GLOBAL COMMISSION ON HIV and the LAW

Risks, Rights & Health

FINDINGS & RECOMMENDATIONS: Criminalisation on the basis of drug use, sex work, sexual orientation & gender identity

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AIDS 2012, Washington DC
Key Populations

FINDINGS

1. Essential for key populations to have **access to HIV prevention, treatment, health services, commodities and information**
2. Yet, there is **under investment by donors and governments** in inexpensive commodities that can stop infection or programmes to promote and distribute them
3. Some governments **criminalise possession of commodities, and behaviours and practices**
4. Governments also **stand by as the police administer society’s disapprobation** — beatings, extortion, torture, arbitrary arrest, and mistreatment

RECOMMENDATIONS

Calls countries to:

• **Prohibit police violence** against key populations

• **Support programmes that reduce stigma and discrimination** against key populations and protect their rights
People who use Drugs

FINDINGS

1. Punitive laws against people who use drugs fuel the spread of HIV and keep users from accessing services for HIV and health care. They mandate compulsory detention, treatment and registration of drug users.

2. Evidence has shown that Governments which have legalised comprehensive harm reduction services have significantly reduced HIV infections.

3. Although UN conventions, which aim to curb drug trafficking, allow for treatment, rehabilitation and social reintegration, the approach to people who use drugs has been predominantly repressive.

4. “Wars on drugs” are wars on people who use drugs.
MITIGATING THE HARM

Comprehensive, consistently implemented harm reduction without punitive approaches

- UK
- Switzerland
- Germany
- Australia

% HIV prevalence among people who inject drugs

Consistent resistance to harm reduction and punitive approaches

- Thailand
- Russia

% HIV prevalence among people who inject drugs

People who use Drugs

**RECOMMENDATIONS**

Calls for countries to:

- **Reform their approach** towards drug use from a purely punitive one to one that promotes health and treatment of users.

- Immediately **close compulsory drug detention centres**, replace by evidence-based voluntary services for treating drug dependence.

- **Abolish national registries** and mandatory testing and forced treatment of people who use drugs.

- **Repeal punitive conditions such as the US government’s federal ban on funding of NSEPs** that inhibit access to HIV services for people who use drugs.

- **Decriminalise the possession of drugs for personal use**, in recognition that the net impact of such sanctions is often harmful to society.

- **Review and reform**, in partnership with the UN, relevant portions of the international narcotics conventions in line with aforementioned approaches.

- **IN PRISONS** – ensure that voluntary health care is available, including HIV prevention and care services regardless of laws criminalising drug use.
FINDINGS

1. Criminalisation in one form or other is the dominant legislative approach to sex work.

2. Laws against consensual adult sex work undermined HIV prevention, allowed excessive police harassment and violence and weakened sex workers ability to negotiate safer sex with clients.

3. Criminal law conflates trafficking with consensual adult sex work. AIDS funds are predicated on this conflation eg: the anti prostitution pledge of US Government.

4. When State recognises their rights, sex workers have collectivised to protect their health, bodily integrity and control HIV within their communities and beyond.

5. Decriminalisation is the first step toward better working conditions for sex workers.
Sex Workers

RECOMMENDATIONS

Calls for countries to:

• Ensure that **anti-human-trafficking laws** are targeted **against those who use force to procure people into commercial sex**

• Repeal laws that prohibit consenting adults to buy or sell sex

• Take all measures to **stop police harassment and violence and prohibit the mandatory HIV and STI testing** of sex workers.

• **Shut down all compulsory detention or “rehabilitation” centres.** Replace with **provision of evidence-based, voluntary, community empowerment services.**

• **Repeal punitive conditions in official development assistance** (e.g. PEPFAR’s anti-prostitution pledge)

• Take decisive **action to review and reform relevant international law (e.g Palermo Protocol, 2000)**
Men who have sex with men

**FINDINGS**

1. **International law protects the universal right to privacy**, which guards people’s sexual practices from interference by the state.

2. **Criminalisation** of same-sex relations **is widespread**. But even where same-sex relations are not criminalised, the state extends **no legal protection from discrimination** on the grounds of sexual orientation.

3. **Punitive laws** against homosexual behaviour are **impeding and undermining HIV prevention** efforts for MSM

4. **Decriminalisation is necessary, but insufficient** – efforts are also required to reduce associated stigma, violence
MEN WHO HAVE SEX WITH MEN, LAW & HIV

Sample of African & Caribbean countries that criminalise same-sex sexual activity

- Senegal***
- Zambia*
- Jamaica
- Guyana
- Trinidad and Tobago

% HIV prevalence among men who have sex with men

Sample of African & Caribbean countries that do not criminalise same-sex sexual activity

- Burkina Faso***
- South Africa***
- Dominican Republic
- Bahamas
- Suriname
- Cuba

% HIV prevalence among men who have sex with men

Note: Estimated prevalence for Jamaica ranges from 25–30%.
Sources:

*** Data based on the UNAIDS Reports.

Men who have sex with men

**RECOMMENDATIONS**

Calls countries to:

- **Reform their approach towards sexual diversity** - from punishing consenting adults involved in same-sex activity, offer access to effective HIV and health services and commodities

- **Repeal all laws that criminalise consensual sex between adults of the same sex and/or laws that punish homosexual identity**

- Respect existing civil and religious laws and **guarantees relating to privacy**

- **Remove legal, regulatory and administrative barriers** to the formation of community organisations by or for LGBT people

- Promote effective measures **to prevent violence against men who have sex with men**

- **IN PRISONS** – ensure that voluntary health care is available, including HIV prevention and care services (condoms, ART), **regardless of laws criminalising same-sex acts**.
FINDINGS

1. In many countries, by law or by practice, transgender persons are denied acknowledgment as legal persons. A basic part of their identity - their gender - is unrecognised.

2. Violence (by the police and citizenry) against transgender people is often condoned by the State.

3. Outcomes are - increased marginalisation, exposure to HIV and rare use of HIV prevention, treatment, care and support services.

4. Limited progress – legislation that recognises transgender persons and their rights - legal sex change, registration of identification documents in accordance with lived gender, recognition of alternative/ third genders and prohibition of discrimination
Transgender people

RECOMMENDATIONS

Calls countries to:

- Repeal all laws that criminalise transgender identity or associated behaviours, including cross-dressing

- Offer transgender people access to effective HIV and health services and commodities. Transphobia is a health risk.

- Allow for affirmation of transgender identity in identification documents

- Remove legal, regulatory or administrative barriers to the formation of community organisations by or for transgender people.

- Explicitly prohibit discrimination based on gender identity
Are we on track?

- Improved legal environment alone can bring new infections down by 1 m (Global Commission)
- HIV services not yet reaching all key populations (UNAIDS report July 2012)
- Even today, only 8% of prevention spending goes to programmes for key populations
- New infections only 0.5 m fewer than 2001
- New discourse needed to refocus on prevention among key populations
Thank You!

Report of the Global Commission on HIV and the Law

“Risks, Rights & Health”

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