



Regional Dialogue: Latin America

26-27 June 2011, São Paulo

FACT SHEET

Global Snapshot¹

- In 2010, 106 countries reported having laws, regulations or policies that obstruct access to HIV services for populations at higher risk of HIV exposure.²
- 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.³ 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.⁴

Latin America⁵

- HIV is a relatively stable epidemic in Latin America. In 2009, there were an estimated 92,000 new infections - compared to 99,000 in 2001 - and 58,000 AIDS related deaths - compared to 53,000 in 2001. In the same period, due to the wider availability of antiretroviral treatment, the number of people living with the virus increased from 1.1 million to 1.4 million.
- One third of HIV positive people in the region live in Brazil. Early and ongoing treatment and prevention efforts have kept the adult HIV prevalence rate below 1% for the last decade.
- Most HIV epidemics in Latin America are concentrated around networks of MSM. Homophobia, stigma and discrimination contribute to MSM having disproportionately high rates of HIV. For example, Bolivia reported an HIV prevalence of 21.2% among MSM and 0.1% among the general population.⁶ Transgender populations also experience higher rates of HIV and encounter discrimination from government officials, including health care providers, because many countries do not allow gender changes on official documents. Both MSM and transgender organizations report violence against their members, perpetrated by both government officials and other citizens. Religious and cultural factors drive the homophobia and transphobia, which in turn fuels the spread of HIV.
- Heterosexual transmission is increasing in Latin America. It is estimated that four out of five new HIV diagnoses in the mid-2000s resulted from unprotected sexual interactions, the majority heterosexual. 43% of new HIV infections in Peru are attributed to heterosexual intercourse.

- Investments in prevention and treatment are showing positive results in some sex worker populations. Low HIV prevalence, attributable to elevated condom use, has been reported among female sex workers in Chile, El Salvador and Guatemala. However, several countries report violence against sex workers based on their perceived serostatus, particularly among transgender populations.
- Of the estimated 2 million injecting drug users in the region, more than one quarter might be living with HIV. Prisoners and detainees are at compounded risk, due to the prevalence of drug use, MSM, the lack of prevention strategies and the denial of their human rights. Close to 6% of prisoners at Sao Paulo penitentiary in 2007 tested HIV positive.
- In Chile, legislative changes have attempted to address violence against women, but consistent enforcement is lacking. A study in Chile, Brazil, Uruguay and Argentina found that women who are HIV positive are more likely to be victims of domestic violence, both before and after diagnosis. HIV positive women are often coerced into sterilization by health care workers, reinforcing the link between reproductive health, HIV and human rights.

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.⁷
- Some signs of progress in Latin America:
 - In May 2011, Brazil's Supreme Court ruled that "stable" same-sex couples should have the same financial and social rights as married heterosexual couples. This is the third such ruling in the region, after Argentina and Uruguay.
 - Ecuador issued its first compulsory licence for Kaletra, an antiretroviral drug, in 2010. In Brazil, a public civil action demanding a compulsory license for Kaletra, filed in 2005 by NGOs and the Federal Public Ministry, is currently awaiting an appeal trial.
 - Bolivia and Honduras enacted HIV specific anti-discrimination legislation in the early 2000s; however, both countries continue to struggle to comprehensively enforce and provide funding for these statutory provisions.

Global Commission on HIV and the Law

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, or 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 against women:
 - Weak or unimplemented 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.

- 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.
- In February 2011, the first Regional Dialogue took place in Bangkok, Thailand, for the Asia and Pacific region, bringing together governments, civil society, communities and development partners. The second dialogue took place in Port of Spain, Trinidad & Tobago in April 2011. The third took place in Chisinau, Moldova in May 2011.
- The Regional Dialogue for Middle East and North Africa will take place in Cairo, Egypt on 27 - 29 July and the dialogue for Africa will take place on 3 - 4 August 2011 in Johannesburg, South Africa.

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

- http://data.unaids.org/pub/Report/2008/jc1530_epibriefs_latinafrica_en.pdf
- <http://scholarship.law.cornell.edu/ijli/vol38/iss1/6/>

¹ Figures in this section drawn from the *UNAIDS Report on the Global AIDS Epidemic 2010*.

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

³ "Verdict on a Virus: Public Health, Human Rights and Criminal Law", International Planned Parenthood Federation (IPPF).

⁴ "Commitments and Conundrums: Human Rights and the Global Fight on HIV/AIDS, Tuberculosis and Malaria." Open Society Institute and the Canadian HIV/AIDS Legal Network (2010).

⁵ Figures in this section drawn from the *UNAIDS Report on the Global AIDS Epidemic 2010*.

⁶ "MSM, HIV and the Road to Universal Access – How Far Have We Come?" American Foundation for AIDS Research Special Report (2008).

⁷ Figures drawn from the *UNAIDS Report on the Global AIDS Epidemic 2010*.

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