



# Regional Dialogue: Africa

3-4 August 2011, Pretoria, South Africa

## FACT SHEET

### Global Snapshot<sup>1</sup>

- In 2010, 106 countries reported having laws, regulations or policies that obstruct access to HIV services for populations at higher risk of HIV exposure.<sup>2</sup>
- 79 countries worldwide criminalize same-sex relations between consenting adults and six apply the death penalty.
- More than 100 countries criminalize some aspect of sex work.
- 32 countries apply the death penalty for some drug offences. 27 countries continue to impose compulsory treatment for drug users.<sup>3</sup> Compulsory treatment has a recidivism rate of over 90%; it is an inefficient response to drug dependence, as well as to the heightened risk of HIV infection amongst people who use drugs and those in closed settings.

### Africa<sup>1</sup>

- New infections are on the decline in sub-Saharan Africa; in 2009 there were an estimated 1.8 million new infections, compared to 2.2 million in 2001. Increased safer sex practices, particularly among young people, have been essential in this shift. In same period, AIDS related deaths decreased from 1.4 to 1.3 million.
- Despite this progress, Africa remains the world's most affected region, as acknowledged in the 2011 UN Political Declaration on HIV/AIDS. 34% of people worldwide living with HIV in 2009 resided in southern Africa; 31% of new HIV infections in the same year occurred in this region, as did 34% of all AIDS-related deaths.
- In 2005 in N'Djamena, Chad, a workshop was held with 18 countries from West and Central Africa. The workshop resulted in the drafting of a model law which featured the overly broad criminalization of HIV transmission. Under this model law, criminal sanctions may apply to someone who is aware of their HIV positive status exposes another to the virus. It is drafted widely enough to encompass mother-to-child transmission. The law not only creates a disincentive to HIV testing, it is violative of national constitutions as well as international human rights and anti-discrimination instruments. 16 countries in West and Central Africa adopted provisions from the N'Djamena model law.
- The majority of HIV transmission in Africa is through unprotected heterosexual sex. Large proportions of those living with the virus are in long-term relationships - as high as 78% in Malawi. The prevalence of sero-discordant couples is estimated between 36-85%. Data from Zambia suggest 60% of new infections occur within marriage or cohabitation.
- Globally, about 40% of adult women with HIV live in southern Africa. Research shows that gender inequality within a relationship increases the risk of HIV transmission by 13.9%. Inequality manifests pragmatically in women's inability to negotiate condom use, and systemically in cultural practices such as wife inheritance, marital and "corrective" rape, "beading" and genital mutilation, all of which expose women and girls to infection. HIV positive women are frequently subjected to abandonment, violence, discrimination and stigma, in contravention of their rights under both international and national law.
- HIV risk is linked directly to women's reproductive rights; a lack of reproductive rights means a lack of adequate information about contraceptive choices. In addition, if women become infected with HIV, a lack of reproductive rights may prevent them from seeking treatment, care and support. Women may be afraid to access programmes to reduce the risk of mother-to-child transmission of HIV because of fear of abandonment or violence from their partner.<sup>4</sup> In 2009, 20 Namibian women launched a lawsuit against state hospitals which sterilized them without their knowledge or consent.<sup>5</sup> These are only the legally documented cases; there are hundreds, if not thousands of cases of forced sterilization in the region, often resulting from non-consensual HIV testing.
- Although women have statutory rights to own property, these rights are rarely upheld due to patriarchal cultural norms. In Zimbabwe, an estimated 50% of marriages are unregistered; unregistered marriages have unequal legal protection in regard to inheritance. This leads to instances of matrimonial abandonment or disowning of a bride by her late husband's family. This is exacerbated in instance of polygamy, where one wife may be favoured over another. Furthermore, discrimination on the basis of HIV-positive status may lead to a woman being disowned or abandoned. In the context of HIV and otherwise, many women whose rights have been infringed do not have the means to access the courts and enforce their rights.
- Sex work is criminalised in many African countries. As a result, sex work is forced underground, exposing sex workers to violence and exploitation. In Cape Town, 37% of street-based and 20% of brothel-based sex workers "often experience violence"; in Mombasa, 67% of sex workers undergo violence "occasionally" and for 30% it is a "common occurrence".<sup>6</sup> There is little recourse for them, as police and health care workers frequently discriminate against sex workers, in violation of their human rights.
- The 2011 Political Declaration on HIV/AIDS – drawing on the overwhelming body of evidence from the beginning of the epidemic until now – specifically cites men who have sex with men (MSM) as higher risk group, highlights their exclusion from African HIV programmes and emphasizes the detrimental impact of discrimination and stigma on effective HIV responses. 50 of the 79 countries worldwide which criminalise consensual same-sex sexual contact are in Africa, making up two thirds of the continent. All six of the countries in the world to apply the death penalty for such acts are in the Middle East or Africa. Only four countries on the continent (4%) have anti-discrimination laws which include sexual orientation.<sup>7</sup>
- High HIV prevalence is well documented among MSM. In Senegal, 82% of surveyed MSM also have sex with women, and in Malawi, one third of MSM were married or cohabiting with a woman. Prevention methods and discriminatory laws fail to address these behavioural realities.
- A body of data is emerging on drug use in Africa. In Nigeria, 50% of detainees on drug charges are young people. There is a corresponding increase in drug-related HIV risk behavior such needle sharing, a practice used by over 50% of injecting drug users in Tanzania. HIV prevalence among injecting drug users is over 40% in Kenya and Tanzania.<sup>8</sup> The drug laws of African countries are based on a criminal rather than public health approach, which has proven counter-productive to HIV prevention.

## Examples of laws and practices that hamper progress on HIV

- Laws and practices that directly or indirectly criminalize and discriminate against people living with HIV and key affected populations at high risk of HIV exposure:
  - Criminalization of same-sex behaviour and aspects of sex work
  - Enforced compulsory detention of drug users, sometimes for years, and in some cases leading to the death penalty
  - Legal barriers that prohibit the possession of needles and syringes, deny access to opioid substitution therapy
  - Travel restrictions imposed on people living with HIV
  - Criminalization of HIV transmission
  - Laws that hinder the establishment of harm reduction programmes
  - Employment laws that prohibit people living with HIV from working in certain sectors
  - Manipulation and misinterpretation of anti-trafficking laws that result in the violation of human rights and/or arrest of key affected populations and people living with HIV.
- Laws and practices that can lead to violence and discrimination to be experienced by women:
  - Non-implementation of or weak laws to protect women from violence
  - Laws that deny women equal inheritance and property rights
  - Lack of legislation to address and outlaw bigamy, polygamy and marital rape
  - Forced sterilization of HIV-positive women
- Laws and practices that impede HIV-related treatment access:
  - Free trade agreements that impede the future production of and access to low-cost generic antiretroviral medicines.
  - Disease control acts that mandate people living with HIV be put in isolation and/or imprisoned
- Laws and practices that compromise the rights of children:
  - Impunity to harmful acts towards children
  - Legal barriers that prevent children and young people from accessing prevention and treatment services without parental/guardian consent.

## Enabling the Legal and Policy Environment

A number of countries have taken steps to provide enabling environments for people living with HIV and affected populations.

- In 2010, 71% of countries globally had laws prohibiting discrimination against people living with HIV. Programmes to address stigma and discrimination have doubled in four years: 92% of countries reporting in 2010 versus 46% in 2006, indicating an acknowledgement of the importance of eliminating stigma and discrimination.<sup>1</sup>
- Some signs of progress in Africa:
  - At the end of 2009, 41% of the adults and children who needed antiretroviral therapy in southern Africa were receiving it. This is a remarkable scale up compared to treatment levels as low as 2% in 2002, attributable largely to the availability of generic medicines. This availability is being threatened, however, as African nations fail to take full advantage of TRIPS flexibilities and enter into TRIPS-plus arrangements with developed countries, with the effect of raising drug prices. There is also increasing pressure to use criminal sanctions against IP infringements, which creates a disincentive to generic medicine manufacturers. Kenya and Uganda have both taken juristic steps to limit anti-counterfeit legislation, to avoid impeding access to medicines and infringing on PLWHA's right to health.
  - Some, but not all African nations have domestic violence legislation in place. The majority of African states are parties to CEDAW (the Convention on the Elimination of All Forms of Discrimination Against Women) and many have adopted corresponding domestic legislation; however, effective enforcement is reported to be hampered by lack of investment in enforcement and harmful cultural norms.
  - South Africa legalized same-sex marriage in 2006, the first African nation and the second nation outside Europe to do so; it also bans all forms of discrimination based on sexual orientation, both in its Constitution and anti-discrimination statutes. Botswana, Mauritius and Mozambique ban some forms of discrimination based on sexual orientation, but lack comprehensive schemes and enforcement.

## Global Commission on HIV and the Law

- In June 2010, UNDP and UNAIDS launched the Global Commission on HIV and the Law to analyze the most critical legal and human rights challenges of the HIV epidemic and recommend remedial policies.
- The Commission comprises global leaders on HIV-related legal and human rights issues, including some of the world's best-known jurists, political leaders and policy-makers.
- The Commission is mobilizing public dialogue in a range of countries across the globe to ensure that laws support, rather than block, effective HIV responses. The Commission's findings and recommendations will be announced in December 2011/early 2012.
- Regional Dialogues are held to inform the deliberations of the Commission and ensure that it benefits from the views expressed by civil society, including the experiences of key affected populations, and the views of governments.
- All Regional Dialogues are occurring in 2011. The first took place in February in Bangkok, Thailand, for the Asia and Pacific region, bringing together governments, civil society, communities and development partners. Subsequent Dialogues have been held in Port of Spain, Trinidad & Tobago in April, Chisinau, Moldova in May, Sao Paulo, Brazil in July and Cairo, Egypt also in July.
- The Regional Dialogue for High Income Countries will take place in Oakland, USA on 16-17 September.

**For more information relating to Punitive Laws, Human Rights and HIV responses in Africa please see:**

[www.unaids.org](http://www.unaids.org)  
[www.csis.org](http://www.csis.org)  
[www.ilga.org](http://www.ilga.org)  
[www.sweat.org.za](http://www.sweat.org.za)

<sup>1</sup> Figures in this section were drawn from the *UNAIDS report on the global AIDS epidemic 2010*.

<sup>2</sup> Vulnerable subpopulations include sex workers, men who have sex with men, injecting drug users, transgender people, women and children.

<sup>3</sup> *Making the Law Work for the HIV Response: A snapshot of selected laws that support or block universal access to HIV prevention, treatment, care and support* UNAIDS fact sheet, July 2010.

<sup>4</sup> AIDS & Rights Alliance for Southern Africa Issue Brief, June 2010.

<sup>5</sup> *HIV+ women in Africa sterilized, stigmatized* by Geoffrey York, The Globe and Mail, June 14, 2009.

<sup>6</sup> Sex Workers Education and Advocacy Taskforce study

<sup>7</sup> *State Sponsored Homophobia: A world survey of laws prohibiting same sex activity between adults*, ILGA report, David Ottosson, May 2010.

<sup>8</sup> *HIV Prevention among Injection Drug Users in Kenya and Tanzania*, a report for the CSIS Global Health Policy Center, Phillip Nieburg and Lisa Carty, April 2011.

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