EXECUTIVE SUMMARY

GLOBAL COMMISSION ON
HIV and the LAW

Risks, Rights & Health

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THE GLOBAL COMMISSION ON HIV AND THE LAW

The Global Commission on HIV and the Law is an independent body that consists of fourteen distinguished individuals who advocate on issues of human rights, HIV, public health, law and development.

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The Commission, convened by the United Nations Development Programme (UNDP) on behalf of the Joint United Nations Programme on HIV/AIDS (UNAIDS), issued its flagship publication *Risks, Rights & Health* in 2012. The Supplement does not reopen the content and recommendations of the 2012 report. Instead it adds to and amplifies the findings of the 2012 report.

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EXECUTIVE SUMMARY

In 2012, the Global Commission on HIV and the Law called on countries to outlaw discrimination, repeal punitive laws and enact protective laws to promote public health and human rights for effective HIV responses. Today more than 89 countries have taken action to repeal or reform laws: some have repealed laws criminalizing HIV, same-sex relations, and drug possession, and others have enacted laws advancing reproductive rights, sex education, and the human rights of people living with or at risk from HIV.

In 2015, at the United Nations (UN) General Assembly, countries unanimously adopted the 2030 Agenda for Sustainable Development (2030 Agenda). The 2030 Agenda, grounded in human rights principles, established an ambitious target to end the epidemics of AIDS and tuberculosis (TB). The 2030 Agenda made a bold pledge to leave no one behind.

This Supplement highlights developments since 2012 in science, technology, law, geopolitics, and funding that affect people living with or at risk from HIV and its co-infections. The recommendations add to and amplify those of the Commission's 2012 report *Risks, Rights & Health,* which remain as relevant as they were six years ago.

FINDINGS

HIV treatment increased but AIDS is not over; other epidemics loom. Of the estimated 36.7 million people living with HIV, 20.9 million were receiving anti-retroviral therapy (ART) by mid-2017, almost triple the number in 2010. Declines in new HIV infections among adults are far too slow, threatening further progress towards the end of the AIDS epidemic. HIV continues to be a disease of the vulnerable, marginalised and criminalised—gay men and other men who have sex with men, transgender people, people who use drugs, sex workers, prisoners, migrants and the sexual partners of these populations. Key populations and their sexual partners account for 47% of new HIV infections in 2017. Adolescent girls and young women aged 15-24 suffered 20 percent of all new HIV infections.

Progress is also dogged by epidemic **viral hepatitis** and **tuberculosis**, co-infections that complicate and threaten the lives of people with HIV, and vice-versa. About 2.8 million people living with HIV are co-infected with hepatitis C virus (HCV) and 2.6 million with hepatitis B virus (HBV). Globally, more than 13 percent of people with TB tested for HIV received positive results, and TB is the leading cause of HIV-related deaths. New medications can cure HCV within two to three months with minor side-effects. More countries are using legal and policy remedies to bring down high costs of medicines to increase treatment access. But lack of investment in research and development (R&D) of new diagnostics and tolerable treatments for TB, a disease of the poor, has made cure of this ancient disease elusive for far too many people.

Science leapt forward. Three major studies have proved that HIV-positive people with viral loads sufficiently suppressed by ART pose a zero risk of transmission. At the same time, pre-exposure prophylaxis (PrEP), taken as prescribed, protects the uninfected from contracting HIV in almost all instances. These facts have helped lawyers defend against prosecutions for HIV exposure and transmission based on the misconception that HIV is a "deadly weapon." Still, advocates are concerned about the misuse of DNA analyses to infer transmission and the use of artificial intelligence to identify HIV "suspects."

Online markets for medications and "self-initiated interventions" such as readily available HIV tests are enabling people to care for their own health reliably and without stigma, even where products are sometimes inaccessible or illegal in the countries where these people reside. But efficacy, safety, and privacy are concerns, and effective regulation is needed.

Civic space shrank. Between 2012 and 2015, more than 60 countries drafted or enacted laws, or stepped up enforcement of older ones, to outlaw, harass, vilify, attack, or bankrupt civil society organisations and international

aid groups that help them. Lesbian, gay, bisexual and transgender (LGBT) people have been targeted with special brutality, including through "anti-homosexuality propaganda" laws. A virtual public square, the Internet, also became a site of corporate exploitation, government surveillance, content manipulation, and incitement to violence against "undesirables."

Donor funding dropped. In 2015, donor funding for HIV fell by 13 percent. "Middle-income countries" now shoulder more than half the burden for financing HIV responses. Funding gaps extend to TB and viral hepatitis as well. New economic realities require financial innovation. But there is no substitute for solidarity between the wealthy and the poor - an approach that has yielded significant progress in the global AIDS response. Latest data shows no significant new commitments from donors and donor government funding for HIV decreased in 2017.

Criminalisation persisted. As of July 2018, 68 countries criminalise HIV non-disclosure, exposure or transmission, or allow the use of HIV status to enhance charges or sentences on conviction. HIV prosecutions have been reported in 69 countries. Belarus, Canada, Russia and the United States lead in the number of prosecutions. In some countries TB patients have been criminalised for not adhering to and completing treatment.

Anti-sex work laws remain problematic. Several countries have adopted the "end-demand" model of arresting sex workers' clients rather than the workers themselves. With the noble intent of ending human trafficking, in 2018 the United States (US) passed legislation allowing legal action against websites that host ads for paid sexual services. Sex workers say that such laws erode their safety, control and earnings. New research concludes that decriminalisation of adult consensual sex work could significantly reduce HIV infection among sex workers.

The war on drugs goes on. Some countries decriminalised possession of small quantities of drugs. Still, depending on the locality, people who use drugs often remain excluded from HIV, TB, and hepatitis treatments, or are subjected to coerced or confined TB treatment. Imprisoned patients are lost to follow up. Mothers who use drugs were especially vulnerable, locked up while pregnant to compel recovery and threatened with loss of child custody if they failed to pursue treatment after birth.

Borders tightened. With the 258 million migrants, including 28.5 million refugees and asylum seekers, some countries adopted restrictive immigration policies, including visa denials, screenings, and deportation based on health status.

Women and girls left further behind. Criminalisation, discrimination and violence continue to undermine women's and girls' ability to protect their health and realise their rights. Sexual and reproductive health and HIV are closely linked. Legal and human rights barriers continue to impede access to sexual and reproductive health services and increase women's and girls' vulnerability and risk. Healthcare providers in over 70 jurisdictions have used conscientious objection to deny care to women and girls. The 2017 US "global gag rule" is compounding risk and increasing vulnerability.

RECOMMENDATIONS

In addition to the recommendations made in the Commission's 2012 report *Risks, Rights & Health,* to ensure effective, sustainable health responses consistent with universal human rights obligations, the following measures must be adopted as a matter of urgency:

1. Governments must prohibit in law all forms of discrimination against people living with and vulnerable to HIV, TB or viral hepatitis. Governments must take steps to repeal or amend any laws or policies that discriminate against people based on HIV, TB or hepatitis status.

2. Governments and other funders of biomedical R&D must urgently increase investments in R&D of new health technologies, including diagnostics, medicines and vaccines for HIV, TB and viral hepatitis. Governments and public funders of R&D must consider and implement alternative policies such as tax incentives and prize awards to encourage R&D investment by the private sector in neglected diseases such as TB.

3. Governments must ensure that everyone living with or at risk of acquiring HIV, TB, or viral hepatitis has affordable access to the most effective, high-quality health technologies, including diagnostics, medicines and vaccines for HIV, TB and viral hepatitis.

4. Governments must establish legal protections to safeguard the privacy and confidentiality of social media users, digital health technologies, online healthcare records, electronic medical records and communications with healthcare providers. Governments must protect sensitive health information such as HIV status or hepatitis or tuberculosis infection against unjustifiable access and impose strong penalties on those that violate users' rights.

5. Governments must stop the use of laws restricting the registration and operation of civil society organisations or their sources of funding to curtail their activities. Where any such laws have been enacted, countries must repeal or refrain from enforcing them.

6. Governments must enact laws that provide an enabling environment for civil society organisations to operate, including those providing services to populations living with or affected by HIV, TB or viral hepatitis.

7. Governments must refrain from enacting laws that require non-heterosexual sexual orientations to be portrayed as inherently inferior.

8. Donors and governments must sustain support to civil society programmes and legal reform efforts aimed at defending and promoting the human rights of people living with HIV, TB or viral hepatitis, particularly in marginalised groups.

9. Assuming that the transition from international to domestic funding continues, donors must ensure that they do not desert countries with inadequate resources for effective responses to HIV and its co-infections.

10. Governments must assume greater responsibility for financing their HIV, TB and hepatitis responses. This includes ensuring sufficient investment in human rights programmes for law reform and access to justice.

11. Governments and the private sector must adjust their policies and subventions for universal health coverage to focus on the rights of individuals to access the highest attainable standard of health. They must not derogate from individual rights provided in international human rights law by reference to economic classifications of national wealth that result in derogations from these human rights.

12. Governments must prohibit the non-consensual use by law enforcement or private entities of digitally-collected or stored private information, especially data related to sexual and reproductive health. Such data must not be used for discriminatory purposes or for commercial surveillance, profiling or targeting, except as provided by law, with the informed consent of the subjects and in circumstances consistent with universal human rights.

13. Governments must stop the censorship and restriction on Internet access and communication except where provided by law that is consistent with universal human rights law. Governments must facilitate the use of Internet and evidence-based information, education and communications platforms to promote access to health and rights information and services.

14. Governments must refrain from denying entry, restricting their travel within national borders or deporting people living with HIV, TB or viral hepatitis based on their positive status. Governments must repeal such laws where they exist.

15. Governments must not mandate universal HIV, TB, or viral hepatitis testing of foreign nationals. If such laws or policies exist, they should be repealed or abolished. Any requirements to undergo such tests should only occur where provided for by law, for proper purposes consistent with universal human rights law.

16. Governments must provide migrants, including asylum seekers or refugee applicants, access to the full range of health services including for HIV, TB and viral hepatitis regardless of immigration status. Governments must provide this standard of care in detention and confinement settings.

17. Governments must amend laws and policies that deter health seeking among migrant populations, such as requirements to show national identification documents, residence cards, or to only receive treatment in their home region or country.

18. In countries where HIV criminalisation laws still exist, courts must require proof, to the applicable criminal law standard, of intent to transmit HIV. The intent to transmit HIV cannot be presumed or derived solely from knowledge on the part of the accused of positive HIV status and/or non-disclosure of that status; from engaging in unprotected sex; by having a baby without taking steps to prevent mother-to-child transmission of HIV; or by sharing drug injection equipment.

19. Governments must ensure that, where an HIV-specific law has been repealed, there is a restriction on the application of any general laws to the same effect either for HIV or TB.

20. Governments must prohibit the prosecution—under HIV-specific statutes, drug laws, or child abuse and neglect laws—of women living with HIV for choices they make during and after pregnancy, including about breastfeeding children.

21. Whenever HIV arises in the context of a criminal case, police, lawyers, judges and where applicable, juries, must be informed by the best available scientific evidence concerning the benefits and consequences of appropriate therapy, and the individual and community advantages of maintaining such therapy.

22. Governments must ensure that HIV status is not used as such to justify pre-trial detention, segregation in detention or prison, or harsher or more stringent sentences or conditions of parole or probation following release from custody.

23. Governments must refrain from adopting laws based on the "end-demand" model of sex work control and repeal such laws where they exist.

24. Governments must not pass laws prohibiting, penalising, or enabling legal action against Internet site owners or other media interests that accept advertisements for sex work. If such laws have been adopted, the governments concerned must repeal them.

25. Governments must not employ coercive methods or confinement during treatment of persons who use drugs nor detain or imprison anyone for failure to take up, adhere to or successfully complete HIV, TB or viral hepatitis therapy or drug dependence treatment.

26. Governments must repeal laws or regulations that mandate total abstinence from drug use as a pre-condition for accessing treatment for HIV, TB or viral hepatitis.

27. Governments must make every effort to ensure that incarceration is a last resort for drug use and drug-dependence offences and should instead promote alternatives to incarceration for drug use and drug-dependence offences.

28. Governments must adopt legal protections to prevent discrimination against people who use drugs.

29. Governments must adopt and enforce laws that protect and promote sexual and reproductive health and rights. Governments must remove legal barriers to accessing the full range of sexual and reproductive health services.

30. Governments must limit the use of "conscientious objection" in healthcare where the health and lives of others are at risk as a consequence.

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