

High-level commission finds an epidemic of bad laws is stifling the global AIDS response

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Punitive laws and human rights abuses are costing lives, wasting money and stifling the global AIDS response, according to a report by the Global Commission on HIV and the Law, an independent body of global leaders and experts. The Commission report, "HIV and the Law: Risks, Rights and Health," finds evidence that governments in every region of the world have wasted the potential of legal systems in the fight against HIV. The report also concludes that laws based on evidence and human rights strengthen the global AIDS response - these laws exist and must be brought to scale urgently.

"Bad laws should not be allowed to stand in the way of effective HIV responses," said Helen Clark, [United Nations](#) Development Programme Administrator. "In the 2011 Political Declaration on HIV and AIDS, Member States committed to reviewing laws and policies which impede effective HIV responses. One of the key contributions of the Commission's work has been to stimulate review processes and change in a number of countries."

The Global Commission on HIV and the Law—comprising former heads of state and leading legal, [human rights](#) and HIV experts—based its report on extensive research and first-hand accounts from more than 1,000 people in 140 countries. The Commission, supported by the United Nations Development Programme on behalf of the Joint United Nations Programme on HIV/AIDS, found that punitive laws and discriminatory practices in many countries undermine progress against HIV.

For example, laws and legally condoned customs that fail to protect women and girls from violence deepen gender inequalities and increase their vulnerability to HIV. Some intellectual property laws and policies are not consistent with international human rights law and impede access to lifesaving treatment and prevention. Laws that criminalise and dehumanise populations at highest risk of HIV—including men who have sex with men, sex workers, transgender people and injecting drug users—drive people underground, away from essential health services and heighten their risk of HIV. Laws that criminalise HIV transmission, exposure or non-disclosure of HIV status discourage people from getting tested and treated. More specifically:

- In more than 60 countries, it is a crime to expose another person to or transmit HIV. More than 600 HIV-positive people across 24 countries, including the United States, have been convicted of such crimes. These laws and practices discourage people from seeking an HIV test and disclosing their status.
- 78 countries criminalise same-sex sexual activity. Iran and Yemen impose the death penalty for sexual acts between men; Jamaica and Malaysia punishes homosexual acts with lengthy imprisonment. These laws make it difficult to prevent HIV amongst those most vulnerable to infection.
- Even though they may provide harm reduction services informally, laws in some countries criminalise some aspects of proven harm reduction services for injecting drug users, including in Cambodia, China, Myanmar, Malaysia and the Philippines. In contrast, countries that legalise harm reduction services, like Switzerland and Australia, have almost completely stopped new HIV infections among injecting drug users.
- More than 100 countries criminalise some aspect of sex work. The legal environment in many countries exposes sex workers to violence and results in their economic and social exclusion. It

also prevents them from accessing essential HIV prevention and care services.

- Laws and customs that disempower women and girls, from genital mutilation to denial of property rights, undermine their ability to negotiate safe sex and to protect themselves from HIV infection. 127 countries do not have legislation against marital rape.
- Laws and policies that deny young people access to sex education, harm reduction and reproductive and HIV services help spread HIV.
- Excessive intellectual property protections that hinder the production of low-cost medicines, especially second-generation treatments, impede access to treatment and prevention.

Enforcing bad laws squanders resources and undermines effective HIV responses

Over the past three decades, scientific breakthroughs and billions of dollars of investments have led to the remarkable expansion of lifesaving HIV prevention and treatment, which has benefited countless individuals, families and communities. Yet, the Commission's report finds that many countries squander resources by enacting and enforcing laws that undermine these critical investments.

"Too many countries waste vital resources by enforcing archaic laws that ignore science and perpetuate stigma," said former President of Brazil Fernando Henrique Cardoso, who chairs the Commission. "Now, more than ever, we have a chance to free future generations from the threat of HIV. We cannot allow injustice and intolerance to undercut this progress, especially in these tough economic times."

Governments must enact laws based on evidence,

human rights and public health

The report finds that laws based on public health evidence and human rights can transform the global HIV response. According to the Commission's report, laws and practices rooted in sound public health evidence and human rights exist and such laws and practices must be replicated. To end the epidemic of bad laws and to promote good laws that support effective HIV responses, the Commission urges governments to ban discrimination on the basis of HIV status and to repeal laws that criminalise HIV transmission or non-disclosure of HIV status. The Commission calls on governments to use the law to end the scourge of violence against women and girls and to resist international pressures to prioritise trade over the health of their citizens. The Commission also recommends decriminalising same-sex sexual activity, voluntary sex work and drug use, which will allow vulnerable populations access to HIV services.

"Women are half the world's population and young people are our future," said Nevena Ciric, a Serbian woman living with HIV. "Countries must enact laws that prevent violence against women and girls, as well as ensuring that laws support the provision of comprehensive sexual health education and services to young people."

The global community has a critical role to play. Global leaders, civil society groups and the United Nations must hold governments accountable to the highest standards of international law, public health and universal human rights, and advocate for policies and practices based on human rights and public [health](#) evidence.

"Governments across the world have a responsibility to take bold action and repeal laws that stem from ignorance and intolerance," said Maurice Tomlinson, a Jamaican lawyer and legal advisor for [AIDS](#)-Free World. "In Jamaica, where HIV prevalence among men who have sex with men

is among the highest in the world, anti-sodomy law breeds fear and violence and drives these men away from the care and treatment they need."

Governments must follow the leadership of countries that have enacted laws that help advance effective HIV responses. For example, African and Caribbean countries that do not criminalise same-sex sexual activity have lower HIV prevalence among men who have sex with men.

Countries that treat injecting drug users as patients instead of criminals—including New Zealand, Germany, Australia, Switzerland and Portugal —have increased access to HIV services and reduced HIV transmission rates among people who use drugs.

"We must ensure that new interventions to prevent and treat HIV reach the people who need them most," said former President of the Republic of Botswana Festus Mogae, a member of the Commission. "Laws that prohibit discrimination and violence and protect at-risk populations are a powerful, low-cost tool to ensure that [HIV](#) investments are not wasted. Undoubtedly, enforcing such laws is complex and politically challenging, but our report shows that it can and must be done."

Provided by Global Commission on HIV and the Law

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