



# Legal Reform: Ending Official Discrimination against People Living with HIV and Key Populations

Policy Paper

Interagency  
Coalition on AIDS  
and Development



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## 1 WHAT IS THE ISSUE?

Laws in many countries discriminate against people living with HIV and members of other ‘key populations’,<sup>1</sup> such as gay and bisexual men and other men who have sex with men (MSM), transgender people, sex workers and people who use drugs. The existence of these laws makes it difficult to fight HIV. For that reason, and because such laws violate human rights, removing or reforming them is a top priority for community and civil society advocates worldwide. This goal is supported by most HIV scientists, doctors, donors, and global health groups such as the World Health Organization (WHO).

## 2 WHY LEGAL REFORM MATTERS TO PEOPLE LIVING WITH HIV AND COMMUNITY GROUPS

Legal reform matters because laws that discriminate against people living with HIV and other key populations violate their human rights and can leave them vulnerable to prosecution and incarceration as well as prevent them from accessing health care to keep themselves healthy and safe. The impact can reach across all parts of their lives. Whether legal or not, **discrimination always violates human rights**. Under these laws, the rights of people living with HIV and members of key populations can be legally ignored or violated. They and their partners, family members, friends and communities are at risk of abuse and harassment from police and of being arrested and sent to prison. They might lose their jobs, their houses, custody of their children and many other things that are important to them.

### **Most of these laws also are terrible for public health.**

There is plenty of evidence showing that they have a negative effect on a country’s HIV response. HIV and other infectious diseases such as tuberculosis (TB) and viral hepatitis will become even bigger health problems unless people are able and willing to know their status and to get quality, friendly care and treatment when they need it. These things are less likely to happen when people are worried about social and economic stigma and their personal freedom and security.

## 3 WHAT THESE LAWS ARE AND BACKGROUND INFORMATION

Two types of laws are in question. One type is often called ‘**HIV criminalisation**’: laws in this category are those that mention and focus on HIV directly. For example:

- HIV ‘nondisclosure’ and ‘exposure’ laws make it a crime for a person living with HIV to have sex without telling a partner their HIV status. It often does not matter under these laws whether condoms or other prevention measures were used, or whether HIV transmission occurred.
- Laws that make HIV ‘transmission’ a crime can be used to prosecute people living with HIV for having transmitted the virus to another person. In some places, these laws include language saying that a crime occurs only when transmission is ‘intentional’ or ‘deliberate’. But people living with HIV are often charged with this crime when there is no evidence of any intention to transmit.

As of 2016, about 70 countries have laws of this kind. They include laws that refer only to HIV as well as laws in which HIV is one of two or more diseases that are mentioned.<sup>2</sup> About 30 countries in sub-Saharan Africa have laws that can be interpreted as ‘HIV criminalisation’ in one or more areas.<sup>3</sup>

<sup>1</sup> The term ‘key populations’ refers to people and communities with higher-than-average rates of HIV and greater risk for becoming infected with the virus. Men who have sex with men (MSM), sex workers and people who inject drugs are key populations in nearly every country. Other people and communities are considered key populations in some countries, including migrants, prisoners and adolescent girls. In most countries and regions, members of key populations are less likely on average to be get HIV prevention and treatment services due to stigma, discrimination and many legal, social and cultural barriers.

<sup>2</sup> HIV Justice Network: [www.hivjustice.net/news/new-report-shows-hiv-criminalisation-is-growing-global-problem-but-advocates-are-fighting-back](http://www.hivjustice.net/news/new-report-shows-hiv-criminalisation-is-growing-global-problem-but-advocates-are-fighting-back). According to the source, the total number of countries was 72 as of April 2016. Another number also mentioned in the source: “This total increases to 101 jurisdictions when the HIV criminalisation laws in 30 of the states that make up the United States are counted individually.”

<sup>3</sup> HIV Justice Network: [www.hivjustice.net/news/new-report-shows-hiv-criminalisation-is-growing-global-problem-but-advocates-are-fighting-back](http://www.hivjustice.net/news/new-report-shows-hiv-criminalisation-is-growing-global-problem-but-advocates-are-fighting-back). The criminal laws that are HIV-specific are different in all 30 or so countries. Some contain positive parts, such as prohibiting discrimination on the basis of HIV status in housing and employment. But all are either broad or vague (or both) about HIV criminalisation. That means they could be used against people living with HIV.

The second type of laws do not usually refer to HIV. Instead, **they focus on other groups of people and their behaviour.** Many have a major impact on people living with HIV and members of other key populations because they include laws that:

- criminalise sexual practices between people of the same sex;
- criminalise sex work in general, or criminalise the actions of sex workers specifically;
- criminalise drug possession or use;
- prohibit or limit access to HIV prevention services that are needed by people who inject drugs, such as exchanging used needles and syringes for clean ones; and
- make it difficult or impossible for people to select the gender they prefer on identify cards, which limits the physical safety, freedom of movement, and access to services for many transgender individuals.

At least 70 countries have laws that make it a criminal activity for an individual to have sexual contact with someone of their own sex. These laws can and are used to harass, arrest, imprison and threaten people who identify as gay, bisexual, transgender or intersex. A large share of these laws are in countries in Africa and Southeast Asia, two regions heavily affected by HIV.<sup>4</sup>

Sex work is either completely illegal or partially regulated in most of the world's countries. Yet even in the few countries or cities where sex workers do not face specific legal restrictions, they are often harassed or abused by the police on a regular basis. In many places, sex workers are arrested if they are carrying condoms, and then prosecuted for promoting illegal behaviour. To avoid such charges, many sex workers in such places do not bring condoms on the street with them and are less likely to use them during sex. Their risk for getting HIV is of course much higher as a result. Sex workers who are living with HIV face additional risks of being prosecuted under HIV criminalisation laws, and related coercion, blackmail, and threats of violence.

People who use drugs face similar challenges. Because in nearly every country they are often engaged in activities that are illegal, they experience high levels of police harassment, violence and imprisonment. Many cannot get adequate health care, including HIV treatment or prevention services that they might need.

Criminalising drug use has a severely negative effect on HIV prevention. While needle and syringe exchange programmes are available in at least 90 countries,<sup>5</sup> they are few and far between and people often need to travel great distances to access these limited services. Additionally, no evidence based harm programmes are available in more than 60 countries where injecting drug use has been reported.<sup>6</sup> One main reason needle and syringe exchange is not more widely available is that governments refuse to provide legal protections for the organisations providing the service and their workers, or for the people who use the services in order to get clean needles.

For transgender individuals, it has long been known that they face massive abuse, stigma and discrimination. Most transgender people live in places where they have few legal opportunities to claim their dignity and live as they want to. For example, the majority of countries have no laws or policies that allow people to select a preferred gender for their official identification cards and papers. Even in Europe, where transgender rights are recognized more than in other regions, by mid-2015 only three countries had passed specific laws allowing people to change their gender with no restrictions.<sup>7</sup> Outside of Europe, only Argentina and Colombia had adopted a similar legal policy.

All of these legal restrictions and barriers violate international human rights standards, including the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Rights of Persons with Disabilities (2006).<sup>8</sup> Most countries in the world—including many that have laws that discriminate against people living with HIV and key populations—have signed these treaties.

<sup>4</sup> Source: Erasing 76 Crimes, <https://76crimes.com/76-countries-where-homosexuality-is-illegal/>. The numbers were valid as of August 2016.

<sup>5</sup> Harm Reduction International (IHRA) (2015). 'The Global State of Harm Reduction Report 2014', [www.hri.global/global-state-of-harm-reduction](http://www.hri.global/global-state-of-harm-reduction).

<sup>6</sup> Harm Reduction International (IHRA) (2015). 'The Global State of Harm Reduction Report 2014', [www.hri.global/global-state-of-harm-reduction](http://www.hri.global/global-state-of-harm-reduction).

<sup>7</sup> Human Rights Watch, 'Rights in Transition: Making Legal Recognition of Transgender People a Global Priority', [www.hrw.org/world-report/2016/rights-in-transition](http://www.hrw.org/world-report/2016/rights-in-transition).

<sup>8</sup> United Nations Office of the High Commission of Human Rights, [www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx)

## 4 THE GOOD AND THE BAD: OPPORTUNITIES AND CHALLENGES FOR PEOPLE LIVING WITH HIV AND COMMUNITIES

Legal reform to remove or fix bad laws is a critical priority for people living with HIV and community groups. Although such efforts are often difficult, even partial success could lead to many **opportunities** for a better future. For example:

- People living with HIV and other key populations will face **fewer barriers to quality health care** and can **live more openly and comfortably**. Less discrimination would enable them to be more active and productive members of society, which is good for both them and for a country overall.
- HIV responses in general would be better too because **more people, including many of those most in need, could access prevention and treatment services without fear**. A crucial opportunity of legal reform is improvement in a country's effort to control HIV and prevent its further spread.
- Societies in general are better places when they are **more tolerant and supportive of all people**. Legalized discrimination increases fear and distrust. Confronting national problems like HIV is not possible without solidarity throughout society.

Legal reform is not only about removing or fixing bad laws. Laws are not always a problem: they can also be an opportunity for positive change. Good laws can help improve the health and lives of all individuals affected by HIV and members of key populations. An important part of overall legal reform therefore should focus on **putting in place laws or policies that make it illegal to discriminate against people living with HIV and key populations**. Having these laws on the books is an essential first step toward reducing social and economic stigma and discrimination. The next step—making sure these laws or applied (also known as 'enforcement')—usually requires adequate legal services that are open to and supportive of the people who should be protected.

Laws that are fully enforced and effectively protect key populations and people living with HIV are also part of **smart economic, social and public health policies**. Government resources that might be spent on enforcing the discriminatory laws can be used instead to make sure that more and better HIV prevention and treatment services are available for all who need them. This could result in far fewer HIV infections and a healthier population overall.

For people living with HIV and community and key population groups, some of the **challenges** of legal reform include the following:

- The discriminatory laws are often popular among government officials, parliamentarians and the public. There are many reasons people support them, including lack of understanding and fear of HIV transmission and prejudice toward people living with HIV and other key populations.
- Many HIV and community advocates do not know how their country's legal system works or what the best 'entry points' are to influence legal reform.
- There is often little access to the type of high-quality legal services needed to challenge discriminatory laws or to help enforce anti-discrimination ones.
- The media often are not helpful and frequently cause harm through sensationalizing accusations and prosecutions of people living with HIV and other key populations. Accurate and careful stories about discrimination against people living with HIV and key populations do not get much space or time.
- Although most of these laws violate human rights standards, it is often more effective for strategy to focus on public health arguments. Government officials and parliamentarians often do not understand or recognize human rights.

## 5 HOW TO BE INVOLVED: SUGGESTED ACTION AREAS FOR PEOPLE LIVING WITH HIV AND COMMUNITIES

People living with HIV, other key population groups and community organisations can and should be involved in supporting and advocating for legal reform in their countries. The following are examples of suggested activities and actions:

- **Know the situation and your rights.** Which discriminatory laws are on the books in your country? What do they specifically say? Are they enforced? Are any new laws being considered in parliament or in the government? Has your country signed international human rights agreements that these laws seem to violate? Can you find proof of violations? This kind of information is necessary to fully understand the situation, including the priority actions.
- **Find out, if you do not know already, what people think of these laws (public opinion).** Do people understand what they actually say? Do they really support them? What might make people more likely to support legal reform? Focus groups and surveys might help identify opportunities to get more public support.
- **Rally people living with HIV and community members** to the cause of legal reform. This might include awareness-raising about the discriminatory laws and how they can be used. Reminding people in the community about health-related obstacles and human rights violations might also help mobilise them.
- **Propose and advocate for new laws and policies** that protect people living with HIV and key populations from discrimination in areas such as housing, employment and education. Many countries around the world have examples of laws that can be adapted.
- **Ask for financial and other support from abroad—but only if it will not be used against you.** Many global and regional organisations focus on human rights, including around HIV. They often can support community and civil society efforts on legal reform. Local groups are encouraged to carefully consider whether such support could have negative effects as well, such as people claiming that legal reform of this sort is an attempt to make the country accept ‘foreign’ values.