Progress and the Peril: HIV and the Global De/criminalization of Same-Sex Sex

2023 Report
“Rather than punishing consenting adults involved in same-sex activity, countries must offer such people access to effective HIV and health services and commodities”

-Global Commission on HIV and the Law
10-10-10 Goals by 2025

- < 10% of countries have punitive legal and policy environments that deny or limit access to services
- < 10% of people living with HIV & key populations experience stigma & discrimination
- < 10% of women, girls, people living with HIV and key populations experience gender inequality and violence
The HIV Policy Lab

Law is an intervention, and is a powerful means to expand science to scale

A collaboration with between academic, UN, and civil society organizations to track, measure and improve the HIV-related law and policy environment in countries around the world.

Tracks the adoption status of 33 globally recommended laws and policies across a 194 countries
the de jure content of the law, as written, and whether national law refrains from criminalizing consensual same-sex sexual acts

Is a country’s policy to avoid prosecuting people for same-sex sexual activity (or in other words, observes a “de-facto policy of non-enforcement”)

Sources: ILGA, UNAIDS’ NCPI, HIV Policy Lab Research

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Over 120 states and territories criminalized same-sex sex at the start of the AIDS pandemic

Since the resolution establishing the Joint United Nations Programme on AIDS in 1994, 46 countries have removed criminal laws on same-sex sex

129 countries do not criminalize same sex-sex in 2023

Helping secure progress against the AIDS pandemic
As of 2023, 2/3 of countries do not criminalize same-sex sex in written law.

Countries that criminalize same-sex sex: 65 (33.5%)

Countries that do not criminalize same-sex sex: 129 (66.5%)

Today, 63% (24.6 million) of people living with HIV live in countries where same-sex sex is not illegal.
Every country that fully decriminalized in recent years started by not enforcing criminalizing laws. Today **24 countries** have a *de facto* policy of non-enforcement.
Between 2017-2023, thirteen countries removed laws criminalizing same-sex sexual activity

Figure 1: Decriminalization of Consensual Same-Sex Sex Under Law (2018-2023)

Note. Text of the new laws for each of these can be found in the HIV Policy Lab Resource Library at www.hivpolicylab.org/sources
Countries from multiple regions have decriminalized same-sex sex, bringing some regions closer to 10-10-10 targets.
Decriminalization of same-sex sex in Africa

**West & Central Africa:**
More than half (52%) of countries

**Eastern & Southern Africa:**
Nearly half (43%) of countries

**Middle East & North Africa:**
Less than half (20%) of countries
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<th>Do not criminalize (20)</th>
<th>Criminalize but no reported prosecutions (7)</th>
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HIV Policy Lab
Policy adoption
S1 - Same-sex sex non-criminalization

[Map of Africa showing policy adoption status]
Public Health Impact

Global HIV prevalence:
- Gay men and other men who have sex with men vs. all adults: **11 x higher**
- Transgender people vs. all adults: **14 x higher**

Difference in HIV prevalence between MSM and other adult men in selected African countries:
- Non-criminalizing countries: **7.2 higher**
- Criminalizing countries: **24.8 higher**

Among the entire population:
- Knowledge of HIV status in non-criminalizing vs. criminalizing countries: **11.3% higher**
- Viral suppression in non-criminalizing vs. criminalizing countries: **8.1% higher**
Criminalization is linked to higher HIV rates
Criminalization drives inequality in HIV
Criminalization undermines the HIV response at a population-level
Criminalization hinders accurate public health planning
Discriminatory legislation adversely affects health outcomes
Peril Amidst Progress: Deepening Criminalization in countries out of step with global trends

In countries that already criminalize same-sex relationships, new laws and bills under consideration aggravate criminalization:

- Imposing harsher penalties
- Some including long prison sentences and even the death penalty
- Expanding the scope of criminalization
- Imposing sanctions on those who do not report others or who somehow support or assist affected populations, including as part of the AIDS response.

Trans Criminalization

- Trans women, in particular, face high risk of HIV, often considered “men” under same-sex criminalization.
- Countries issue public order offenses like indecency, vagrancy, and loitering to systematically subject trans people to arrest and prosecution for their gender identity.

Much of this momentum is coming from coordinated global political attacks
**Counter Trends: Transgender Identities**

- Globally, trans people have an HIV prevalence that is 14 times that of other adults.

- Many national legal environments deny the existence of trans people, criminalize trans identities or set burdensome preconditions for their participation in society.

- 20 countries reported to UNAIDS in 2023 that they criminalize transgender people, and 13 countries are reported to have such laws in the ILGA database as of 2020.

- Countries issue public order offenses like indecency, vagrancy, and loitering to systematically subject trans people to arrest and prosecution for their gender identity.
Progressive measures: Transgender Identities

- Spain’s legal reforms in February 2023 allow for gender recognition procedures based on self-determination.

- In 2022, Kuwait struck down law criminalizing “imitating the opposite sex” or cross dressing which carried a prison term.

- In 2018, the highest Appellate Court for Guyana, the Caribbean Court of Justice, struck down the vague cross-dress laws used to harass and arrest transgender persons.
Counter Trends: Transgender Identities

- Nov 2022: Russia Bans conversations about homosexuality and gender identity
- May 2023: Pakistan’s Shariat Court strikes down enabling legislation on changing gender markers in official document
- May 2021: Hungary bans legal gender recognition
- Feb 2023: Bulgaria’s Supreme Court denies legal name change of trans people
- Over 500 anti-trans bills introduced between January and September 2023 in US state legislatures
- July 2023: Russia signs into law bill banning gender affirming care which was approved in May 2023
Less than half of countries that do not criminalize same-sex sex have non-discrimination protections both on the basis of both gender identity and sexual orientation.
Case studies of Decriminalization

Angola, Mauritius, Singapore, Botswana, India, Cook Islands, Gabon, and Antigua and Barbuda

- Many countries seemed unlikely to criminalize just a few years before.
- Courts & Legislatures: many political & legal pathways to decrim.

Economic Case, Human Rights

- Significant positive impact on GDP
- Strong rights obligation
Lessons for the AIDS response

• Success produced by investing in policy-change and law-reform efforts to decriminalize same-sex sex

• Important even when short-term change does not look likely

• Decriminalization alone is not sufficient, there is urgent need to address broader enabling laws and policies and invest in community services and advocacy

• The need to maintain a truly multi-sectoral AIDS response since necessary changes are not led solely by the health sector
Progress and the Peril
Available now at
www.HIVPolicyLab.org