

How an Epidemic of Bad Laws is Obstructing the Global HIV Response

HIV transmission: Laws that criminalise HIV transmission or penalize non-disclosure of HIV status increase stigma and discourage people from getting tested or treated for fear of prosecution.

- More than 60 countries specifically criminalise HIV transmission. This includes Canada, 37 of the 50 United States, 27 countries in Africa, 13 in Asia and the Pacific, 11 in Latin America and 9 in Europe. High income countries lead the world in actual prosecutions under such laws; more than 600 HIV-positive people across 24 countries have been convicted of such crimes.
- In Bermuda, it is a crime for people living with HIV to have any sexual contact that might pass body fluids to another person.

At-risk populations: Laws and practices that criminalise and dehumanize populations at highest risk for HIV make them more vulnerable and drive them away from HIV, harm reduction and health services.

Sex Workers

- More than 100 countries criminalise some aspect of sex work. Cuba, China, Iran, Vietnam, South Africa and most of the U.S. outlaw sex work entirely. Laws in many countries deny sex workers fundamental civil entitlements, increasing their HIV vulnerability.

Injecting Drug Users (IDUs)

- IDUs comprise about 60% of new HIV cases in Russia. Yet, drug treatment programmes do not provide HIV services and the government restricts harm reduction services.

Men who have Sex with Men (MSM)

- 78 countries criminalise same-sex sexual activity. In Caribbean countries where homosexuality is criminalised, almost 1 in 4 MSM is HIV-positive, compared to 1 in 15 MSM in countries where it is not.

Women and youth: Laws and customs that disempower women undermine their ability to protect themselves from HIV. Policies that deny youth access to sexual and reproductive and HIV services help spread HIV.

Women

- Customary practices in Africa, Latin America, Asia and the Middle East such as early marriage and genital mutilation increase risk of HIV exposure.
- 127 countries lack legislation outlawing marital rape. In Antigua and the Bahamas, a husband who rapes his wife is only charged with sexual assault.

Youth

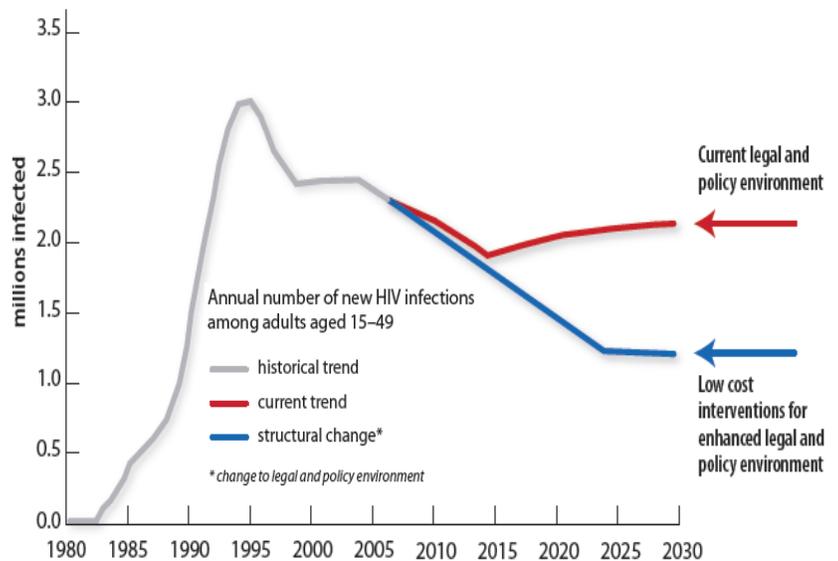
- Laws that require parental consent discourage teens from seeking reproductive health and HIV prevention services.
- In the US, more youth volunteered for HIV testing once parental consent requirements were removed.

Access to HIV treatment: Excessive intellectual property protections that hinder the production of low-cost medicines, especially second-generation ARVs, are impeding access to treatment.

- The flexibilities in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) are being eroded and this is contributing to the ARV treatment gap.
- Even when countries have tried to use the existing flexibilities, they have faced retaliation. For example, when Thailand issued a compulsory license in 2007 on an ART by Abbott, the company announced it would withdraw multiple applications to obtain marketing approval for new drugs in Thailand.
- The number of Free Trade Agreements with IP provisions is increasing steadily and this could have a detrimental impact on access to treatment.
- Overly broad anti-counterfeiting laws which conflate sub-standard medicines with generics are an impediment to expanding access to quality, affordable medicines.

Enforcing Bad Laws Squanders Scarce Global Health Investments

- Changes in the legal and policy environment, along with other interventions, could lower new adult HIV infections to an estimated 1.2 million by 2031, compared to 2.1 million if current efforts continue without these broader structural changes.
- Public resources are wasted on enforcing laws that criminalise HIV transmission and dehumanize at-risk populations.
- In contrast, laws that protect at-risk populations are powerful low-cost tools to help ensure that financial and scientific investments for HIV are not wasted.
- Enacting laws based on sound public health and human rights will ensure new prevention and treatment tools—such as PrEP, male circumcision and microbicides—reach those who need them.



Laws & Practices Based on Evidence & Human Rights Can Advance Effective HIV Responses

Criminalisation of HIV Transmission

- In 2011, Denmark, recognising that ART significantly reduces the risk of transmission and allows most HIV-positive people to live longer, suspended a law that criminalised HIV transmission and exposure.
- In 2011, Guyana and Fiji recently rejected the criminalisation of HIV transmission as bad public health policy.

Sex Workers

- Police education and empowerment of sex workers can lead to decreased risk of HIV infection among sex workers. In Kolkata, India, such interventions helped reduce HIV prevalence among sex workers from 11% in 2001 to less than 4% in 2004.
- In 2012, the Kenya National Human Rights Commission called for the decriminalization of sex work.

Intellectual Property & Treatment Access

- A 2012 judgment from the High Court of Kenya prevents the implementation of the 2008 Anti-Counterfeit Act on the basis that the Act did not clearly distinguish between counterfeit and generic medicines and thus could undermine access to generics and the right to health.
- In 2010, Ecuador issued a compulsory licence for LPV/RTV (ritonavir). This resulted in a price reduction of 70%.

Men who have Sex with Men

- In 2009, India's High Court of Delhi removed parts of its penal code that criminalized homosexuality.
- Tunisia's National Strategic Planning Committee recently called for the decriminalisation of same-sex relations as part of its National AIDS Plan 2012-2016.
- In 2012, the Kenya National Human Rights Commission called for the decriminalization of sex work.
- In 2012, Malawi's President Joyce Banda announced that she aims to decriminalise homosexuality.

Injecting Drug Users

- Countries that treat injecting drug users as patients instead of criminals—including New Zealand, Germany, Australia, Switzerland and Portugal—have increased access to HIV services and reduced HIV transmission rates among injecting drug users.
- A 2011 decision of the Supreme Court of Canada noted that people who use drugs should not be forced to choose between abstinence and forgoing health services.

Women

- Namibia has taken steps to combat marital rape: the Combating of Rape Act of 2000 precludes marriage from constituting a defence to a charge of rape.
- In the past three years, 8000 communities across the world, including in 15 African countries, banned genital mutilation.