



HIV, Health and Development at the United Nations Development Programme

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Making the law work for HIV responses

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It's been more than four decades since the beginning of the AIDS pandemic, and its end ought to be within reach, in part thanks to remarkable advances in science such as a new, injectable form of pre-exposure prophylaxis (PrEP). However, inequalities continue to prolong and even worsen the pandemic. We have a unique opportunity with the "10-10-10 targets" outlined in the "2021 Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to Ends AIDS by 2030": less than 10% of people living with HIV (PLHIV) and key populations experience stigma and discrimination; less than 10% of PLHIV, women and girls and key populations experience gender-based inequalities and gender-based violence; and less than 10% of countries have punitive laws and policies.¹

Punitive and discriminatory laws remain all too common. There are 92 countries that currently criminalize HIV transmission, exposure and non-disclosure, and 48 countries or territories that prohibit PLHIV from entry, stay or residence.^{2,3} These kinds of legal barriers are not just inhumane, but also actively hamper efforts to tackle HIV.

Fear of stigma, discrimination, and prosecution makes people less likely to seek critical testing, treatment, and care. As a result, countries that advance punitive laws, including criminalizing same-sex sexual acts, sex work and drug use, are shown to have less successful HIV responses, with lower rates of HIV-positive individuals knowing their status, lower rates of uptake of treatment and lower rates of viral suppression among PLHIV.⁴

Conversely, countries that have legal environments advancing non-discrimination, independent human rights institutions, and gender-based violence (GBV) responses have fared much better, with greater knowledge of HIV status and higher rates of treatment and viral suppression.⁴

Some countries have made progress on elements of the 10-10-10 targets, as seen from Botswana's 2019 ruling to decriminalize homosexuality and its more recent decision to uphold the ruling. However, we have also seen that such progress can be fragile and no countries are on track to achieve the 10-10-10 targets.

A large and growing percentage of new HIV infections are occurring in key populations and their sexual partners, who continue to experience high levels of stigma, discrimination, violence, marginalization, and criminalization, often fuelled by hostile environments and shrinking civic space.⁵

Civil society and communities are on the front lines of addressing discriminatory and punitive laws and reaching key populations with essential HIV and health services while advancing their human rights. These organizations have proven especially important

during the covid-19 pandemic, which has severely disrupted the delivery of HIV services.⁶ As laws restricting civil society have become increasingly prevalent, governments must take action to promote an open civic space as a way of supporting their national HIV responses.

Bold action to assess and scale innovative policies and practices on the path to removing punitive and discriminatory laws can help countries and communities mitigate the impact of criminalization and increase access to services. Many governments and communities are already working with partners, such as the United Nations Development Programme (UNDP) and the Global Commission on HIV and the Law, to implement innovative measures, such as multi-stakeholder legal environment assessments, guidance for prosecutors on HIV-related criminal cases, legal support, work with judiciary, legislators, law enforcement, and health care workers and GBV responses.

Enacting evidence and rights-based laws is also essential to ensure that people living with HIV and other key populations can receive high quality healthcare that considers their unique needs and eliminates stigma and discrimination in health systems. Iran, for example, recently passed an HIV anti-discrimination by-law for public and private health centres, and integrated anti-stigma and discrimination efforts into its national HIV surveillance system.⁷

"Leaving no one behind" is a key rallying cry for getting back on track for the SDGs and the target of ending AIDS by 2030. However, as long as harmful laws remain in place, the rights of marginalized people are neglected and inequalities dictate health outcomes, the pandemic will continue. It requires political will, scaling innovative policies and practices, and supporting civil society and communities on the journey to removing the punitive and discriminatory laws and criminalization impeding HIV responses and deepening inequalities.

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2 Criminalization HIV. Human rights fact sheet. https://www.unaids.org/sites/default/files/media_asset/01-hiv-human-rights-factsheet-criminalization_en.pdf

3 UNDP Connecting the dots towards a more equitable, healthier and sustainable future. <https://www.undp.org/publications/connecting-dots-towards-more-equitable-healthier-and-sustainable-future-undp-hiv-and#modal-publication-download>

4 Kavanagh MM, Agbla SC, Joy M, et al. Law, criminalisation and HIV in the world: have countries that criminalise achieved more or less successful pandemic response? *BMJ Glob Health* 2021;6:e006315. doi: 10.1136/bmjgh-2021-006315 pmid: 34341021

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