



**LESSONS FROM THE EVALUATION OF  
THE GLOBAL COMMISSION ON HIV  
AND THE LAW  
ISSUE BRIEF #1**

**Enabling legal environments, including  
decriminalization for HIV responses**

*Drawing on the external evaluation of the Global Commission on HIV and the Law,<sup>i</sup> <sup>ii</sup> this issue brief shares lessons and reflections on enabling legal environments, including decriminalisation, to inform the implementation of key commitments in the 2021 Political Declaration on HIV and AIDS and the Global AIDS Strategy.*

## **Introduction**

Law has been used to criminalize HIV exposure, transmission and/or the actual or potential non-disclosure of HIV status, as well as same-sex sexual activity, gender identity, sex work and drug use. Around the world, 134 countries and jurisdictions criminalize or prosecute HIV exposure, nondisclosure and/or transmission based on general criminal laws, 153 criminalise some aspect of sex work, 70 criminalised consensual same-sex sexual activity, 20 criminalise and/or prosecuted transgender persons, and 115 prohibit the use or possession of drugs for personal use.<sup>iii</sup> There has been increasing recognition of the negative impact of discriminatory and punitive laws, policies and practices on the ability of people living with HIV and key populations to enjoy their rights, including their right to health, access justice and seek redress for human rights abuses and violations.

Overly broad use of criminal law has been problematic for the HIV response, failing to prevent harm and negatively impacting public health, social justice and human rights. There have been several calls for the repeal of particular laws, including from the Global Commission on HIV and the Law.<sup>iv</sup> A recent analysis showed that in countries where same-sex sexual relationships, sex work and drug use were criminalized, levels of HIV status knowledge and viral

suppression among people living with HIV were significantly lower than in countries where key populations were not criminalized.<sup>v</sup> Countries where laws have advanced human rights protections, particularly those that protected rights to non-discrimination and responded to gender-based violence, had achieved greater progress. Other studies have also highlighted the positive impact of the removal of harmful laws on the HIV response. For example, decriminalizing sex work could avert 33 to 46 percent of HIV infections among female sex workers.<sup>vi</sup> Modelling data suggest that implementing law reform would reduce incarceration in people who inject drugs by 80 percent, and thus stop 9 percent of new HIV infections between 2018 and 2030.<sup>vii</sup>

In the 2021 Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030 (the Political Declaration), UN Member States committed to the ambitious '10–10–10 targets', seeking to ensure that by 2025 less than 10 percent of countries have punitive legal and policy frameworks; less than 10 percent of people living with, at risk of and affected by HIV experience stigma and discrimination; and less than 10 percent of women, girls and people living with, at risk of and affected by HIV experience gender-based inequalities and sexual and gender-based violence.<sup>viii</sup> The Global AIDS Strategy 2021–2026: End Inequalities. End AIDS (the Global AIDS

Strategy) notes that punitive laws, policies and practices contribute to inequalities that undermine the HIV.<sup>ix</sup> It calls on countries to create enabling legal and policy environments. It is estimated that, alongside other forms of stigma and discrimination, failure to remove criminal laws targeting people living with HIV and key populations will lead to an additional 2.5 million new HIV infections and 1.7 million AIDS-related deaths between 2020 and 2030.

### **Key lessons from the Global Commission on HIV and the Law**

Evidence of the impact of laws on HIV responses has made HIV a key entry point for decriminalization efforts. The following lessons highlight how addressing HIV-related criminalization, using evidence, human rights analysis and the first-hand experience of key populations and those most affected by unjust criminal laws can advance rights-based HIV responses.

#### **1. Shared understanding of the harms caused by the overly broad and unjust application of criminal laws is key to creating an enabling HIV-related legal environment**

National-level activities to address HIV are most effective where there is political buy-in, local ownership and multi-stakeholder groups that bring together government and civil society to ensure a just HIV-related legal and policy environment. A government-led, participatory legal environment assessment (LEA) can be a key step in helping build a shared understanding of the content of existing laws and their impacts. The process

of conducting an LEA can in and of itself generate broad-based buy-in for creating enabling legal environments, introduce the notion of assessing laws and their impacts on HIV-related outcomes, and promote ownership of the process, outputs and follow-up agenda.<sup>x</sup> It is best conducted as a multisectoral process involving, for example, not only lawyers, lawmakers, law enforcement and the judiciary but also health workers, civil society and representatives of key and vulnerable populations. Convening these different stakeholders to jointly determine the scope of an assessment allows diverse perspectives and experience with the laws, including lived experience, and technical, medical and legal expertise to come together—ultimately feeding into a plan of action to strengthen HIV-related legal environments.

The LEA processes can create a critical mass of stakeholders, including government leaders, who recognize the importance of protective laws and policies and human rights to the HIV response, as well as the harms caused by punitive and discriminatory laws, policies and practices, thus making legal and policy reform more successful. The multi-stakeholder nature of LEAs facilitates informed, in-depth assessment and actionable follow-up to promote implementation of recommendations for law and policy reform. For example, LEAs contributed to the inclusion of condoms and lubricants in national essential medicines list (the Democratic Republic of the Congo), repeal of laws criminalizing unintentional transmission of HIV (Mozambique and Zimbabwe), decriminalization of consensual

same-sex conduct (Seychelles) and the development of strategies for mainstreaming HIV and human rights in legal and regulatory frameworks (Sudan).<sup>xi</sup> UNDP has supported 32 LEAs in Africa, Asia and the Pacific, the Caribbean, and Eastern Europe and Central Asia, which have resulted in improved relationships between governments and civil society as well as positive changes to HIV-related legal environments.

**2. Sensitization of key stakeholders and engagement in legal review processes can improve laws, including criminal laws, that govern the rights and health of HIV-affected communities**

Widespread participation in legal review processes serves to foster broad-based and long-term buy-in and ownership of laws that positively impact the rights and health of HIV-affected communities. The diverse roles of different duty bearers in upholding the law necessitates the sensitization of parliamentarians who create laws, various stakeholders such as law enforcement and health workers who implement laws, lawyers who defend the law, and judges who apply and interpret the law. Creating opportunities for parliamentarians to be exposed to testimonies of HIV-affected populations and civil society has not only expanded the idea of what constitutes evidence in the legislative space to inform legal reform but shone a strong light on the harms caused by criminal law in the context of HIV.

Sensitization of health workers, lawyers and law enforcement helps create cadres of duty

bearers within countries known by key population members to be supportive whom they might call upon as necessary. For example, across Africa, workshops for lawyers have brought together purposefully selected groups of lawyers from across the continent to develop their capacity to successfully litigate cases relating to HIV and tuberculosis to improve the lives of people living with HIV and other key populations.<sup>xii</sup> Engagement of these different stakeholders in sensitization efforts helps engage more actors in seeking to remove harmful laws and promote a more supportive legal and policy environment. The Global Partnership for Action to Eliminate All Forms of HIV-related Stigma and Discrimination can be a vehicle for joint engagement between governments, civil society, UN entities and other partners to advance enabling legal environments.<sup>xiii</sup>

**3. A well-informed judiciary is important in the reform of HIV-related punitive and discriminatory laws and the achievement of relevant decriminalization**

Judges play an essential role in the protection of HIV-related human rights. However, with HIV science continually evolving, it cannot be assumed that all judges have the most current information to make appropriate rights-based judgments based on evidence and expert knowledge in this area. Efforts to support judges with this expert knowledge are an important investment in creating supportive legal environments. For example, in 2015, the High Court of Kenya presided over a case regarding the criminalization of HIV



transmission through the HIV and AIDS Prevention and Control Act, No. 14 of 2006. The Act stated that a person who is infected with HIV and aware of their status shall not knowingly and recklessly put another person at risk of becoming infected unless that other person knows that fact and voluntarily accepts the risk of being infected. The judges ruled that the language was overly broad and ultimately unconstitutional, and that it would lead to privacy violations and the promotion of fear and stigma.<sup>xiv</sup> Some of the Members of the High Court involved in this ruling noted they had attended the Africa Regional Judges Forum at which they had been sensitized on issues related to the harms caused by HIV-related criminalization, exposed to the stories of key populations about how HIV-related laws have affected their lives, and presented with up-to-date medical and public health evidence related to HIV. It is up to judges to decide how they will ultimately act in reviewing evidence and applying criminal law in the context of HIV but providing opportunities such as peer fora for judges to learn and share knowledge alongside other judges can produce a well-informed judiciary that is better equipped to address prejudices in the law and provide support for legal change.

#### **4. Coordinated, multi-pronged and multisectoral legal advocacy is most effective in changing HIV-related punitive and discriminatory laws, and achieving relevant decriminalisation**

There are many documented stories of success in changing laws that criminalize different aspects of HIV through pressure,

particularly from civil society.<sup>xv, xvi</sup> Responsive and inclusive legal reform must include cross-sectoral and multilevel engagement on the health and human rights impact of criminalisation. Breaking down silos between thematic legal areas allows for individuals across sectors, working on different topics such as drug use or sex work, to draw from a much wider evidence base than previously available. While commitment by leaders at all levels is central to effective legal reform, engagement with and advocacy by key and diverse stakeholders can ensure that laws are responsive to the actual needs of HIV-affected communities. Beyond engaging with parliamentarians, it is important to generate public discussion, including through media, to garner societal support for preventing the harms caused by criminal law and pushing for legal change. Public opinion matters across all stages of legal reform, including monitoring and enforcement.

#### **5. Global and regional advocacy can help advance national-level changes to HIV-related punitive and discriminatory laws, including decriminalisation**

Global and regional stakeholders can play a positive role in advancing national-level change, through coordinated advocacy and by helping to create safe political spaces for discussions on the reform of HIV-related laws. Rather than being limited to in-country dialogues, increasing opportunities for gatherings and collaboration at the regional level can allow for constructive interactions between those responsible for creating and implementing laws and individuals who

might normally experience oppressive legal environments, where they can safely voice their lived experiences. Global and regional human rights systems have also proved very important in this respect. For example, the Inter-American Court of Human Rights held a State responsible for violating its treaty obligations on the right to health due to its inaction to extend health care services to people living with HIV.<sup>xvii</sup> The Political Declaration and the Global AIDS Strategy can also be used in advocacy efforts to align country-level policies with global standards and challenge overly broad criminalization. UNDP and the UNAIDS Secretariat have collaborated to issue proposed recommendations aligned with public health and human rights norms amidst national HIV law reform processes, as was the case in Zimbabwe where HIV criminalization provisions were ultimately repealed in 2022. Global and regional efforts to end the misuse of criminal law in the HIV context can make it easier for national-level advocates to push for change.

## **Conclusion**

The misuse of criminal law, both in how laws are written and how they are applied, raises human rights concerns, and threatens to perpetuate the global HIV epidemic. Scaling up systemic efforts to create enabling legal environments is critical. Generating evidence on the impact of punitive and discriminatory laws on people living with HIV and key populations, as well as strategies being used by countries to reform these laws is vital. In this respect, building the capacity of community-led organizations to generate evidence is important. The sensitization of key stakeholders, including people living with HIV and key populations, parliamentarians, law enforcement agencies, lawyers and judges, and sustained, multisectoral advocacy at the national, regional and global level can positively impact HIV-related legal environments. Such efforts are critical to achieving the 10-10-10 targets and other commitments of the Political Declaration and the Global AIDS Strategy as well as ending AIDS as a public health threat by 2030.

UNDP is a founding co-sponsor of the Joint UN Programme on HIV/AIDS (UNAIDS). UNDP convenes the Joint Programme's work on rights, law, stigma and discrimination and co-convenes the work on key populations (with UNFPA). UNDP also serves as interim Principal Recipient for Global Fund HIV grants in challenging operating environments. UNDP is a co-convenor of the Global Partnership for Action to Eliminate All Forms of HIV-related Stigma and Discrimination which works with countries to address stigma and discrimination across six priority settings: the community, education, health care, humanitarian and emergency settings, the justice system and the workplace.

On behalf of UNAIDS, UNDP convened the Global Commission on HIV and the Law in 2010.<sup>xviii</sup> The Global Commission's 2012 Report and 2018 Supplement made recommendations to governments on a range of issues including criminalisation, key populations, gender equality, rights-based service delivery, access to medicine and the use of digital technologies for HIV. The breadth and approach of follow-up activities to the Global Commission offer key lessons for what it will take to operationalize the ambitious commitments of the 2021 Political Declaration and the Global AIDS Strategy.

UNDP has worked with governments, civil society organizations and other partners to advance the recommendations of the Global Commission on HIV and the Law in 90 countries. In line with its Strategic Plan 2022–2025 and HIV and Health Strategy 2022–2025, UNDP supports countries and communities to create enabling legal and policy environments that respect human rights, and is committed to regaining lost ground on HIV, TB and malaria.

The external evaluation of the Global Commission on HIV and the Law was conducted by the University of Southern California (USC), Institute on Inequalities in Global Health in 2021. This issue brief was developed jointly by UNDP and the USC, Institute on Inequalities in Global Health.

## Endnotes

- <sup>i</sup> Program on Global Health and Human Rights, Institute on Inequalities in Global Health, University of Southern California. *Evaluation of the Global Commission on HIV and the Law*. 2020. Available at: <https://hivlawcommission.org/wp-content/uploads/2021/06/Final-Report-Independent-Evaluation-Global-Commission-HIV-and-the-Law.pdf>.
- <sup>ii</sup> Program on Global Health and Human Rights, Institute on Inequalities in Global Health, University of Southern California. *Evaluation of the Global Commission on HIV and the Law: Executive Summary*. 2021. Available at: [https://hivlawcommission.org/wp-content/uploads/2021/06/Global-Commission\\_evaluation\\_ExecSummary.pdf](https://hivlawcommission.org/wp-content/uploads/2021/06/Global-Commission_evaluation_ExecSummary.pdf).
- <sup>iii</sup> UNAIDS, *Global AIDS Update Report 2022: Progress towards the 2025 Targets*. Available at: <https://www.unaids.org/>.
- <sup>iv</sup> Global Commission on HIV and the Law. *HIV and the Law: Risks, Rights and Health*. 2012. Available at: [www.hivlawcommission.org/report](http://www.hivlawcommission.org/report).
- <sup>v</sup> M. Kavanagh et al. "Law, criminalisation and HIV in the world: have countries that criminalise achieved more or less successful pandemic response?". *BMJ Global Health* 2021;6:e006315. doi:10.1136/bmjgh-2021-006315.
- <sup>vi</sup> K. Shannon et al. "Global epidemiology of HIV among female sex workers: Influence of structural determinants". *Lancet* 385(9962) (3 January 2015), p. 55–71. doi:10.1016/S0140-6736(14)60931-4.
- <sup>vii</sup> A. Borquez et al. "The effect of public health-oriented drug law reform on HIV incidence in people who inject drugs in Tijuana, Mexico: an epidemic modelling study". *The Lancet Public Health* 3(9) (August 2018), pp. e429–e437. doi:10.1016/S2468-2667(18)30097-5.
- <sup>viii</sup> UNGASS. *Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030*. 2021.
- <sup>ix</sup> UNAIDS. *End Inequalities. End AIDS: Global AIDS Strategy 2021–2026*. 2021.
- <sup>x</sup> UNDP. *Practical Manual: Legal Environment Assessment for HIV: An Operational Guide to Conducting National, Legal, Regulatory and Policy Assessments for HIV* (January 2014). Available at: <https://www.undp.org/publications/practical-manual-legal-environment-assessment-hiv-operational-guide-conducting>.
- <sup>xi</sup> Full LEA reports for these and other countries are available at: [www.hivlawcommission.org/elibrary-lea/](http://www.hivlawcommission.org/elibrary-lea/).
- <sup>xii</sup> Program on Global Health and Human Rights, Institute on Inequalities in Global Health, University of Southern California. *Evaluation of the Global Commission on HIV and the Law*. 2020.
- <sup>xiii</sup> The Global Partnership is co-convened by UNAIDS, UNDP, UN Women, the Global Fund for AIDS, TB and Malaria and the Global Network of People Living with HIV. It is working with governments across 30 countries and counting to take concrete action to address stigma and discrimination.
- <sup>xiv</sup> Kenya Law. *AIDS Law Project v Attorney General, et al*. Petition No. 97 of 2010. High Court of Kenya, 2015. Available at: <http://kenyalaw.org/caselaw/cases/view/107033/>.
- <sup>xv</sup> UNDP. "Malawi HIV law amended to remove rights-infringing provisions," 12 December 2017.
- <sup>xvi</sup> Southern Africa Litigation Centre. "Botswana: Challenging Criminalisation of Same-Sex Sexual Relationships." 11 June 2019. Available at: <https://www.southernafricalitigationcentre.org/2019/06/11/botswana-challenging-criminalisation-of-same-sex-sexual-relationships/>.
- <sup>xvii</sup> See IACtHR Press Release. Available at: [www.corteidh.or.cr/docs/comunicados/cp\\_44\\_18\\_eng.pdf](http://www.corteidh.or.cr/docs/comunicados/cp_44_18_eng.pdf). Also the African Commission on Human and Peoples' Rights has a Committee on HIV which has issued important reports and recommendations to African Union member states. See: [www.achpr.org/specialmechanisms/detail?id=15](http://www.achpr.org/specialmechanisms/detail?id=15).
- <sup>xviii</sup> Global Commission on HIV and the Law. [www.hivlawcommission.org/](http://www.hivlawcommission.org/).



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