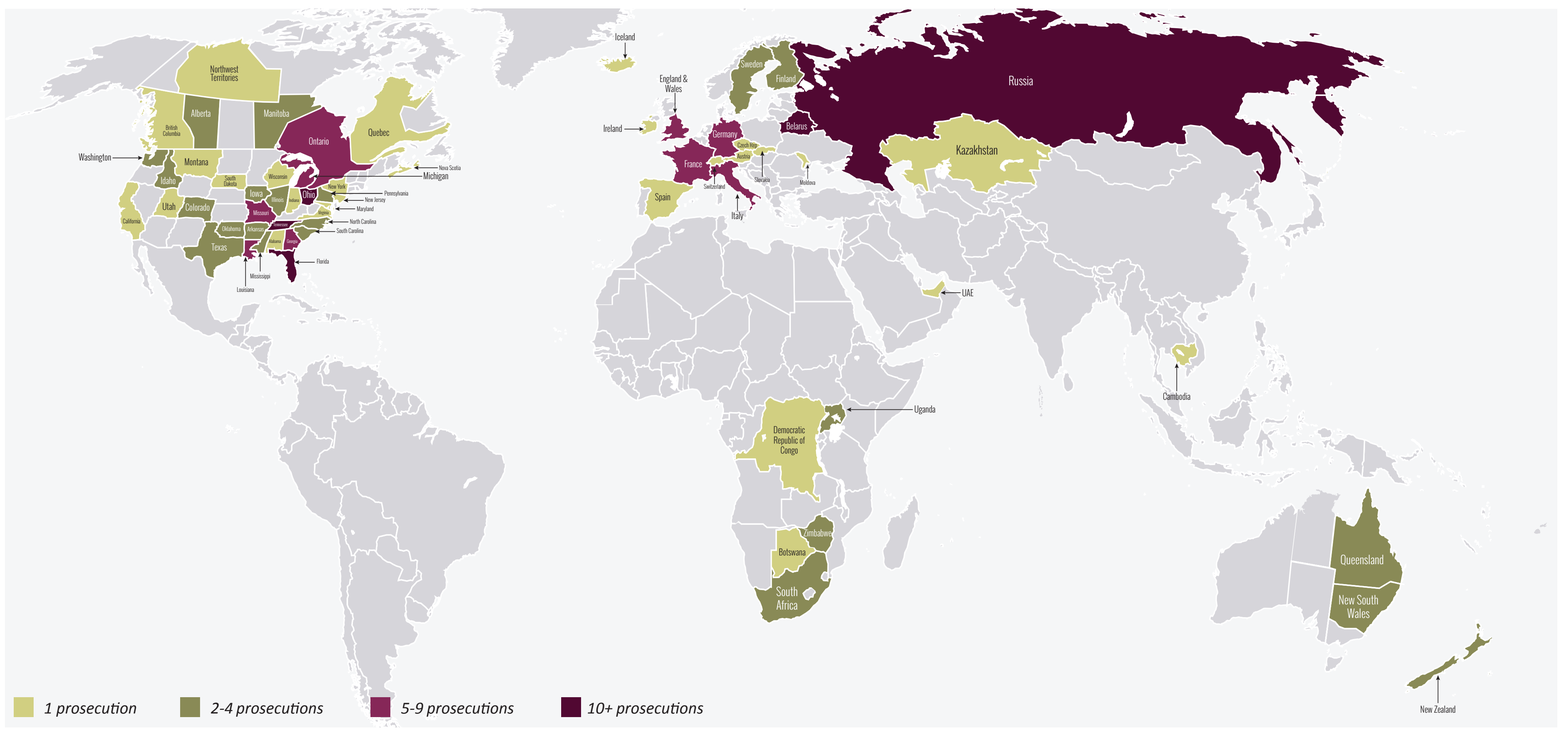
JURISDICTIONS WITH HIV-SPECIFIC CRIMINAL LAWS



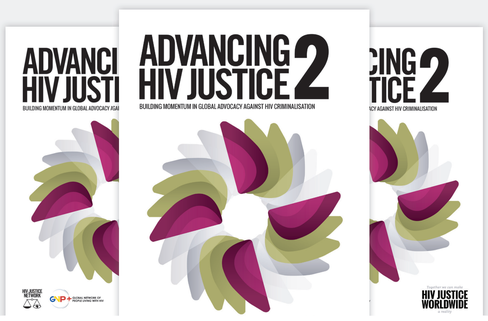
WHERE HIV-RELATED PROSECUTIONS HAVE EVER BEEN REPORTED



WHERE HIV-RELATED PROSECUTIONS HAVE RECENTLY TAKEN PLACE



THE FULL *ADVANCING HIV JUSTICE 2* REPORT IS AVAILABLE AT:
WWW.HIVJUSTICE.NET/ADVANCING2



HIV JUSTICE NETWORK

www.hivjustice.net
info@hivjustice.net

21st International AIDS Conference, Durban, July 2016.
Abstract THPED428

1 Global Commission on HIV and the Law. *HIV and the Law: Risks, Rights & Health.* July 2012. Available at: http://hivlawcommission.org/index.php/report
2 UNAIDS. *Policy Brief: Criminalisation of HIV Transmission,* August 2008. Available at: http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/basedocument/2008/20080731_jc1513_policy_criminalization_en.pdf; UNAIDS. *Ending overly-broad criminalisation of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations,* May 2013. Available at: http://www.unaids.org/en/resources/documents/2013/20130530_Guidance_Ending_Criminalisation
3 Anand Grover. *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, June 2010. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf
4 WHO. *Sexual health, human rights and the law.* June 2015. Available at: http://www.who.int/reproductivehealth/publications/sexual_health/sexual-health-human-rights-law/en/
5 Obtaining accurate information on HIV-related cases can be challenging – even more so in countries where such information is not freely available. Given the lack, or inadequacy, of systems to track HIV-related criminal cases in most jurisdictions, it is not possible to determine an exact number for every country in the world. Much of what is known about individual cases comes from media reports, and often the outcome of a reported arrest, or the legal disposition of a criminal case remains unknown. Other limitations that may favour case reporting in one jurisdiction, country or region compared with another, include: the role and "effectiveness" of public health offices in pursuing partner notification; whether or not individuals and communities rely on the criminal justice system to manage HIV-related disputes; accessibility to information including through the media and case records; and the existence of civil society organisations working on and/or monitoring the issue. Therefore, our data should be seen as an illustration of what may be a more widespread, but generally undocumented, use of the criminal law against people with HIV.
6 Denmark created an HIV-specific criminal law in 2001 when the Supreme Court found that the general law could not be used; this HIV-specific criminal law was suspended in 2011. Between 2001 - 2011, Denmark had been one of the top ten countries in the world for prosecutions *per capita* of people with HIV.
7 UNAIDS. *On the Fast-Track to end AIDS: 2016-2021 Strategy,* Geneva, 2016. Available at: http://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_PCB37_15_18_EN_rev1.pdf; IAPAC Guidelines for Optimizing the HIV Care Continuum for Adults and Adolescents, 2015 http://jia.sagepub.com/content/early/2015/10/23/2325957415613442.full.
8 Global Commission on HIV and the Law, op cit; Anand Grover, op cit. WHO (2015), op cit.
9 UNAIDS. *Criminalisation of HIV Non-Disclosure, Exposure and Transmission: Background and Current Landscape.* Geneva, 2012. Available at: http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/BackgroundCurrentLandscapeCriminalisationHIV_Final.pdf

#REPEAL19A

A successful campaign against the criminalisation of HIV in Victoria, Australia

A LASTING LEGACY OF AIDS 2014 IN MELBOURNE

Paul Kidd
Living Positive Victoria/
HIV Legal Working Group

Heath Paynter
Co Health Victoria

John Manwaring
Victorian AIDS Council



BACKGROUND

The criminalisation of HIV transmission, exposure and nondisclosure is a significant impediment to the HIV response in Australia, as it is in many countries. The state of Victoria is heavily overrepresented in the criminalisation of HIV, with about half of Australia's HIV-related criminal prosecutions occurring in that state. Victoria also had, since 1993, **Australia's only HIV-specific indictable criminal offence** – section 19A of the *Crimes Act 1958*.

Section 19A was one of the most serious offences on the Victorian statute book, carrying a **maximum penalty of up to 25 years' imprisonment** – equivalent to the maximum sentence for rape or armed robbery and higher than that for manslaughter. Only murder and treason carried higher penalties.

Against this background, the two Victorian HIV sector organisations, Living Positive Victoria and Victorian AIDS Council, undertook an advocacy process to address the high level of criminalisation in our state and **call for change** to be timed with the AIDS 2014 conference in Melbourne.

OUR AIMS WERE:

- To **increase community awareness** of the issue of criminalisation and its impact on the local HIV response
- To **build a dialogue** with lawmakers and policy experts about the ways that criminalisation drives stigma and infringes the human rights of people with HIV
- To **minimise the number of people facing charges**, by supporting alternatives to criminal prosecutions such as public health management processes and calling for prosecutorial guidelines that would ensure the criminal law was only used when absolutely necessary
- To **use the global focus** on Melbourne as host city of AIDS 2014 to achieve the repeal of section 19A

WHAT WE DID

In the lead-up to AIDS 2014, we developed an advocacy strategy specifically targeting section 19A. Our aim was to use the continued existence of this HIV-specific law to highlight **Victoria's poor record on HIV criminalisation**. We knew that key global agencies such as UNAIDS, the Global Commission on HIV and the Law, the Inter-Parliamentary Union and the HIV Justice Network had consistently condemned HIV-specific criminal laws, and that during the conference we would have strong support from around the world as we called for its repeal.

OUR ADVOCACY STRATEGY INCLUDED:

- Meeting with key legislators and allies within the state parliament to build awareness of the issue and our plans
- Developing a detailed policy discussion paper setting out the history of section 19A and the case for its repeal, drawing together legal, public health and human rights arguments in a single, accessible document
- A public awareness campaign, branded with the hashtag #Repeal19A, to increase community understanding of the issue of criminalisation and the need for government action
- Strong visibility of the #Repeal19A message at the conference, with T-shirts, posters, stickers and informational materials, including a guide to 'HIV and the law' for visitors to Melbourne
- Bringing together a coalition of like-minded organisations across the HIV and public health sector, as well as legal and human rights organisations, in support of our efforts
- Linking #Repeal19A to our agencies' broader political demands leading up to the conference and the state election scheduled to follow three months after

RESULTS

Our strategy had a powerful impact. Announcements were made by both of the major Victorian political parties during the conference, promising to take action. Following a change of government at the state election campaign, the new Labor government restated its commitment to full repeal of the law.

Section 19A was repealed, with support from all major political parties, in May 2015.

"By disproportionately punishing the transmission of HIV, [section 19A] stigmatises people living with HIV. It reinforces the misunderstanding that HIV infection is a 'death sentence'. This mischaracterisation has a particularly negative impact on the lesbian, gay, bisexual, transgender and intersex communities… All Victorians are entitled to the equal protection of the law and to live their lives free from discrimination."

Attorney-General Martin Pakula, Second Reading Speech, Legislative Assembly 15 April 2015

LESSONS LEARNED

The repeal of section 19A is a **major legacy of hosting AIDS 2014 in Melbourne.** Our campaign showed that a targeted and well-researched advocacy case can be developed in a complex area of public policy to build a compelling narrative for political change. We increased awareness of the issue of criminalisation among the gay community and obtained a clear commitment from government to ensure HIV is treated as a public health issue.

living positive victoria

VICTORIAN AIDS COUNCIL
WORKING TOGETHER

CONTACT: PAUL@KIDD.ID.AU / @PAULKIDD

The role of scientific experts in combatting unjust HIV prosecutions: a Canadian example

CÉCILE KAZATCHKINE,[1] RICHARD ELLIOTT,[1] EDWIN BERNARD,[2] PATRICK EBA[3]

[1]CANADIAN HIV/AIDS LEGAL NETWORK; [2]HIV JUSTICE NETWORK; [3]UNAIDS

1 Background

- In 2012, the Supreme Court of Canada (SCC) ruled that a person living with HIV can be prosecuted under sexual assault law for not disclosing their HIV-positive status before having sex that poses a "**realistic possibility of transmission**."
- Despite the well-established impact of low viral load on HIV transmission risk, the Court decided that a person could be convicted of aggravated sexual assault even if they had used a condom **or** had a low (which they defined as below 1,500 copies/ml) or undetectable viral load.

2 Description

- In response to the SCC decisions that were widely criticized for being at odds with scientific evidence and clinical practice, some medical experts started to mobilize. In particular, six leading Canadian HIV scientists and clinicians took ground-breaking action to advance justice by co-authoring the "***Canadian consensus statement on HIV and its transmission in the context of the criminal law***."[1]
- Based on a literature review, the Canadian statement was published in 2014 in a medical journal with the endorsement of more than 75 scientific experts from across the country.

3 Lessons Learned

Since notions of HIV transmission risk, as well as the nature of the impact of HIV infection on quality of life and life expectancy are the basis of HIV-related prosecutions in Canada, scientific experts have a crucial role to play to ensure that the criminal law is based on the most accurate and available scientific evidence rather than fear, stigma, ignorance or prejudice.

- The statement has proved extremely useful to Canadian advocates especially when engaging with policy-makers and the media, by providing visibility and credibility to their calls to end unjust prosecutions.
- The statement is now being used by defense lawyers representing people living with HIV, judges and scientific experts testifying in court with some positive impacts already emerging.
- The Canadian statement is also being used as a model by activists and lawyers internationally to mobilize scientists and clinicians to develop similar statements relevant to their own jurisdictions in order to bring science to justice.

4 Next Steps

As demonstrated in the Netherlands, Switzerland, England, Wales, Scotland, Germany, Sweden, Iowa (U.S.)[2] and in some cases in Canada, scientific evidence on HIV-related risk can influence positive legal change. But in many jurisdictions, people continue to be prosecuted for non-disclosure or perceived/potential HIV exposure despite a minimal, or even non-existent, risk of HIV transmission. Unjust HIV criminalization undermines public health and human rights. Internationally, it is vital that scientists build on recent successes and undertake joint efforts with advocates to bring science to justice.

Examples of impact in Canadian legal proceedings

Since the Supreme Court of Canada's 2012 ruling:

- Two lower courts concluded based on the expert scientific evidence before them that having a low viral load is sufficient to negate a "realistic possibility of transmission." One of the courts also concluded that using a condom alone is sufficient.
- In one case involving sex with an undetectable viral load, the crown invited the judge to enter an acquittal. In at least one other case, charges were dropped before the trial.
- In other cases, defense lawyers have used the statement to secure successful guilty pleas.

Notes

[1] M. Loutfy et al., "Canadian consensus statement on HIV and its transmission in the context of the criminal law," *Canadian Journal of Infectious Diseases & Medical Microbiology* 25, 3 (2014): pp. 135–140. Available at aidslaw.ca/lawyers-kit.

[2] E.J. Bernard, S. Cameron, P. Eba, C. Kazatchkine. *One Shouldn't Convict People for Hypothetical Risks: frustratingly slow incorporation of the prevention impact of antiretroviral therapy into criminal law and policy*. FRAD0101. To be presented on 22 July 2016 at 11 a.m. in Session Room 4.

Contact

Cécile Kazatchkine
Senior Policy Analyst
Canadian HIV/AIDS Legal Network
ckazatchkine@aidslaw.ca

PUNISHING HIV:

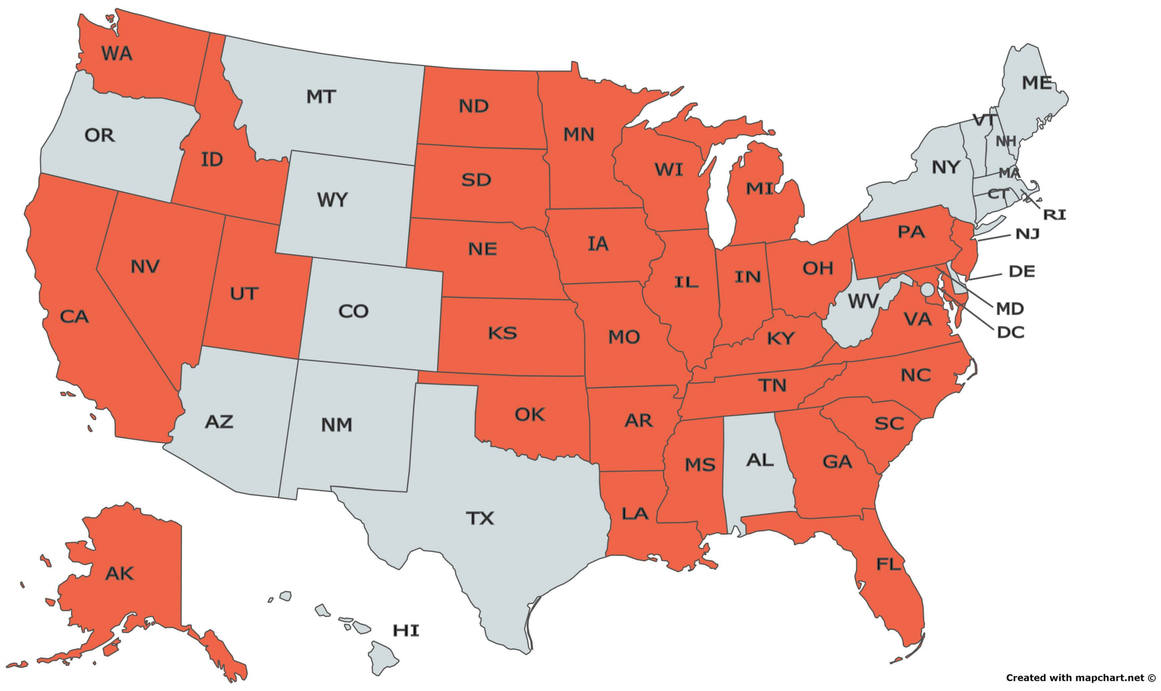
Does race impact sentencing under criminal HIV exposure and disclosure laws in the United States?

Trevor Hoppe, MPH, PhD
Department of Sociology, University at Albany, SUNY, thoppe@albany.edu

BACKGROUND

According to a recent CDC/DOJ report, thirty-two (32) U.S. states currently have HIV-specific criminal laws on the books. In general, these laws make it a crime for people living with HIV to either: 1) engage in sexual behaviors with a partner without disclosing their HIV-status beforehand; or, 2) expose another to HIV without their consent.

Map of the United States Highlighting States with Criminal HIV Exposure or Nondisclosure Statutes



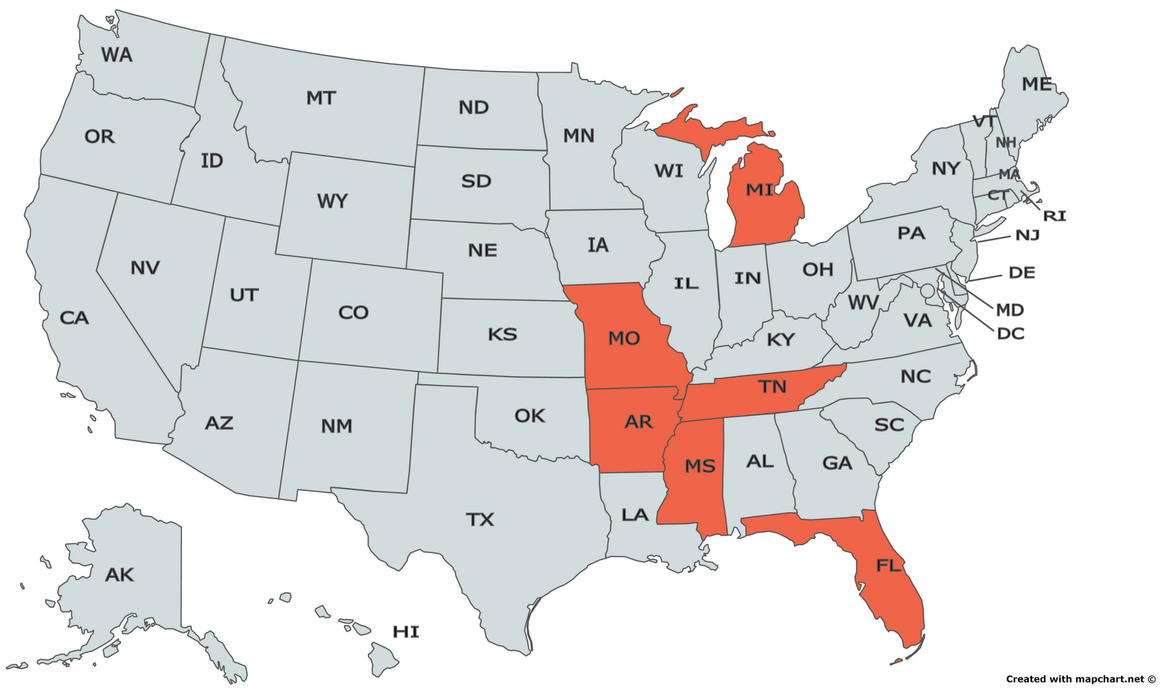
Social movements in the United States have recently drawn attention to the racial disparities in the American criminal justice system. Studies have shown that Black heterosexual men are disproportionately convicted under at least one U.S. state´s HIV disclosure law: Michigan. These findings raise questions about how evenly American HIV-specific criminal laws are applied.

However, no study has yet examined whether there are racial or gender differences in the length of criminal sentences handed out under American HIV exposure and disclosure laws.

METHODS

This study draws on an original dataset of convictions under HIV-specific criminal laws in five U.S. states: Arkansas, Florida, Michigan, Missouri, and Tennessee.

Map of the United States Highlighting States Studied in this Research Project

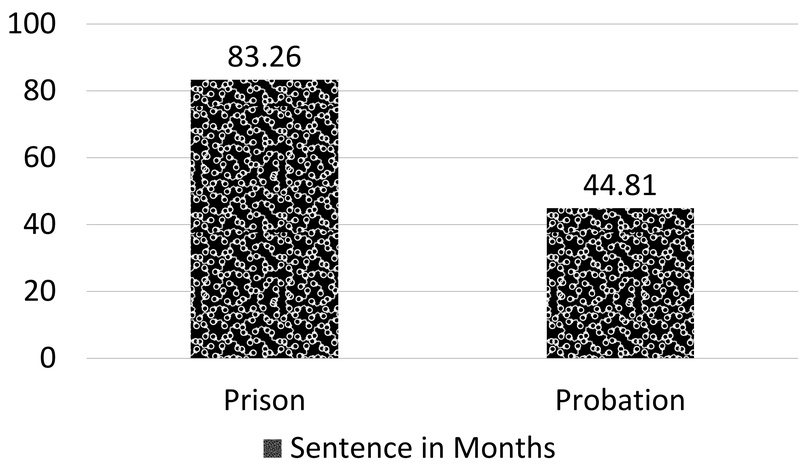


Data describing convictions between 1990 and 2010 under each state´s HIV-specific criminal law were obtained from:

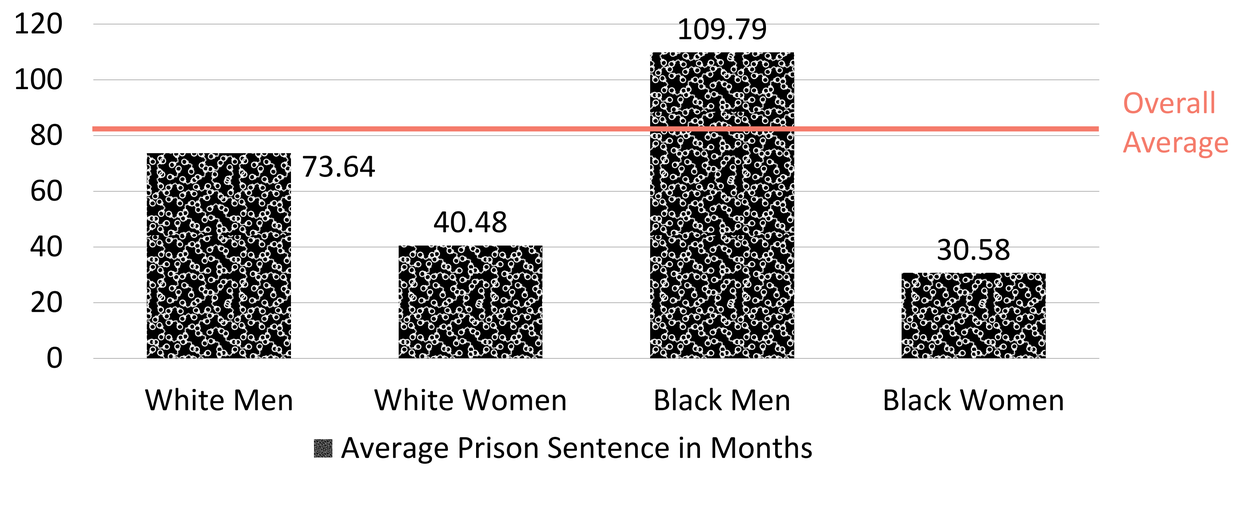
- State law enforcement (e.g. Departments of Corrections)
- State court administrators
- State-run sex offender registries (where applicable)
- Local circuit court clerks
- Newspaper reports

RESULTS

Prison was the most common sentence. Overall, 357 convictions were identified in the five states studied between 1990 and 2015. Of these cases, 307 cases were sentenced to incarceration in jail or prison while 50 were sentenced to probation. The average incarceration sentence was 83.26 months (nearly 7 years), while the average probation sentence was 44.81 months.



Black men were sentenced to three years longer in prison than white men: Overall, black men were assigned lengthier incarceration terms (109.79 vs 73.64 months for white men) and probation sentences (55.73 vs 35.57 months).



In Arkansas, Black men were sentenced to nearly a dozen more years in prison than white men: In four out of five states, black men were given greater prison sentences, with the greatest disparity observed in Arkansas (278.86 months vs. 139.50 for white men).

Overall, men were sentenced to lengthier incarceration terms (98.16 vs 36.35 months for women) and probation terms (46.51 vs 38 months for women).

Few Black women were convicted in most states, with the exception of Florida; in that state, sentences between Black and white women were similar (27.32 vs 25.42 months for white women).

DISCUSSION AND CONCLUSIONS

Overall, this study suggests that there are important racial and gender disparities in sentencing under U.S. HIV disclosure and exposure laws that mirror broader patterns in the American criminal justice system.

These findings suggest advocates may wish to appeal to broader frameworks of racial injustice in their efforts to reform these laws.

HIV criminalization in California: a comprehensive assessment of equity, effectiveness and enforcement of criminal laws targeting people living with HIV

Amira Hasenbush, J.D., M.P.H.[1] & Ayako Miyashita, J.D.[1,2]

[1]The Williams Institute – UCLA School of Law, [2]Los Angeles HIV Law and Policy Project – UCLA School of Law

Introduction

HIV criminalization is a term used to describe statutes that either criminalize otherwise legal conduct or that increase the penalties for illegal conduct based upon a person's HIV-positive status. Some HIV criminal laws do not require transmission of HIV, and in some states, HIV criminal laws criminalize conduct that poses a low or negligible risk of transmission, such as spitting or biting. California has four HIV-specific criminal laws, and one non-HIV specific criminal law that criminalizes exposure or potential exposure to any communicable disease.

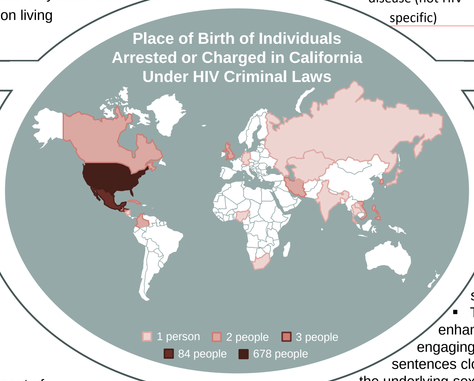
Methods

- Criminal Offender Record Information (CORI) data were obtained from the California Department of Justice for any individuals who had contact with the criminal justice system under the following statutes, from the time of enactment through June, 2014:
  - Cal. Penal Code § 647f
  - Cal. Health & Safety Code § 120291
  - Cal. Penal Code § 12022.85
  - Cal. Health & Safety Code § 120290*
- CORI data include any contacts with the criminal justice system, from arrest to sentencing
- Data were cleaned and analyzed using Stata version 13.1

*Note: Incidents involving Cal. Health & Safety Code § 120290 were dropped from the analysis unless they could be identified as having involved a person living with HIV

California HIV Criminal Laws

Code Section	Criminalized Conduct	Year Enacted	Felony/ Misdemeanor
Cal. Penal Code § 647f	Solicitation if the person tested positive for HIV in a prior solicitation or other sex offense that resulted in mandatory HIV testing	1988	Felony punishable by imprisonment for 16 months or longer
Cal. Health & Safety Code § 120291	Consensual unprotected sex in which an HIV-positive person does not disclose their status and has a specific intent to transmit the disease to their sex partner	1998	Felony punishable by imprisonment in state prison for three, five, or eight years
Cal. Penal Code § 12022.85	Having knowledge that one is HIV-positive while engaging in a nonconsensual sex crime	1988	Sentence enhancement punishable by imprisonment for three or more additional years
Cal. Health & Safety Code § 1621.5	Having knowledge that one is HIV-positive while donating blood, tissue, semen or breast milk	1988	Felony punishable by imprisonment for two, four, or six years
Cal. Health & Safety Code § 120290	Willful exposure to any contagious, infectious, or communicable disease (not HIV-specific)	1939	Misdemeanor

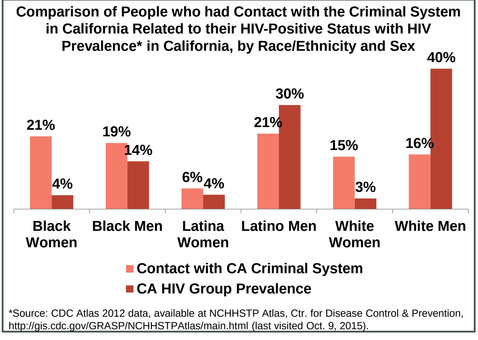


Early Findings

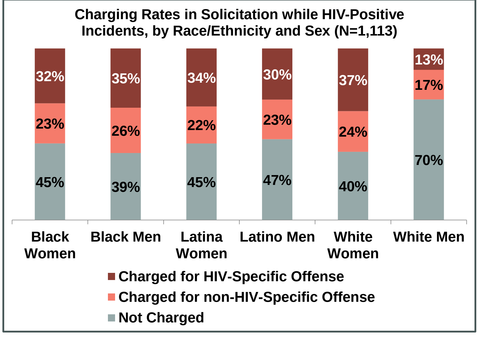
- Overall, 800 people have come into contact with the California criminal system from 1988 to June 2014 either under an HIV-related law or under the misdemeanor exposure law as it related to a person's HIV-positive status.
- The vast majority (95%) of all HIV-related criminal incidents impacted people engaged in sex work or suspected of engaging in sex work.
- More than half (54%) of all enforcement of HIV criminalization laws occurred in Los Angeles County, but only 37% of people living with HIV/AIDS in California have lived in Los Angeles County.
- Every incident in which one or more HIV-specific charges were brought resulted in a conviction (385 out of 385 charges), and 90% of convictions led to sentences of immediate confinement.

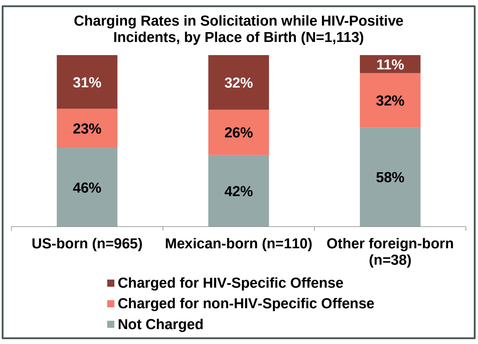
Early Findings Cont'd

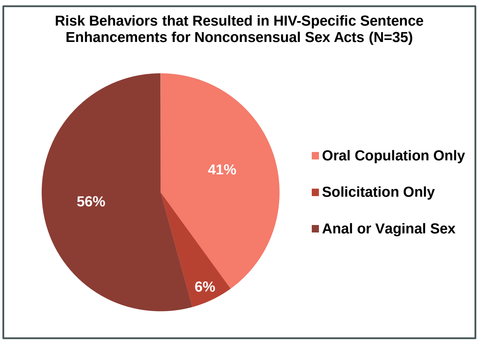
- The length of sentences varied with the different HIV-related crimes:
  - Those convicted of solicitation while HIV-positive were sentenced to an average of two years.
  - People convicted of exposure to HIV with intent to transmit were sentenced to about 4.5 years.
  - Those convicted of the sentence enhancement for being HIV-positive while engaging in a nonconsensual sex act received sentences closer to five and a half years, including the underlying sex offense criminal sentence.
  - People living with HIV/AIDS who were convicted of the misdemeanor exposure law were incarcerated for 45 to 90 days.
- Among HIV-related sex work incidents, White men were significantly less likely to be charged with an HIV-specific crime (12% vs. 31%) and significantly more likely not to be charged with any crime (71% vs. 42%) than all other race/ethnicity/sex groups. All association tests using chi2 test of independence were significant, p. <.001.

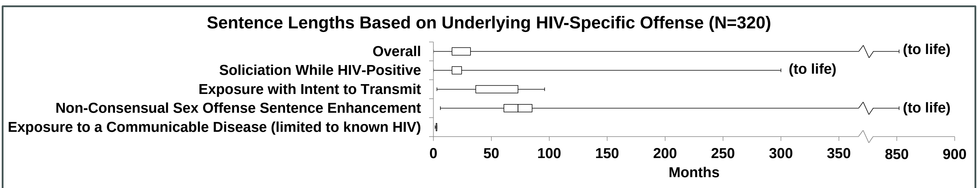


*Source: CDC Atlas 2012 data, available at NCHHSTP Atlas, Ctr. for Disease Control & Prevention, http://gis.cdc.gov/GRASP/NCHHSTPAtlas/main.html (last visited Oct. 9, 2015).









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Contact: hasenbush@law.ucla.edu

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HIV criminalisation in Sub-Saharan Africa: Failure to uphold scientific, medical and human rights recommendations

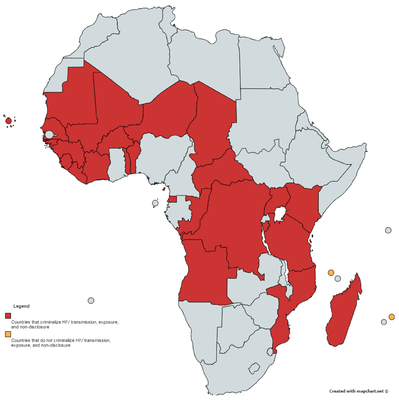
Eba P[1], Bernard E,[2] Kazatchkine C,[3] Cabal L[1]
[1]UNAIDS; [2] HIV Justice Network; [3] Canadian HIV/AIDS Legal Network

Background

- In the past 15 years, 27 sub-Saharan African countries have adopted HIV-specific laws. These laws raise serious public health and human rights concerns, including with regard to punitive provisions that allow for overly broad criminalisation of HIV non-disclosure, exposure or transmission.

- The *2013 UNAIDS guidance note on ending overly broad HIV criminalisation* provides scientific, medical and human rights evidence and arguments to analyse and challenge these punitive provisions.

African Countries with HIV-specific laws



Methods

The study reviewed 26 out of 27 HIV-specific laws in sub-Saharan Africa as of July 2014. HIV criminalisation provisions in these laws were analysed against six key recommendations of the 2013 UNAIDS guidance:



UNAIDS guidelines for ending unjust HIV criminalisation:

(i) limit criminalisation to intentional HIV transmission;
(ii) no criminalisation for non-disclosure or exposure;
(iii) no criminalisation for condom use;
(iv) no criminalisation where the person has low viral load or is on effective treatment;
(v) no criminalisation when undiagnosed; and
(vi) no criminalisation in case of consent to HIV risk prior to sex (e.g. via disclosure of HIV status)

Results

The review of HIV-specific laws in sub-Saharan Africa shows that nearly all of the countries (24 out of 26) criminalise HIV non-disclosure, exposure or transmission.

- In 16 countries, vague criminal law provisions could be used to prosecute a woman who transmits HIV to her child during pregnancy, delivery or breast-feeding.
- 16 countries allow for the criminalisation of people living with HIV even when they engage in protected sex (condom use).
- In 16 countries, disclosure of HIV positive status before sex does not preclude criminal liability.
- In 17 countries, people can be prosecuted even if they did not know their status at the time of the offence.
- In 17 countries, people living with HIV can be prosecuted even if they are on effective HIV treatment or have low viral load.
- 8 countries criminalize HIV non-disclosure and 12 countries criminalise potential or perceived HIV exposure (where transmission did not occur)
- 7 countries allow for criminal liability on the basis of negligence or recklessness as opposed to the intentional transmission.

Conclusion

- HIV criminalisation provisions in HIV-specific laws in sub-Saharan Africa fail to take into account best available scientific and medical recommendations provided in UNAIDS 2013 Guidance note.

- These provisions are contrary to human rights and are likely to compromise effective HIV responses.

- This study calls for further efforts to address overly broad criminalisation to ensure that they are in line with best available scientific and medical evidence.

Conseil national du sida et des hépatites virales

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CRIMINAL RISK FOR PEOPLE LIVING WITH HIV AS A RESULT OF UNPROTECTED SEXUAL RELATIONS

AIDS 2016
DURBAN, SOUTH AFRICA JULY 18–22, 2016
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THPED423

M. Celse, P.-Y. Geoffard, J.-P. Couteron, A. Guimet, J.-P. Dozon, J. Massot, P. Mathiot, S. Musso, P. Yeni, P. Gaudin,
« Criminalisation » commission of the French National AIDS Council (CNS)

In France, **sexual HIV transmission and/or exposure to transmission risk may constitute a criminal offence**, under certain conditions. People living with HIV (PLHIV) are not familiar with these conditions, and nor are the prevention and care providers. In order to provide specification, the French National Aids Council (CNS) has conducted an in-depth legal analysis of the 23 criminal proceedings for HIV transmission and/or exposure decided by the French courts.

THE LEGAL GROUNDS OF PROSECUTION

- Unlike in certain countries, there is no legislation in France that makes specific reference to transmission of HIV or transmissible diseases.
- According to well-established case law since 1999, the prosecutions for HIV transmission and/or exposure are based on the offence of **"administration of harmful substances causing physical or psychological harm to another person"** ("administration de substances nuisibles ayant entrainé une atteinte à l'intégrité physique ou psychique d'autrui", or ASN), defined by **Article 222-15 of the French Criminal Code**.

Elements required to constitute the ASN offence

Actus reus (objective element)	*Mens rea* (intentional element)
▪ **Harmful substance**: any body fluid containing HIV *(sperm, pre-seminal liquid, vaginal secretions, etc.)* ▪ **Administration of the substance**: by any unprotected sexual relations, presenting a risk, albeit minimal, of HIV transmission *(vaginal or anal intercourse, oral sex, etc.)* ▪ **Actual harm to the victim's integrity** – either physical: *HIV infection* – or psychological: *in the absence of actual HIV transmission, the psychological shock and anxiety suffered by the victim upon being informed of the risk to which he/she was exposed*	▪ **The voluntary nature of the act is sufficient to constitute criminal intention**: *the fact of having decided to have unprotected sexual relations upon the awareness of the risk for the victim.* Furthermore: – **Harmful intention is not required**: *it is not necessary for the perpetrator to have contaminated the victim on purpose.* – **The level of intention** accompanying the act *(concealing that he/she is HIV-positive/lying about his/her status/produce false results to manipulate the partner, etc.)* **is without effect on the characterization of the offence**, but may be taken into account in the assessment of the severity of the fault and determining the penalty.

THE SCOPE OF CRIMINALLY REPREHENSIBLE ACTS

The legal grounds and the elements of case law show that **any unprotected sexual relation between HIV discordant partners may incur the criminal liability of the HIV-positive partner**.

The simple exposure to the risk of HIV transmission, without actual transmission, is an offence that may give rise to prosecution and a sentence	Sentences for the simple exposure have only been pronounced as an incidental issue in matters including, in principal, a sentence for the actual transmission of HIV to at least one victim. Nonetheless, in law, there is nothing to exclude incriminating a person solely for simple exposure.
An unprotected sexual relation between HIV discordant couples is an offence committed by the HIV-positive partner, even if the HIV-negative partner is informed of the risk to which he/she is exposed and that he/she consents	The concealment by the perpetrator of his/her disease characterises nearly all the procedures. Nonetheless, in law, the criminal nature of the unprotected sexual relation shall not depend on either the concealment by the accused, nor the victim's consent, as the latter cannot exempt the perpetrator from his/her liability.
The formal awareness by the perpetrator of his/her HIV-positive status prior to the events is not an absolute condition to classify the offence	The awareness by the accused of his/her HIV-positive status prior to the events is nearly always certified by a previous HIV-positive result or engagement in HIV medical care. Nonetheless, the accused's liability may be initiated, even if he/she never tested for HIV, but could not ignore the likelihood of being HIV-positive given his/her at risk behaviour. Accordingly, avoiding to take an HIV test does not prevent the criminal risk.
Protecting the sexual relations by other means than systematic condom use presents a criminal risk	The admissibility of other means of protection than the condom, in particular the protection by the use of antiretroviral drugs remains uncertain at this stage, as the courts have not yet judged such cases. If the accidental condom breakage could be considered as a force majeure event exempting the perpetrator from his/her liability, some lawyers consider that if the prevention provided by the treatment fails, this could, under law be apprehended as a non-exempting uncertainty.

THE PENALTIES INCURRED

Criminal charges according to the seriousness of the infringement	Jurisdiction	Maximum penalty incurred
Actual transmission of HIV		
▪ **ASN** *(art. 222-15)* **having resulted in a mutilation or permanent disability** *(art. 222-9)*	Criminal Court	**10 years' imprisonment + a €150,000 (~170,000 USD) fine**
▪ **With aggravating circumstances** *(art. 222-10)* [a]	Court of Assize (French higher criminal court, involving a jury)	**15 years' imprisonment + a €150,000 (~170,000 USD) fine**
Exposure to HIV without transmission		
▪ **ASN** *(art.222-15)* **which resulted in a work incapacity of < 8 days or no work incapacity, with aggravating circumstances** *(art. 222-13)* [a], [b]	Criminal Court	**3 years' imprisonment + a €45,000 (~50,000 USD) fine**

[a] *Aggravating circumstances: being the victim's spouse, cohabitee or partner under a PACS (civil solidarity pact); premeditation*
[b] *In the absence of aggravating circumstances, a simple summary offence of the 4thclass (Art. R624-1, up to a €750 (~835 USD) fine)*

CONCLUSION

It is necessary to **improve the information for PLHIVs on their rights and legal responsibilities**. The prevention and support actions for PLHIVs must **incorporate the criminal risk dimension**.

Conseil national du sida et des hépatites virales
39-43, quai André Citroën | 75739 Paris CEDEX 15 France
michel.celse@sante.gouv.fr | T. +33(0)1 40 56 68 50 | **www.cns.sante.fr/en**

No tolerance for tolerance: constitutional challenge to Jamaican TV stations' refusal to air pro-LGBTI rights advertisement

MAURICE TOMLINSON, RICHARD ELLIOTT

Canadian HIV/AIDS Legal Network | Réseau juridique canadien VIH/sida

1 Background

In February 2012, Jamaican human rights activist Maurice Tomlinson approached several major TV stations in Jamaica to run a paid ad calling for respect for the human rights of Jamaican lesbian, gay, bisexual, transgender and intersex (LGBTI) people. Even though the Broadcasting Commission of Jamaica confirmed the ad does not violate any of Jamaica's broadcasting laws or regulations, the TV stations refused to air the ad. In October 2012, Tomlinson launched a constitutional challenge supported by AIDS-Free World, asking the court to declare that the TV stations' refusal to air the ad was a breach of his constitutional rights.

2 Legal timeline

In November 2013, the court ruled partly in Tomlinson's favour, finding for the first time that Jamaica's *Charter of Fundamental Rights and Freedoms* does protect homosexuals despite including no specific reference thereto. The court also confirmed that Jamaica's new constitution imposes obligations on private parties to respect Charter rights.

However, it ruled against Tomlinson's claim that the TV stations had breached his rights. Careful review of the judgments confirmed that the judges made a number of significant errors in their reasoning for denying this claim.

Therefore, in August 2014, Tomlinson, supported by the Canadian HIV/AIDS Legal Network, appealed the decision. The Jamaican Court of Appeal heard the appeal in February 2016, and the decision (as of July 2016) is pending.

3 Why is this a landmark case in Jamaica?

1. It is the first appeal to raise the issue of human rights of LGBTI people.
2. It is the first time the Court of Appeal will consider how respecting the rights protected under Jamaica's 2011 *Charter of Fundamental Rights and Freedoms* is the responsibility not only of the government, but also of private actors, including corporations. It is one of a handful of such cases to date in the world, drawing upon court decisions from other jurisdictions.
3. The decision of the Court of Appeal will have ramifications well beyond the immediate issue of airing an ad supporting human rights for LGBTI people. The Court will have to consider the critical role and responsibilities of large media corporations in a democracy, and its decision will also help define the scope of protection of human rights for all Jamaicans under their new constitution.

4 Why is this case important?

Stigma, discrimination and sometimes murderous violence remain pervasive threats to the health and human rights of LGBTI people in Jamaica, denying them universal rights to personal safety, dignity and equality. Homophobia and transphobia also drive LGBTI Jamaicans underground, away from HIV prevention, treatment, care and support interventions, impeding the government's willingness and ability to properly target HIV services to a population at heightened risk. These factors contribute to a vastly disproportionate HIV prevalence (32.3%) among Jamaican gay men and other men who have sex with men. An effective way to end homophobia and transphobia, and thereby help strengthen the response to HIV, is to ensure that LGBTI communities are visible and safe in Jamaica, rather than being forced to live in secrecy.

Contact

Maurice Tomlinson
Senior Policy Analyst
Canadian HIV/AIDS Legal Network
mtomlinson@aidslaw.ca

Reckless Endangerment: sex workers' health and human rights under the *Protection of Communities and Exploited Persons Act*

SANDRA KA HON CHU, JENN CLAMEN, RICHARD ELLIOTT, KATRINA PACEY, TARA SANTINI

1 Background

In 2013, Canada's Supreme Court invalidated several provisions of the *Criminal Code* in *Canada (Attorney General) v. Bedford* dealing with prostitution because they violate sex workers' rights by undermining their health and safety. One year later, the federal government introduced the *Protection of Communities and Exploited Persons Act* (PCEPA). Despite numerous attempts by sex workers and allies to engage with politicians, the PCEPA was passed in December 2014 without meaningful consultation with sex workers who are most affected by the law

2 Description

The PCEPA purports to address "exploitation that is inherent in prostitution" by criminalizing many activities that are essential for sex work to be carried out safely. These include

- communicating in public — or in any place that is in view of, or is next to, a school ground, playground or daycare — to offer or provide sexual services for consideration;
- purchasing sexual services; and
- "receiving a material benefit" from, "procuring" or advertising sexual services.

Sex workers, clients and third parties who work in the sex industry are captured under many of these provisions, which can include penalties of fines, imprisonment or both.

3 Findings

The PCEPA reproduces many of the harms produced by the previous laws that the Supreme Court held were unconstitutional.

Sex workers

- face increased isolation;
- have decreased ability to screen clients or to negotiate clear terms of services with clients;
- are less able to establish safe indoor work spaces;
- have decreased ability to access the services of third parties;
- are prevented from advertising their services; and
- are unable to benefit from health, safety, labour and human rights protections.

Street-based sex workers experience increased displacement, while all sex workers — particularly migrant sex workers — face barriers to accessing police protection.

The PCEPA has also led to a confused law enforcement mandate that conflates trafficking and sex work, resulting in the detention and deportation of sex workers. Consequently, sex workers face increased risk of violence, as well as greater stigma and discrimination.



4 Next steps

The fall of 2015 saw the election of a new federal government that has shown greater openness to listening to sex workers. Although sex workers and allies are prepared to return to court to challenge the PCEPA, they are hoping to work cooperatively with the federal government to create a new legislative framework that respects and protects sex workers' rights.

Contact

Sandra Ka Hon Chu
Director, Research and Advocacy
Canadian HIV/AIDS Legal Network
schu@aidslaw.ca

Advancing Public Health Through Strategic Litigation

Abstract No: TUPED409

Key Lessons from Canada, Kenya, Namibia, Uganda, and Ukraine

LESSON 1:
Strategic litigation should be part of a **BROADER, LONG-TERM ADVOCACY PLAN and involve PARTNERSHIP WITH SOCIAL MOVEMENTS** and allies, including **HEALTH EXPERTS** such as medical practitioners, epidemiologists, and health economists.





LESSON 2:
Funders should provide **MULTI-YEAR FUNDING TO A RANGE OF ORGANIZATIONS** who can complement strategic litigation, including **COMMUNITY-BASED GROUPS** and organizations engaged in **MEDIA ADVOCACY.**

LESSON 3: Organizations should develop a **PLAN** to **IMPLEMENT JUDGMENTS** prior to litigation and should reassess it at various stages.

*****

LESSON 4: Organizations should consider an **INCREMENTAL APPROACH** to litigation, which **STRATEGICALLY BUILDS ON ORDINARY CASES**.



Additional lessons and a full report can be found at
https://www.opensocietyfoundations.org/reports/advancing-public-health-through-strategic-litigation

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Date: *19 July (12:30 -14:30) Poster Exhibition Area*

POSTER NUMBER: TUPED411

Legal Environment Assessments: *A tool to generate evidence for law, policy and strategy review and reform in Africa*

Empowered lives. Resilient nations.

Authors: A. Saha, C. Grant2, M. Getahun3, T. Sellers3

Institution(s): 1 United Nations Development Programme, HIV, Health & Development (BPPS), Addis Ababa, Ethiopia, 2UNDP Regional Centre for Africa Consultant, HIV Health & Development, Johannesburg, South Africa, 3UNDP Regional Centre for Africa Addis Ababa, HIV, Health & Development, Addis Ababa, Ethiopia

Background: The report *'Risks, Rights and Health'* of the Global Commission on HIV and the Law showed stigma, discrimination, punitive laws, police violence and lack of access to justice continue to fuel the HIV epidemic. It recommended conducting legal environment assessments (LEAs) as a method to generate evidence for changing unfavourable laws and policies pertaining to HIV. An LEA looks at HIV and human rights, and reviews legal, policy and regulatory frameworks in the context of HIV focussing on stigma and discrimination; women and gender; children and young people; criminal laws and key populations; and access to HIV treatment. In Africa, LEAs have been successfully used to generate evidence for law, regulation, policy and strategy review and reform and strengthen stakeholder capacities.

Description: With Norwegian and Swedish Government assistance, UNDP supported 10 African countries to conduct LEAs from 2013-2015. Guidance to conduct LEAs was developed and countries engaged with stakeholders (LGBTI, key populations, services providers, government ministries, the police, the judiciary and civil society), to build capacity and generate evidence on laws, policies, regulations and strategies pertaining to HIV, and to identify human rights barriers, challenges, and gaps. Evidence from the LEAs were used by governments to address gaps in their national policies and strategies, inform their global fund concept notes and engage in longer term law and policy reform.

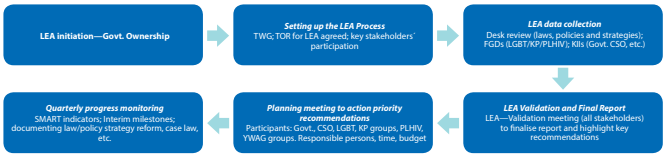
Box 1: A legal environment assessment pertaining to HIV, human rights and the law:

1) Is government-owned: by National AIDS Councils (e.g. Malawi, Nigeria, Seychelles, Swaziland and Tanzania); and/or by Ministries of Justice (e.g. DR Congo and Lesotho).
2) Is led by a technical working group comprised of the lead government entity and include relevant stakeholders including the civil society.
3) Uses a standardised guideline that was developed by UNDP and then tested and used in all the countries where LEAs were conducted in Africa *http://hivlawcommission.org/index.php/elibrary?task=document.viewdoc&id=176*
4) Has to be validated, disseminated and followed up to take forward its recommendations by careful planning of actionable steps through meetings using a standard guideline.
5) Is monitored to see whether the actionable recommendations have been taken forward in a time-bound manner.

Figure 1. Key interventions for national law review and reform (after Global Commission on HIV and the Law)[1]



Figure 2. The Legal Environment Assessment Process



Specific learning and results from national LEAs and their follow up in African countries (2013-2016):

a) Seychelles, 2016: The National Assembly reviewed the Penal Code (Amendment) (No.2) Bill, on 17th May 2016 and voted on 18th May "in favour of the proposal to amend Section 151 of the country's Penal Code that named sodomy a felony, punishable with up to 14 years in prison" with the result that "Same-sex acts are no longer illegal in the Republic of Seychelles".[2]

b) DR Congo, 2015: Revision of the provision in the Congo National HIV Act (Loi 08/011) that criminalises HIV transmission was proposed and accepted by the Cabinet in 2015 and is expected to be passed by the National Assembly in 2016. Revisions from the LEA process adopted by the Senate include **increasing the minimum age of marriage to 18 (from 14 for girls and 16 for boys) and removing requirements for spousal permission for women to work.** A key pillar articulated in the new National Strategic Plan for HIV and AIDS for DRC (2014–2017) *"supporting an enabling legal environment for people living with or affected by HIV".*[3]

Box 2: Capacity strengthening of LGBT on human rights, HIV and the Law during course of LEA in DRC lead to inclusion of lubricants in DRC National Medicines List.

Capacities of 50 MSM, lesbian, and transgender people in 2 provinces were strengthened on human rights, HIV and law as part of the LEA process. **The key population activists then advocated with the government for lubricants to be included as a medical commodity in the national medicines list.** As a result, the national medicines list was amended to include lubricants along with condoms, and ***currently lubricants supply has been ensured and their procurement will be covered by the DRC Global Fund grant.***

c) Malawi, 2015: LEA and its recommendations enabled engagement of human rights and key population organisations to mobilise opinion and to stop harassment of MSM. Malawi civil society/human rights organisations Centre for the Development of People (CEDEP) and Centre for Human Rights and Rehabilitation (CHHR) engaged with the Universal Periodic Review process of the Human Rights Council and made a joint submission on Malawi that submitted a shadow report (JS4)[4] in 2014, which was taken up for UPR during the May 2015 session on Malawi. As a result of the Review in May 2015, **Malawi accepted two recommendations on Sexual Orientation and Gender Identity, *first*** *to take effective measures to protect LGBTI persons from violence and prosecute the perpetrators of violent attacks;* and ***second*** *to guarantee that people of the LGBTI communities have effective access to health services including treatment for HIV/AIDS.* Action on this recommendation was taken when Malawi's National Strategic Plan for HIV and AIDS (2015-2020) committed to increase HIV services targeting MSM and to safe-guard human rights by "ensuring a stigma-free environment and protection of patient-rights in facilities".[5] Lastly, during December 2015, when two men who had engaged in consensual sex were forcibly arrested and harassed for sodomy, CEDEP engaged lawyers to file multiple suits against the police services and the government challenging the arrest. As a direct consequence of this action, the Malawi Government has dropped the sodomy charges against the two men, and the Minister of Justice formally committed to continue to implement the moratorium on arrests of men engaged in consensual sexual behaviour.[6]



d) Nigeria, 2015: The recommendations from the Nigerian LEA report and inputs received during the validation meeting is informing the development of a National Plan of Action with clear accountability frameworks from all stakeholders in 2016. The LEA findings and recommendations provided **inputs to the new draft NSP (2016–2020), particularly** in the section on 'Policy, Advocacy and Human Rights', where the **recommendations from the LEA have helped to prioritise key population interventions with clear indicators.**

Conclusion/Next steps:

Legal environment assessments generate evidence for countries to undertake law, policy and strategy reforms, build capacity of stakeholders and strengthen the voice of key and vulnerable populations to improve their access to rights affirming HIV services.

Abstract No.A-102108-14-EN

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POSTER NUMBER: WEPED360

Mapping of Policies, Laws and Services on GBV and HIV Intersections in Nigeria

Empowered lives.
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Authors: Dr. Olayinka Falola-Anoemuah, NACA, David Owolabi, UNDP RSCA; Addis Ababa; Barrister Adebanke Akinrimisi, National Consultant; Lagos; Ifeoma Madueke, Independent Consultant; Adekemi Ndieli, UN Women

Background: Studies have shown that exposure to violence is a strong predictor of HIV infection (WHO, 2000). Evidence continues to show strong linkage between gender-based violence (GBV) and HIV. In Nigeria, out of a population of about 170 million, an estimated 3.4 million people are living with HIV/AIDS. (Nigeria has the second largest number of people living with HIV/AIDS globally, 59% of whom are women). The national HIV prevalence among the general population is 3.4% and the national median prevalence among pregnant women is 4.1%. Prevalence rates have been found to be consistently higher among females (4.0%) than males (3.2%). Result of the National HIV/AIDS Reproductive Health Survey (2012) revealed that gender inequality is a significant driver for the HIV epidemic. A recent study on HIV-related intimate partner violence among pregnant women in Nigeria showed that HIV-positive pregnant women experienced physical violence in the course of the index pregnancy 6 times more than HIV-negative women; sexual violence about 4 times more than HIV-negative women. An assessment of the country's organizational readiness to deliver services related to GBV and HIV across many sectors is key a to stemming the spread of HIV and mitigating its impact.

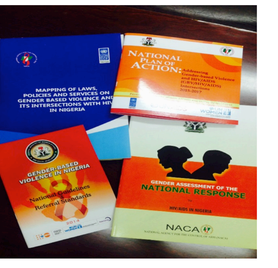
Description: The objective of the exercise was to map existing laws, polices, services and other mechanisms available in the country in the context of GBV and HIV. It also assessed the gaps in response and the opportunities available for engaging men in addressing the problem of GBV and its intersection with HIV as well as to address issues of women living with disabilities and their sexual and reproductive health rights. It was a follow up to the UNDP global initiative on GBV and HIV aimed at promoting the engagement of men and boys as partners for gender equality towards the reduction of women's vulnerability to GBV and HIV infection. The exercise was government led and anchored by NACA. The mapping exercise was conducted in 2013. The process included review of secondary data and gathering of primary data from different stakeholders in various sectors and parts of the country with a national level validation by stakeholders. The mapping revealed the existence of a wide range of abusive practices that predispose women and girls to HIV, including physical, sexual and emotional abuse.

Furthermore, patriarchal norms, beliefs and practices were identified which continue to shape socialization such that boys and men see women and girls as persons of less power and tools for satisfying their sexual desires. It equally revealed existence of a number of laws, policies, guidelines and services that address the issues of HIV and GBV but which lack the necessary linkages.

On the poor linkage of GBV and HIV/AIDS Programmes, a respondent who is a leader of an NGO has this to say:

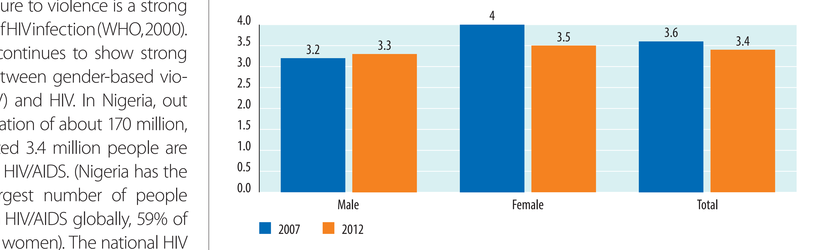
"Actors (NGO) working in the field of GBV and HIV programmes operate in parallel and sometimes in competition with each other. Every organization wants to be a superstar, hence instead of working together, they tend to compete with regards to achievements and laying claims on work being carried out".

According to another respondent from "Hello Lagos", rape and defilement is now like "pure water" with extremely high occurrence rates. Despite the fact that there are a lot of programs and youth directed initiatives such as the school clubs by "Hello Lagos", and other youth targeted programmes, the level of awareness on GBV is still very low and the tolerance levels of GBV high. Majority of the girls we work with feel that battery or physical abuse by a boyfriend or husband shows that he cares and loves her."

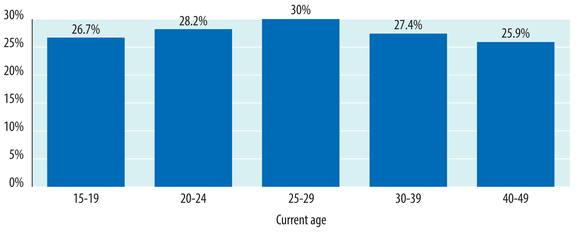


In addition, systemic weaknesses impede coordinated implementation of available policies and programmes. Findings of the mapping led to the development of the National Plan of Action (NPOA) on GBV/HIV Intersections and other gender and HIV related working documents in 2014.

HIV Prevalence in the General Population by Sex (NARHS 2007, 2012)



HIV Prevalence in the General Population by Sex (NARHS 2007, 2012)



Source: Women's Experience of Gender Based Violence in Nigeria: Findings of the 2008 National Demographic and Health Survey Report

Lessons Learned:

The findings and recommendations provided evidence-based advocacy for the passage of the Violence Against Persons Prohibition Act 2015 which had been with the National Assembly for up to ten years prior and the development of other strategic gender and HIV documents. A key lesson learned from the mapping is that advocacy for legal and policy reforms should be informed by evidence-based assessment aligned with global and regional documents. It gives hope that some of the punitive criminalizing legislations against most at risk populations will be reversed.

Next steps:

Stakeholders should be supported to own and implement the NPOA on GBV and HIV intersections at national and sub-national levels in a coordinated manner. Issues of HIV and GBV intersections and strategic incorporation of vulnerable populations including persons with disabilities are being integrated into the new National Strategic Plan (NSP).

Acknowledgements:

- Susana Fried, Deputy Cluster Leader, and Senior Gender Advisor, HIV, Health and Development, BPPS, New York
- UN Joint Team Group on AIDS, (UNJTA) including UNDP, UNAIDS, UN Women, & UNFPA; National Agency for the Control of AIDS (NACA), and Barrister Adebanke Akinrimisi, the National Consultant.

Abstract No. A-792-0403-06852

TUPED414

Strengthening the HIV-related legal and policy environment for key populations in the Democratic Republic of the Congo: A case study

L. Ferguson[1], A. Saha[2], G. Biock[3], S. Tamundele[4], T. Sellers[2], S. Gruskin[1].

Background

Following the work of the Global Commission on HIV and the Law, there has been increased interest in HIV-related legal and policy environments. Implemented by the United Nations Development Programme (UNDP) from 2013 to 2015, one such project sought to use the Global Commission's recommendations to improve HIV-related legal and policy environments for key populations including LGBT populations and women and girls in 19 countries in sub-Saharan Africa including the Democratic Republic of the Congo (DRC).



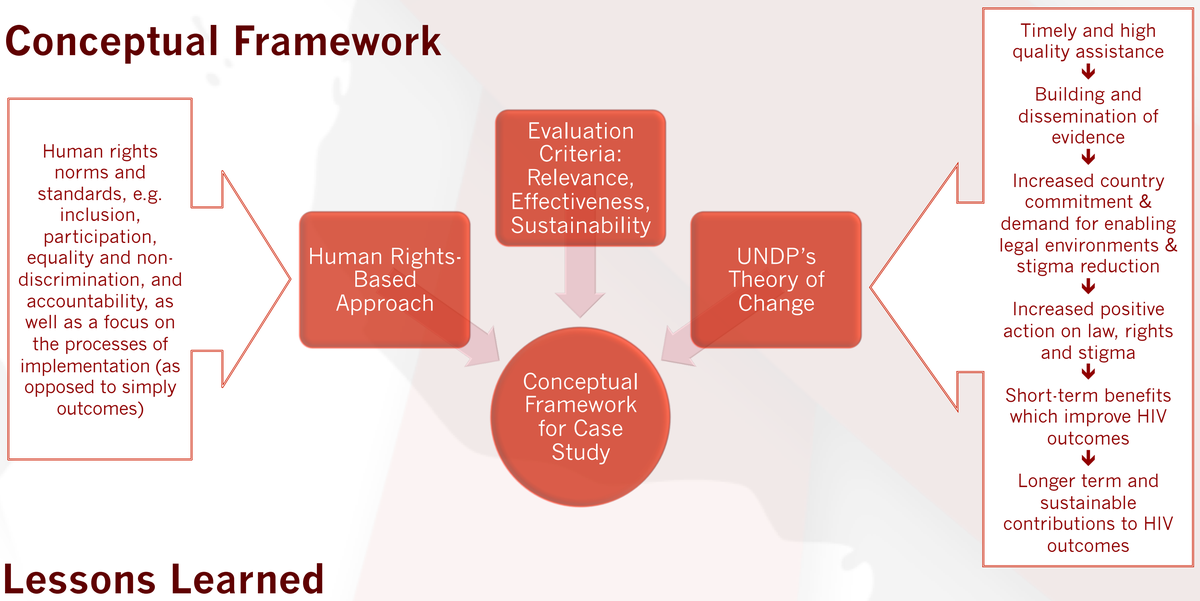
Description

In DRC, a critical mass of stakeholders, across different types of organizations including government, civil society organizations and United Nations agencies, each with access to different networks and champions met regularly for the last few years to undertake systematic and strategic advocacy. To maximize project learning, we conducted a desk-based document review and key informant interviews.

The Project

Implementing the Legal Environment Assessment (LEA) and National Dialogue (ND): The DRC LEA was a huge piece of work, undertaken with intensive research to identify law and policies that negatively impacted HIV and human rights. The ND included representation from all the provinces, bringing together a diverse set of actors, including parliamentarians who had never before been involved in these issues. The final LEA was validated by the Attorney General's office, which gave it legitimacy as a road map for efforts going forward.

Conceptual Framework



Lessons Learned

Remarkable strides were made to improve relevant HIV-related laws and policies in the DRC. Examples included 'creating an enabling legal and policy environment' as a key pillar of the National Strategic Plan on HIV; the addition of lubricant to the essential medicines list; and collective efforts to amend problematic provisions of the HIV law to better protect people living with HIV.

- Capacity building on HIV and the law (e.g. judges, health workers, parliamentarians) has been essential for raising awareness, ensuring appropriate service delivery, and creating an ever-increasing circle of advocates committed to positive change.
- The Ministry of Justice (MOJ) became truly involved in work around HIV and the law after the ND. The ability to work across sectors can rightly be seen as the key to the successes the project has seen to date. This has increased accountability for work relating to HIV and the law within the government and increased government efforts to build the capacity of LGBT communities.
- The Working Group (WG) composed of various parts of the MOJ and other government sectors, the UN system, academics, and a range of civil society organizations, and has been central to the advancement of HIV, law and human rights in the country. They reflected on issues, offered training and support to government and civil society institutions, worked to influence laws, policies, strategies and resource mobilization at the national level and helped the Focal Point and her office to act as needed. They wielded a great deal of influence in terms of law, policy and strategy but were clear that their work was to coordinate, provide tools, and try to catalyse and harmonize actions. Their dynamism was attributed to inclusivity and effective leadership.

Key Interim Findings on the Pathway to Legal Change	Specific Examples from the Democratic Republic of the Congo (DRC)
Assessment of the Legal Environment	• The DRC conducted an LEA in May 2013, gathering basic information on the legal environment, including international legal commitments and principles, regional commitments, and domestic laws and policies. • This was a participatory process culminating in a national dialogue (ND).
Opening Space for Discourse	• The ND was seen as a turning point in the DRC because of the inclusive atmosphere and participants' ability to express themselves freely, including on sex work and LGBT issues. Hearing directly from the sex workers and the LGBT community gave many stakeholders a different mind-set about engaging on these issues; key populations involved were extremely open, and the perceived safety of the space encouraged more and more people to speak out in unprecedented ways. • Despite initial scepticism about revising the HIV law, particularly the article on criminalization of transmission of HIV, the ND shifted mind-sets through working groups with stakeholders who had never before worked together engaging in open dialogue and creating consensus that the law had to be revised.
Change in Knowledge and Attitudes	• Out of the ND came increased recognition of human rights and general awareness of the law. For example, judges learned more about relevant laws and could intervene appropriately in relevant cases. • Perceptions that many ND participants held in relation to PLHIV or LGBT populations were changed from negative moral judgments to recognition of their equal rights. • Open discussion about HIV and demand for testing have increased. There was also an increase in discrimination cases suggesting that people are more aware of their rights and the possibilities for redress. • The LEA highlighted that the penal code contained a provision for criminalizing voluntary transmission of incurable diseases and thus the superfluity of a similar clause in the HIV law.
Changes in Priorities	• In 2013, actions were developed for the promotion of an enabling legal environment, including eight fora on HIV and the law, five Parliamentary fora at national level and five at provincial level. The same year, for the first time, local financial resources were mobilized for work on HIV and the law. In 2014-2015, the roadmap from the ND set priorities for action including advocacy to change the HIV law, capacity building and VCT campaigns.
Changes in Policies and Strategies	• During the ND, there was close examination of the articles of this law that criminalise the voluntary transmission of HIV and insufficiently address guarantees of medical confidentiality for people diagnosed with HIV. Specific recommendations included agreement that the article that focused on criminalisation of HIV transmission, should be repealed, and that parliament should amend the article relating to medical confidentiality in accordance with the SADC's Model Law on HIV and drawing on Senegal's Article 22 of Law No. 2010-03. • Following the ND, there was a national consultation for sexual minorities and human rights, including two training sessions in which the Minister of Justice was involved. • The inclusion of an enabling legal environment as a central axis of the national strategic plan was the result of the hard work of many champions, building on the awareness raising that occurred through the ND. Similarly, LGBT issues, including capacity building around human rights and the need for legal harmonization, were included in the latest funding application to the Global Fund. • Lubricant was put on the list of essential medicines thanks to community advocacy around a request that originated out of the ND.

Conclusions and Next Steps

The incremental gains in policies and related activities achieved to date should be appreciated and built upon as part of the process towards legal change. The fact that this work can take place to such positive effect in a conflict-affected country offers lessons to government, civil society and donors in other similarly situated countries.

Once amended, there is a pressing need to translate the HIV law into something that people at all levels understand and that resonates with them. Television, radio, music and theatre in local languages might all be useful media for bringing attention to the content of the law and its relevance to people's lives.

The interactions and collaborations between the Ministry of Justice, civil society and UN organizations has been key: "if you take away one of these three it will all collapse like a house of cards."

Quote from government representative, DRC





Further Information:
Mid-term evaluation report "Strengthening regional and national legislative environments to support the human rights of LGBT people and women and girls affected by HIV and AIDS in Sub-Saharan Africa": http://bit.ly/29KfRyz

Acknowledgements:
The evaluated project was launched by UNDP Regional Centre for Africa with the assistance of the Governments of Norway and Sweden.

Funding for this work was received from the United Nations Development Programme.

[1] Program on Global Health and Human Rights, Institute for Global Health, University of Southern California, Los Angeles, CA, USA
[2] United Nations Development Program, Regional Centre for Africa, Addis Ababa, Ethiopia
[3] United Nations Development Program, Kinshasa, Democratic Republic of the Congo
[4] Ministry of Justice and Human Rights, Kinshasa, Democratic Republic of the Congo

Peer to peer learning on preventing anti-homosexuality bills: The DR Congo and Burkina Faso case study

Empowered lives.
Resilient nations.

Authors: G. Biock1, B. Miligo2, A. Saha3, T. Sellers3

Institution(s): 1UNDP Country Office DR Congo, Programme Officer HIV and AIDS, Kinshasa, Congo, Democratic Republic of the, 2UNDP Country Office Burkina Faso, National Adviser HIV and AIDS, Ouagadougou, Burkina Faso, 3United Nations Development Programme, HIV, Health & Development (BPPS), Addis Ababa, Ethiopia

Background: In December 2013, a Deputy of the Congo DR National Assembly proposed the introduction of a draft bill to criminalize gay sex in the Democratic Republic of Congo, in order to "preserve African values," and to avoid "moral depravity" and protect the Congolese youth from "western morals."[1] In response, representatives of LGBTI organisations, PLHIV support group UCOP+, representative of the Working Group HIV and Human Rights, a representative of the Centre for Human Rights of the University of Kinshasa and representatives of UN partner organisations convened a meeting in March 2014. A key measure agreed was to develop an advocacy document that showed inconsistencies of any bill criminalising same sex relation could have with the DRC Constitution, international commitments, all international human rights instruments ratified by the DRC and the DRC HIV Law (Loi 2008/011). This document could be used during engagements with MPs, the President of the Congolese National Assembly, etc.

Situation description: In February 2015, in a similar situation, a political party in Burkina Faso introduced a draft Bill for discussion in the National Assembly, seeking to outlaw and 'repress' bestiality, paedophilia and 'same sex marriage'.[2] As during 2013-14 in the context of DRC, news of this was shared between organisations working with key populations, lawyers, civil society organisations (CSOs) and UN agencies to discuss preventive measures. The groups sought support to draft a strategy to address/counter this challenge.



Description of intervention: An emergency meeting of all stakeholders that included LGBT organisations, PLHIV networks, committees associated with the CNLS/NAC, and others was convened to plan a course of action.

The steps of the action plan agreed upon included:

1) Develop and prepare arguments for public health and human rights
2) Write a standard letter compiling the arguments
3) Send this letter to selected key recipients including President of the National Assembly, the Prime Minister, the President of the Government in Transition, the Minister of Justice and Promotion of human rights, UN Agencies, European Union, and to the embassies of selected foreign governments.
4) Identify resource persons from target to facilitate the appointment of advocacy
5) Conduct advocacy

This group agreed to avoid sensationalism and worked with utmost discretion with regard to the sensitivity of the subject and the current socio-political context.

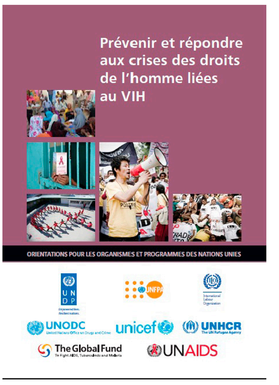
Actions undertaken subsequently included advocacy with the government, preparing counterarguments, corresponding with key government officials including the President of the National Assembly and Minister of Justice, convening a meeting of key HIV/AIDS stakeholders to discuss next steps, and preventing media sensationalism.

Role of DR Congo: In response to the urgent need shared by Burkina Faso UNDP, the UNDP DR Congo country office, which had developed a document for Parliamentarians titled "ARGUMENTAIRE TECHNIQUE CONTRE LA CRIMINALISATION DE CERTAINES POPULATIONS CLES" shared the document promptly with stakeholders in Burkina Faso. Additional documents shared and discussed included a document prepared by UN agencies and the Global Fund to prevent and respond to human rights crises similar to the situation in Burkina Faso.

Letters were sent with this argument to key stakeholders while interactions were held with select stakeholders to prevent furtherance of the agenda for the draft Bill, which was not taken up for discussion.

Box 1. Excerpts from the legal arguments forwarded in the 'Argumentaire' document against the draft bill that aims to prohibit and repress bestiality, paedophilia and same sex marriage in Burkina Faso:

- Background: The current Burkinabe Government in Transition consolidates the achievements of the Constitution of June 02, 2001, and supplements it with the "Charter of Transition." As Burkina Faso has ratified all the international declarations, conventions and international and sub-regional charters, the Government has the obligation to show results to the international community particularly with regard to respect for human rights of its citizens.
- In such a situation the draft bill before the National Transition Council (CNT) on Friday, February 13, 2015, for the purpose of "the prohibition and repression of bestiality, paedophilia and the marriage of persons of the same sex in Burkina Faso" is **redundant** in two aspects, as (a) **Paedophilia** is already prohibited and criminalised in Burkina Faso under Articles 411, 412, 413, 414 and 415 of the Penal Code; and (b) **marriage of persons of same-sex is prohibited** in under the Constitution, which provides that "marriage is based on the free consent of man and woman" (art. 23), and the Code of Persons and the Family (CPF) which states that "marriage is the celebration of a union between a man and a woman" (art. 237). Finally, procedurally it is seriously inconsistent with Section 101 of the Constitution of 2 June 1991, which sets out the respective areas of the Act and the regulations.
- Therefore, the proposed Bill targets the prohibition and suppression of adult consensual homosexuality: and this is in violation of the provisions of the Universal Declaration of Human Rights (UDHR), including, among other provisions, an arbitrary interference with privacy (UDHR article 12). It also contradicts Articles 2 and 26 of the International Covenant on Civil and political rights (ICCPR), and Article 2 of the international Covenant on Economic, Social and Cultural Rights (ICESCR). Burkina Faso is a signatory of all these international covenants.
- Finally, Burkina Faso is also party to the African Charter of Human and People's Rights (ACHPR) which, on 12 may 2014, adopted the Resolution 275 on the protection against violence and other human rights violations against individuals on the basis of their sexual orientation or alleged gender identity. This draft Bill would therefore be in contradiction to the ACHPR Resolution and should therefore, not be allowed to move forward.



Box 2. Excerpts from the Public Health arguments on the importance for public health interventions for men who have sex with men in Burkina Faso presented in the 'Argumentaire' document

- In Burkina Faso, the sero-prevalence is high among the MSM population compared to the national sero-prevalence. According to a study conducted by Johns Hopkins (2013) the prevalence among MSM was 4.9% in Bobo Dioulasso and 4.7% in Ouagadougou: a prevalence that was 4 times the sero-prevalence in the general population.
- Among the MSM interviewed, 79.9% said they were bisexual, 78% reported they were single, 15.4% reported they were married and 23.5% were parents. In addition, 88% of MSM reported early sexual debut (before 20 years of age), linked with less than 50% (43.8%) reported condom use. They also reported that they are subject of stigma and rejection at all levels including health services. As a result, they reported that they had no/poor access to preventative and/or curative health services for STIs and HIV.
- A strong case for provision of stigma-free health care and other services for MSM therefore exists in Burkina Faso – and that would be hampered or obstructed if the draft bill proposed by PAREN becomes the law of the land.

Lessons learned:

A rigorous legal environment assessment in one country leads to significant learning and national capacity building that can be used across nations if they share similar constitutional and judicial processes. In addition to technical expertise, the strong working group in DRC was the key institution in this case, and it convened at short notice to respond to the request from UNDP Burkina Faso for support. Collaboration between agencies, civil society and other stakeholders too were important to respond to similar emergencies.

Conclusion/ Next steps:

There is an urgent need to institutionalize preventing and addressing human rights violations through the establishment of a nation level working group or entity. Collaboration and peer to peer sharing of information and learning is important for strengthening South-South learning that can prevent adoption of harmful laws, policies and practices in the context of HIV.

1 LGBTQ Nation (December 15, 2013). "Democratic Republic of Congo to consider banning gay sex". Available at http://www.lgbtqnation.com/2013/12/democratic-republic-of-congo-to-consider-banning-gay-sex/?utm_source=dlvr.it&utm_medium=facebook. Accessed on 23.05.2016

2 Fasozine (9 Feb. 2015). "CNT: le PAREN va proposer une loi contre l'homosexualité". http://www.fasozine.com/cnt-le-paren-va-proposer-une-loi-contre-lhomosexualite/

Abstract No. A-792-0396-04519

WEPED348 - Poster Exhibition

TITLE

Establishing a community-owned system to monitor and response to HIV-related human rights challenges: lessons learnt so far

PRESENTER

Gavin Reid

AUTHORS

G. Reid[1], R. Lusimbo[2], G. Atwiine[3], J. Kehler[4], G. Caswell[1]

INSTITUTIONS

[1]International HIV/AIDS Alliance, Cape Town, South Africa, [2]Sexual Minorities Uganda (SMUG), Kampala, Uganda, [3]Community Health Alliance Uganda (CHAU), Kampala, Uganda, [4]AIDS Legal Network (ALN), Cape Town, South Africa

Background: Right, Evidence and Action (REAct) is an information technology (IT)-based human rights monitoring and response system used and owned by community-based organisations. Since mid-2014,REAct has been set up in Myanmar, Lebanon, Uganda, Senegal, South Africa and Zimbabwe by organisations of PLHIV, LGBTI people, migrants, women from key populations and sex workers. Through REAct, organisations document human rights-related barriers, including gender violence, to accessing HIV and health services. REAct produces information to inform provision of adequate rights-based programmes; responds to individual emergencies; generates evidence for advocacy, and generates data for improving rights-based programming.
In 2015, there was formative evaluation on REAct with two strands: an overview of its contribution to the existing body of evidence about human rights reporting and response systems; and a specific field evaluation in Uganda.
Description: The overall evaluation used a mixed method approach, including a desk review of information provided by participating organizations and in the public domain and appreciative inquiry/semi-structured interviews with 25 persons, including global key population networks, REAct implementers and strategic partners. In Uganda, a cross-sectional research design was adopted. Qualitative research with one-two-one and focus groups totaled 28 individuals (17 implementers, four managers and seven beneficiaries). Atlas,ti-computer software and Martus software were used for thematic qualitative data analysis.
Lessons learned: REAct has improved skills and human rights knowledge among target population, enhanced the sense of ownership and legitimacy of implementing organisations among their beneficiaries. It has contributed to providing responses to crises responses and generating evidence for advocacy, guided HIV response and programming among Key Populations and improved the diagnosis of human rights-related needs. There is need for further technical assistance on both human rights research and IT use; security risks need to be further factored in and addressed. The inherent suitability of the system needs to be reinforced with robust referrals and partnerships with human rights service providers.
Conclusions/Next steps: REAct contributes to the essential needs among communities to own their own monitoring and response system for human rights violations. REAct needs to be developed to contribute to generating evidence towards the fulfilment of the Sustainable Development Goals and to be openly accessible to other organisations.

More information

WEPED472 - Poster Exhibition

TITLE

Introducing rights-based HIV project in Myanmar (REAct) and its impact

PRESENTER

Nay Lin Tun

AUTHORS

N.L. Tun[1], G. Gray[2], M.T. Oo[2], S. Naing[2], E.M. Soe[2]

INSTITUTIONS

[1]International HIV/AIDS Alliance in Myanmar, Program, Yangon, Myanmar, [2]International HIV/AIDS Alliance in Myanmar, Yangon, Myanmar

Background: According to sentinel surveillance, HIV prevalence among female sex workers aged 15-19 and 20-24 was 5.5 % and 7.9% respectively (2013), compared to adult HIV prevalence at 0.53% (2011). UNAIDS (2014) estimated that 23 percent of HIV-infections in Yangon and Mandalay occurred among sex workers. Government of Myanmar and UN figures (2013) estimate that 40,000 to 80,000 of Myanmar women aged 15 to 49 are engaged in paid sex work.
The Suppression of Prostitution Act 1949 criminalizes sex work with penalties of imprisonment of one r to three years. The Act also limits sex workers'' access to healthcare and makes them vulnerable to threats and harassment from law enforcement.
Description: The REAct (Rights, Evidence and Action) project, a community-based monitoring and response system on human rights-related barriers to accessing HIV and health services, was started in Myanmar at the end of 2014. The Alliance in Myanmar works with four CBOs (2 for sex workers and 2 for MSM) to monitor and document cases of rights violations experienced by young people from key population groups. The beneficiaries receive emergency responses and support and referrals to a continuum of HIV, SRH, health and legal services.
Lessons learned: A total of 47 cases were documented using REAct. 10 cases from young men who have sex with men were documented and have resulted in all of the individuals being released from arrest. Of the 37 sex worker cases 13 are still in custody of law enforcement, despite all of the legal aid and services provided. We found that sex workers generally lack awareness about their arrest rights and because of their low legal literacy they are easy prey to police intimidation and harassment.
Conclusions/Next steps: In addition to documenting cases and providing emergency responses, additional skills in legal literacy and skills and negotiation are needed amongst sex workers and MSM. REAct data can be used to gain support and support policy makers and law enforcement to understand the impact of criminalization on HIV risk and key populations.

More information

Justice Programs for Public Health

Abstract No: TUPED410

Lessons from sub-Saharan Africa, Eastern Europe, and Central Asia

BACKGROUND

In the context of HIV, human rights violations both impede access to health services, as well as to underlying determinants of health, such as physical safety or housing. **Access to justice programs** are critical to address these issues.





KEY LESSONS FOR EFFECTIVE PROGRAMMING

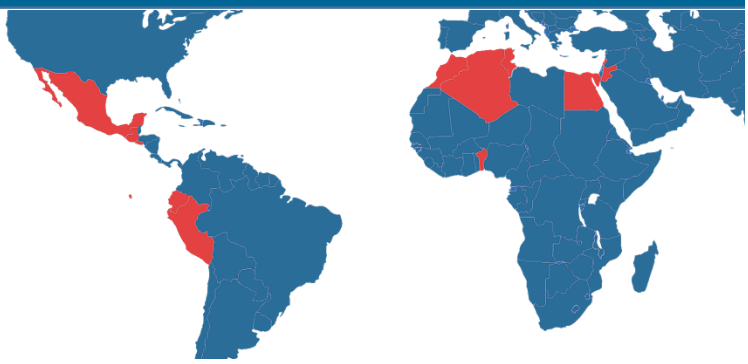
- Raising **rights awareness is a prerequisite** to legal services.
- **Lawyers need to meet communities "where they are at,"** working outside regular office hours, engaging in outreach, and partnering with communities.
- Trained **paralegals drawn from the communities they serve** are well-placed to provide rights education and "legal first aid," responding quickly to violations and addressing multiple needs.
- **Integrating legal and health services** leads to better access and more holistic care. Legal services for socially excluded groups often work best when **paired with psychosocial support**.
- With training and support, **customary justice structures can play an important role** in protecting rights and facilitating access to justice.
- Addressing a community's pressing daily concerns lays essential **groundwork for systemic change**.

Additional lessons and a full report can be found at
https://www.opensocietyfoundations.org/publications/justice-programs-public-health

OPEN SOCIETY FOUNDATIONS

IDLO
Creating a Culture of Justice
International Development Law Organization

LEGAL SERVICES: ESSENTIAL TO NATIONAL RESPONSES, YES, BUT WHAT ABOUT QUALITY AND COVERAGE?



GUATEMALA
Fundación Fernando Iturbide: Court ruling to protect transsexuals in prison

EL SALVADOR
Vida Nueva: Right to informed consent to sterilization affirmed

EGYPT
Al-Shehab: First court decision against HIV workplace discrimination

JORDAN
JSHR: TV programs and social media videos on HIV law and discrimination

ECUADOR
Coalición Ecuatoriana de personas que viven con VIH/SIDA (CEPVVS): Network of human rights defenders established

TUNISIA
ATL: Legal defense of key populations results in acquittal

BENIN
ABDD: HIV law guide for low-literacy clients

LEBANON
Skoun: Drug users in rehabilitation, not prison

MEXICO
Letra S: First online HIV legal service

ALGERIA
AIDS-Algerie: Legal services now included in National HIV/AIDS Strategic Plan

MOROCCO
OPALS: Telephone hot-line for HIV legal services

PERU
PROSA and the Instituto de Estudios en Salud, Sexualidad y Desarrollo Humano (IESSDEH) de la Universidad Cayetano Heredia : Price of AIDS medications reduced by 35%

IDLO acknowledges the financial support for the IDLO HIV & law program from the Ford Foundation and OFID.

The human rights and HIV/AIDS program:

A COMMUNITY-BASED PROGRAM TO PROTECT THE RIGHTS OF PEOPLE LIVING WITH HIV (PLHIV)

Authors: **Liz LACHARPAGNE**
Institution(s): COCQ SIDA, Programme Droits, Montréal, Canada

BACKGROUND

- Respect for human rights is a key component of HIV prevention strategies.
- COCQ-SIDA (Quebec-wide coalition of organizations working on HIV/AIDS) implanted a Human Rights and HIV/AIDS Program (**The "Program"**) in 2005.
- Its goal is to promote and protect the rights of People living with HIV (PLHIV) and support all COCQ-SIDA's members in their own strategies for promoting human rights.

METHODS

Monitoring violations of PLHIV's rights and developing common policies and advocacy strategies.

HIV INFO RIGHTS

An HIV information service (HIV Info Rights) was created in 2009 within the Program.

- This service provides to PLHIVs free information and legal assistance on matters related to their serological status (discrimination, insurance, access to care, criminalization ...).
- Since its inception, more than **1,200 people** have used HIV Info Rights: the number of users is increasing continuously, from 169 users in 2009/2010 to 230 in 2014/2015.

RESULTS

The Program has established a policy position on the criminalization of HIV exposure and has participated in several cases at the Supreme Court of Canada.

The Program has carried out a community-based research project on access to dental care for PLHIV. This research allowed the Program to inform dental care professionals about discrimination and access to care within the dental Program care services. An article about this research will be published in the next issue of the Canadian Journal of Public Health.

CONCLUSIONS

- The Program is conducting an advocacy project on discrimination in employment against PLHIV in particular due to the use of health questionnaires during recruitment process.
- In this context, it coordinated the production of a short film about this issue and conducted a survey on discrimination in employment.
- The Program plans to make concrete recommendations to political and judicial actors to promote access and retention in employment for PLHIV.
- The Program would also develop HIV Info Rights service and reach people who do not attend community-based organizations



Short film of fiction coproduced by COCQ-SIDA and Koma Films
Parfaite pour l'emploi / Perfect for the job on Youtube

COCQ-SIDA

Membre de la Coalition Internationale Sida

PLUS

WEPED352 - Poster Exhibition

TITLE

Criminalization of sexual minorities rights fostering stigma and discrimination: case of Burundi

PRESENTER

Star Rugori

AUTHORS

S. Rugori, I. Iradukunda, R.J. Ninteretse, C. Rumu

INSTITUTIONS

Mouvement pour les Libertes Individuelles, Bujumbura, Burundi

Background: On April 22, 2009, Burundi amended its Criminal Code to criminalize sexual relations between consenting adults of the same sex for the first time in its history. The State of Burundi has legal obligations to protect the rights of all its citizens arising from the Universal Declaration of Human Rights, and various treaties, pacts and international conventions that the State of Burundi has ratified, as well as under the Constitution of the State of Burundi. Nonetheless, sexual minorities in Burundi continue to be the victims of human rights violations and face increasing discrimination and stigmatization.
Description: The research was carried to produce first ever data on the extent of discrimination by le Mouvement pour les Libertes Individuelles - MOLI whose work is around documentation an research on human rights abuse and violations based on real or perceived sexual orientation and gender identity. The authors analyzed MOLI"s archives and verified the accuracy of the files and case documentation of MOLI employees, as well as other reports produced by the organization since 2010, where over 17 cases were documented.
Lessons learned: The research recognized remarkable progress has been made securing the right to health for sexual minorities since 2007, especially with regard to HIV/Aids prevention programs. However, the institutionalization of homophobia materialized by official intolerance and promotion of homophobic attitudes, and detention and threats of detention incite some health providers to not giving comprehensive services to MSM & Transgender while contributing that they go on background and prefer to not disclose their sexual practices to health providers. Also, sexual minorities identifying organizations were found denied registration impacting their ability to organize and mobilize various constituencies.
Conclusions/Next steps: Laws and punitive provisions against sexual minorities continue to hamper effective responses to HIV/Aids as well as for them to attain the highest level of health services as most of them fear of being viewed as criminals. Thus, initiatives on documenting and addressing issues human rights, sexual orientation and gender identity needs to be encouraged in other to adopt a human rights based approach to HIV/Aids.

More information

WEPED356 - Poster Exhibition

TITLE

Anti-gay Law, MSM and HIV: human rights influences and HIV/other STIs among men who have sex with men in Nigeria (MSM)

PRESENTER

Chiedu Chike Ifekandu

AUTHORS

C.C. Ifekandu

INSTITUTIONS

Population Council, HIV Division, Abuja, Nigeria

Background: Results from the recent Integrated Behavioural and Biological surveillance Survey (IBBSS) 2014 indicates that HIV prevalence among Men who have sex with Men is skyrocketing: From 13.5% (in 2007) to 17.2% (in 2010) and 22.9 (2014). Despite the tremendous donor money spent on MSM-HIV programming, the passing of the anti-gay law in Nigeria is having a huge impact on efforts already made to mitigate HIV new infections among this sub-population in Nigeria.

Objective: To measure the impact of the anti-gay law HIV programming in Nigeria
Methods: Between October to December 2015, a well-structured questionnaire were administered to the clients at the Strengthening HIV Prevention Services (SHiPS) Nigeria HIV Drop-in- Centre (DIC) for HCT/STI syndromic management services to MSM in Benue and Nasarawa States. The data were evaluated in a cross-sectional analysis. Logical regression was used to determine the correlates of the anti-gay law.
Results: A total of 436 MSM were reached. This figure indicates 65% of enrollment at the facilities before the signing of the antigay law in Nigeria. Mean age was 23 years +/- SD. HIV prevalence was 6.8%, 19% reported Anal warts cases, 11% for herpes Simples virus (HSV) and 6% for Gonorrhea. 67% visited the drop-in-Centre (DIC) two or more weeks after having the sign and symptoms of the STI, because they are concerned about the attitude of the Healthcare workers if they inform them of their same-sex practice. 39% reported engaging in self-medication before visiting the DIC. 13% were asked to pay double or more at a Health care facility (HCF) because of their sexual orientation and fear of being handed over to the law enforcement agencies. 42% have female sex partners in other to cover up suspicions they could be MSM by the general populations. More than half of the clients are aware of an MSM with an STI but not willing to visit the HCF due to the anti-gay law.
Conclusions: Criminalization of consensual sex among MSM is limiting their uptake of continuum of care and services at the various health facilities thus, increasing their vulnerabilities in increased risky behaviours.

More information

Working towards a TB & HIV free community

Opportunities to work with law enforcement, community members & political leaders to enhance the effectiveness of HIV prevention programmes for people who inject drugs in three South African cities

S. Shelly[1,2], A. Scheibe[3,4], N. Medeiros[5], A. Schneider[2], A. Lambert[6], M. Busz[6], J. Wildschut[2], R. Basson[2], H. Hausler[2]

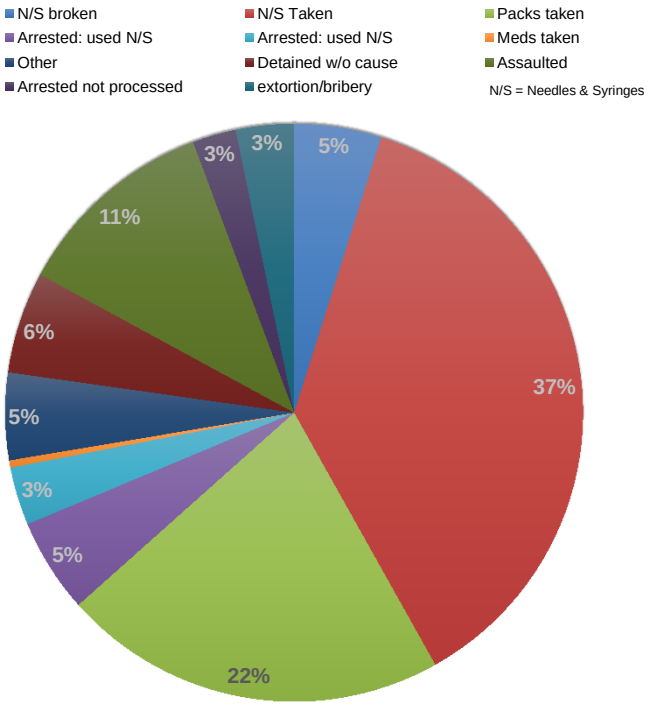
1 University of Cape Town, Psychiatry and Mental Health, Cape Town, South Africa, 2 TB/HIV Care Association, PWUD, Cape Town, South Africa, 3 Independent Consultant, Cape Town, South Africa, 4 University of Cape Town, Desmond Tutu HIV Centre, Institute of Infectious Diseases and Molecular Medicine and Department of Medicine, Cape Town, South Africa, 5 OUT LBGT Wellbeing, Tshwane, South Africa, 6 Mainline, Amsterdam, Netherlands.

Background

Wrongful arrest, confiscation of injecting equipment and assault contribute to high-risk injecting and unsafe equipment disposal among people who inject drugs (PWID). Human rights violations affecting PWID in South Africa have not been quantified. We aimed to measure these violations and map the electoral wards where they occurred in a needle and syringe programme (NSP) in Cape Town, Durban and Pretoria (South Africa). Political and community resistance to the NSP occurred between September and November 2015 in two wards; one in Pretoria and another in Cape Town.

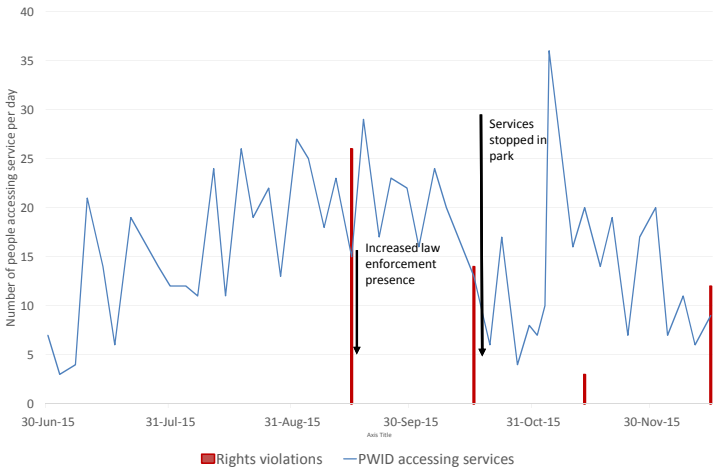
Methods

Data collection began in August 2015 as part of service delivery and included data on: confiscation of injecting equipment; arrest for needle and syringe possession; detention without cause or processing; physical assault, and wards where violation occurred. Data was recorded on paper forms, entered into a spreadsheet and analysed using frequencies, proportions and geospatial mapping.



Results

Between August and December 2015, 232 violations were reported (116 in Pretoria, 108 in Cape Town and 22 in Durban), namely: confiscation of injecting equipment (144), arrest without cause or processing (20), and physical assault (28). Fifty six per cent (65/116) and 75% (81/108) of the violations occurred in the wards where resistance to the NSP were experienced in Pretoria and Cape Town, respectively. In Pretoria, the needle return rate in the ward that experienced resistance dropped by 29% (350 to 250 per day) between August and November 2015. In Cape Town, the number of PWID accessing NSP services from the NSP mobile clinic between 1 November and 15 November 2015 in the ward experiencing resistance dropped from 30 to a low of 5 per day after increased law enforcement action and the forced relocation of the clinic in early November 2015 due to political pressure.



Conclusion

More human rights violations occurred in wards where political resistance to the NSP was experienced compared to wards where no resistance was encountered. Resistance and human rights violations negatively affected injecting equipment disposal and access to NSP services. The effectiveness of NSPs to prevent HIV infections among PWID could be improved through focused advocacy and training around evidence-based HIV prevention interventions for PWID within law enforcement agencies, the broader community and political leaders.

Correspondence:
shaun@tbhivcare.org