FINDINGS & RECOMMENDATIONS FROM THE 2018 SUPPLEMENT OF THE GLOBAL COMMISSION ON HIV AND THE LAW
Overview of key findings

Topics

- AIDS & other looming epidemics
- HIV criminalisation persists
- Crucial developments in HIV science
- Anti-sex work laws remain problematic
- Digital platforms, privacy, confidentiality and data security
- Shrinking civic space
- The war on drugs goes on
- Women and girls still left further behind
- Donor funding dropped
- Barred borders and fear of contagion
NEW CHALLENGES

TUBERCULOSIS & HEPATITIS

AIDS & other looming epidemics
AIDS & other looming epidemics

Findings –

- HIV treatment has increased reaching 20.9m of the 36.7m people living with HIV
- Decline in new HIV infections among adults is slow
- HIV continues to be the disease of the vulnerable, marginalized and criminalized: key populations and their sex partners accounted for 47% of new infections in 2017
- Adolescent girls and young women aged 15 – 24 suffered 24% of all new infections
- Progress is hampered by the epidemics of HIV coinfections, TB and viral hepatitis
AIDS & other looming epidemics

Findings –

- TB is the leading cause of HIV-related deaths
- 2.8m people living with HIV are coinfected with Hep C and 2.6m with Hep B viruses
- High cost of Hep C medicines and lack of investment in research and development of new TB diagnostics and tolerable medicines is impacting progress
- More countries are using legal and policy remedies to bring down the cost of medicines and increase treatment access
Recommendations –

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.

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.
HIV criminalisation persists
Findings –

- 68 countries criminalise HIV non-disclosure, exposure and transmission, or allow the use of HIV status to enhance charges or sentences on conviction
- As of July 2018, HIV prosecution has been reported in 69 countries
- In some countries, people with TB have been criminalized for not adhering to and completing treatment
HIV criminalisation persists

Recommendations –

Governments must ensure that there is a restriction on the application of general laws to the same effect for HIV or TB, as repealed HIV-specific law.

Governments must prohibit the prosecution of women living with HIV for choices they make during and after pregnancy, including about breastfeeding children.

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

Available at https://www.avert.org/professionals/hiv-programming/prevention/treatment-as-prevention
Findings –

- Three major studies have proved that HIV-positive people with ART-suppressed viral loads pose zero risk of transmission.
- These facts have been used to defend against prosecutions for HIV exposure and transmission.
- Phylogenetic evidence also is useful in defending against prosecutions for HIV transmission but advocates are concerned about potential misuse.
Crucial developments in HIV science

Recommendations –

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.

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.
Anti-sex work laws remain problematic
Findings –

- Several countries have adopted the ‘end-demand’ model of arresting sex workers’ clients rather than the sex workers themselves.

- A survey of nearly 600 sex workers a year after the end-demand law was enacted in France showed that the law had detrimental effect on the safety, health and overall living conditions of the sex workers.

- New research concluded that decriminalisation of adult consensual sex work could significantly reduce HIV infection among sex workers.
Anti-sex work laws remain problematic

Recommendations –

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

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.
Digital platforms, privacy, confidentiality and data protection
Findings –

- Online platforms and self-initiated medical interventions and technologies are helping people exercise greater autonomy of their health and access affordable medicines.
- Efficacy, safety and privacy are key concerns; regulation is needed.
- Governments are increasingly monitoring and censoring the use of internet by groups and individuals they deem to be undesirable.
- New technologies such as artificial intelligence facial recognition present potential dangers for misuse against key populations.
Digital platforms, privacy, confidentiality and data protection

Recommendations –

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 against unjustifiable access and impose strong penalties on those that violate users’ rights.

Governments must prohibit the non-consensual use by law enforcement or private entities of digitally-collected or stored private information.
Digital platforms, privacy, confidentiality and data protection

Recommendations –

Health 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 consistent with human rights.

Governments must stop the censorship and restriction on Internet access and communication.

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.
Shrinking civic space
Findings –

➤ Since 2012 more that 60 countries have drafted, enacted or stepped up enforcement of laws to outlaw, harass or attack civil society organisations.

➤ LGBT and sex worker groups have been targeted with special brutality, including through the ‘anti-homosexuality propaganda’ laws and the US ‘FOSTA’ law.

➤ The internet has become a site for corporate exploitation, government surveillance, content manipulation and incitement to violence.
Shrinking civic space

Recommendations –

Governments must stop the use of laws restricting the registration and operation of CSOs or their sources of funding.

Governments must enact laws that provide an enabling environment for CSOs to operate.

Governments must refrain from enacting laws that portray non-heterosexual sexual orientations as inherently inferior.

Donors and governments must sustain support to civil society programmes and legal reform efforts aimed at defending and promoting the human rights.
The war on drugs goes on
Findings –

- Some countries decriminalised possession of small quantities of drugs
- People who use drugs often remain excluded from HIV, TB, and hepatitis treatments, or are subjected to coerced or confined TB treatment in many contexts
- 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
The war on drugs goes on

Recommendations –

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.

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.
Recommendations –

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.

Governments must adopt legal protections to prevent discrimination against people who use drugs.
Women and girls still left further behind
Findings –

- Criminalisation, discrimination and violence continue to undermine women’s and girls’ ability to protect their health and realise their rights.

- SRHR and HIV are closely linked. Legal and human rights barriers continue to impede access to SRHR 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.
Women and girls still left further behind

Recommendations –

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.

Governments must limit the use of “conscientious objection” in healthcare where the health and lives of others are at risk as a consequence.
Donor funding dropped
Findings –

- 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
Donor funding dropped

**Recommendations –**

Donors must not desert countries with inadequate resources for effective responses to HIV and its co-infections.

Governments must assume greater responsibility for financing their HIV, TB and hepatitis responses, including ensuring sufficient investment in human rights programmes.

Governments and the private sector must adjust their policies and subventions for universal health coverage to focus on the right to the highest attainable standard of health.
Findings –

- Globally, there are an estimated 258 million migrants, 28.5 million of whom are refugees and asylum seeker.
- Repressive legislation extends to immigration, affecting migrants seeking new homes for their families.
- Developing countries, including some of the world’s poorest countries, hosts 84 percent of the world’s displaced persons.
- For migrants living with HIV and its co-infections, repressive laws and policies can be life-threatening.
Barred borders and fear of contagion

Recommendations –

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 not mandate universal HIV, TB, or viral hepatitis testing of foreign nationals.

Any requirements to undergo such tests should only occur where provided for by law, for proper purposes consistent with universal human rights law.
Barred borders and fear of contagion

Recommendations –

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.

Governments must amend laws and policies that deter health seeking among migrant populations.
Thank you!

The 2018 Supplement of the Global Commission on HIV and the Law “Risks, Rights & Health” is available at:

www.hivlawcommission.org/supplement

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