



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 countries
criminalize same-sex
sexual relations

< 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

HIV Policy Lab

The HIV Policy Lab online platform systematically gathers and monitors laws and policies adopted by countries around the world—documenting where key HIV science has been translated into policy. It is an open, growing global public resource that builds data from legal documents, government reporting, and independent research. In-depth country pages, an interactive global map and comparison across issues and countries is available. Please click below to enter.



Find a country



Global map

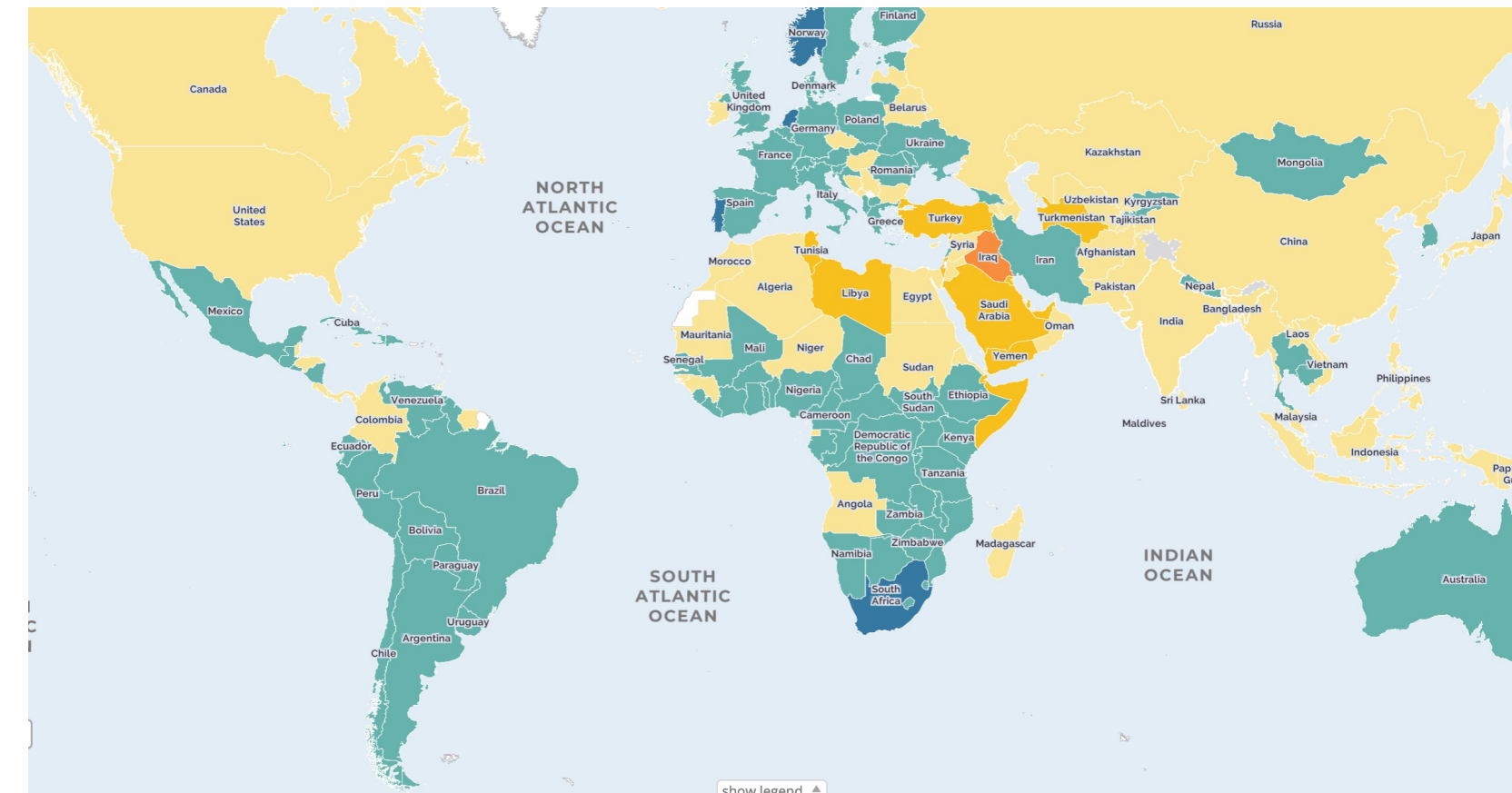
View map



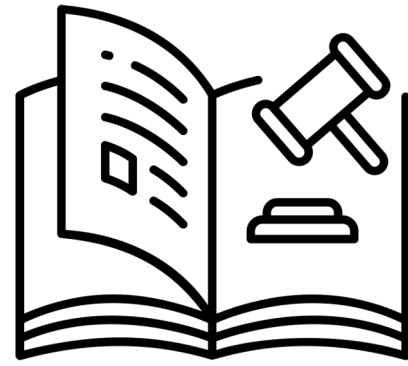
Compare countries

View countries

www.hivpolicylab.org



HIV Policy Lab measures on decriminalization...



the de jure content of the law, as written,
and whether national law refrains from
criminalizing consensual same-sex sexual
acts

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



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*

Global trends: Decriminalization

**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

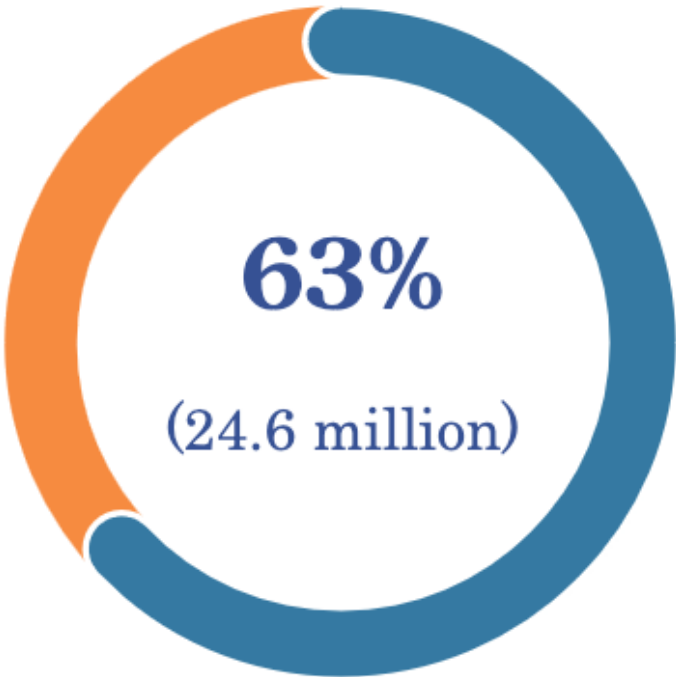
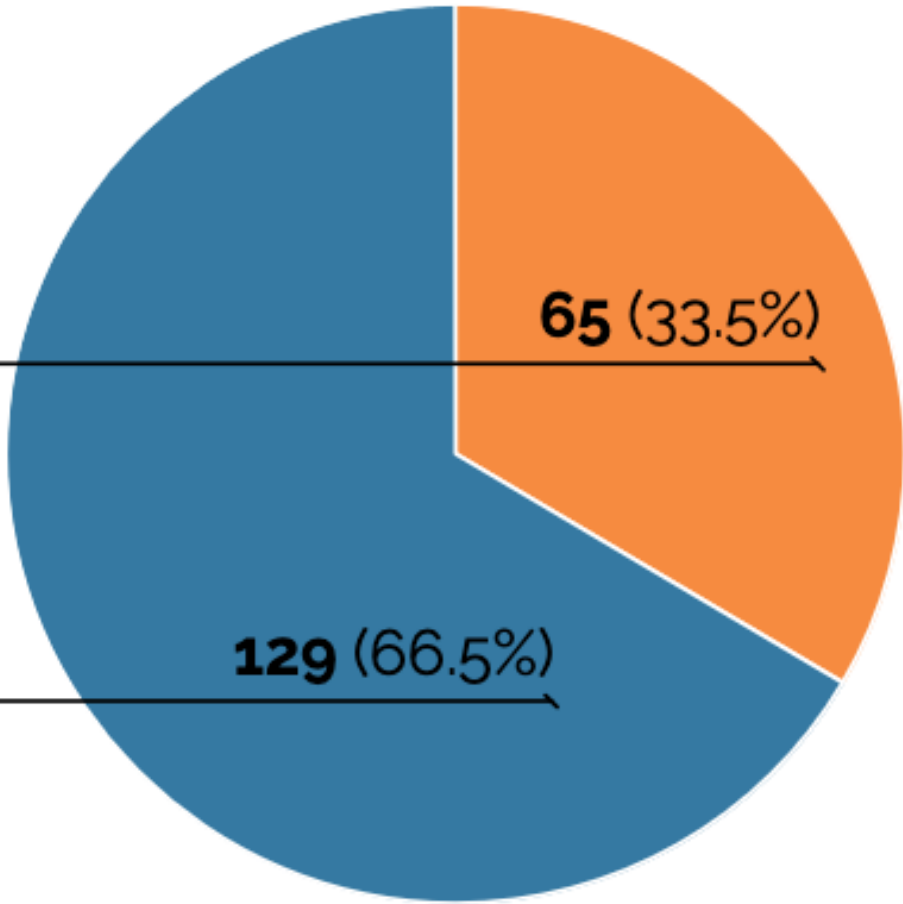
**129 countries do not criminalize same
sex-sex in 2023**

Helping secure progress against the AIDS pandemic

As of 2023 2/3 of countries do not criminalize same-sex sex in written law

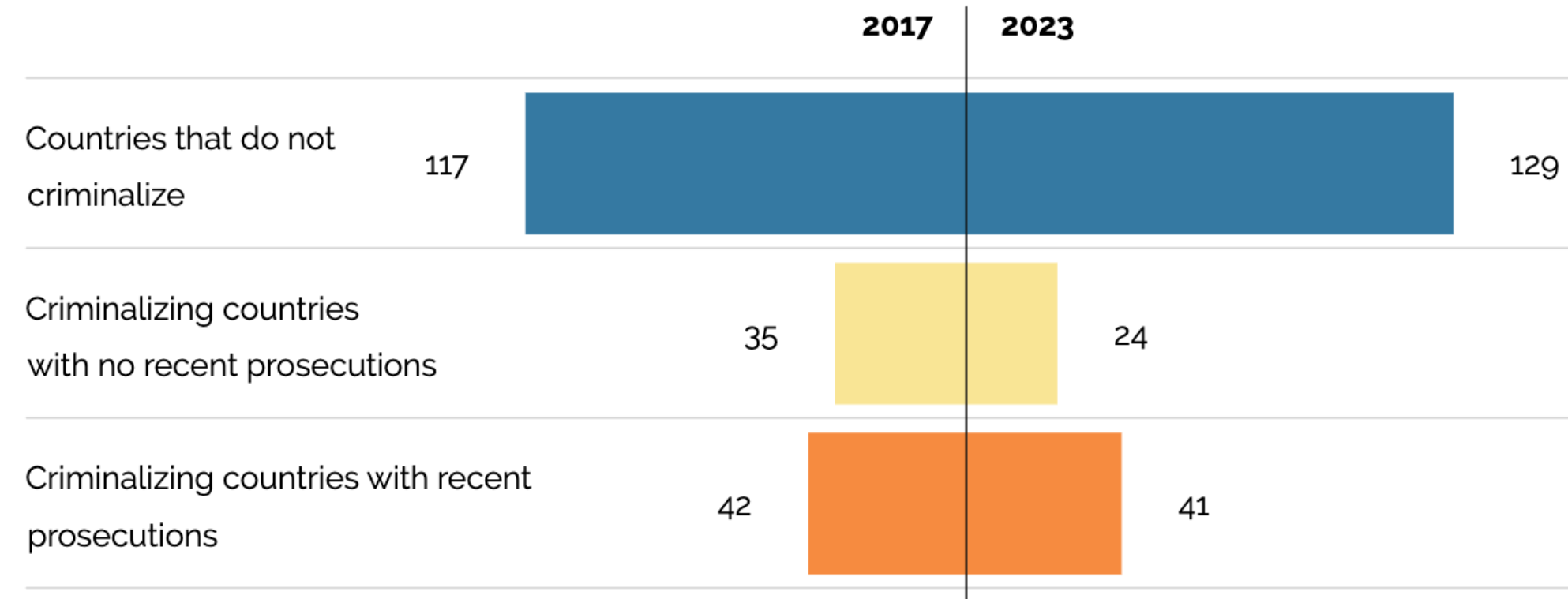
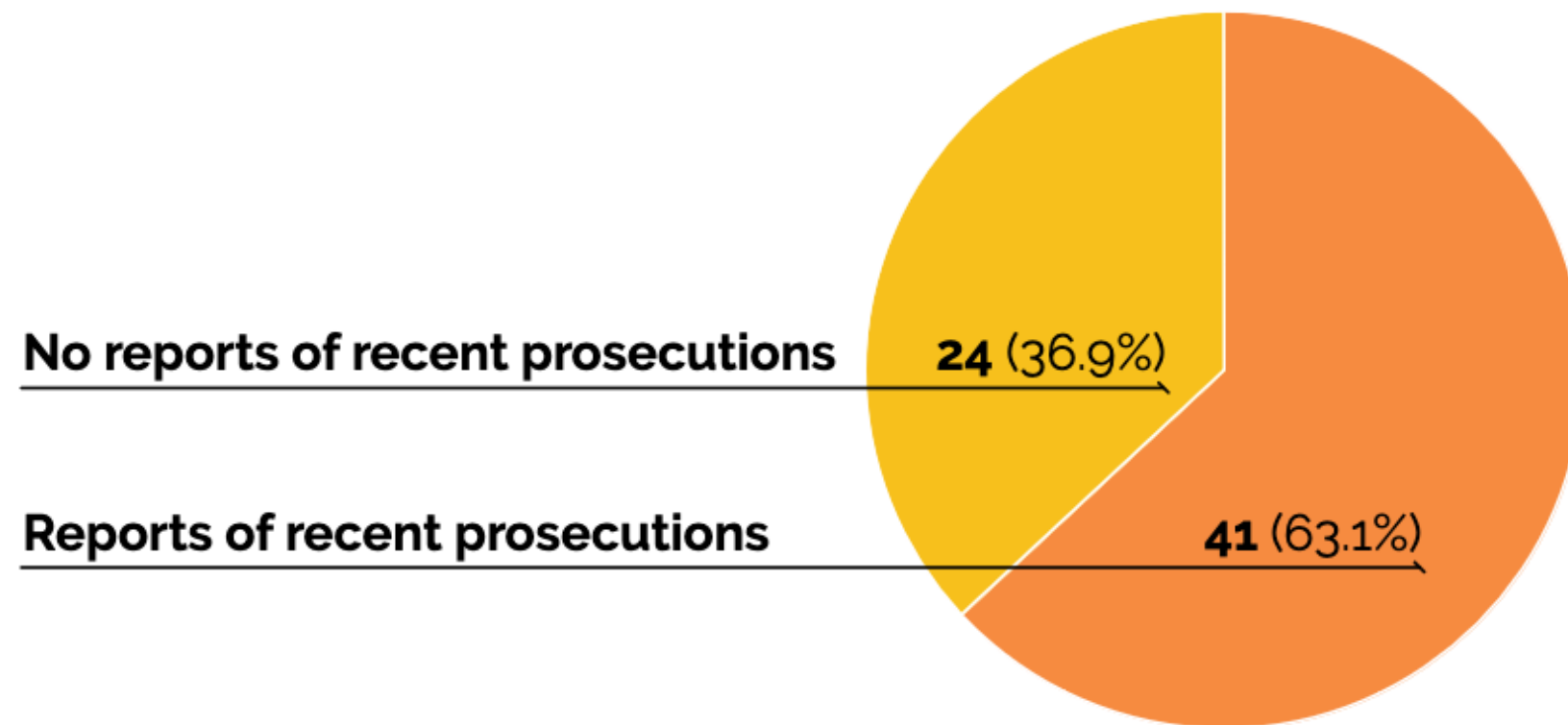
Countries that criminalize
same-sex sex

Countries that do not
criminalize same-sex sex



Today, 63% (24.6 million) of people living with HIV live in countries where same-sex sex is not illegal.

Policies & Enforcement



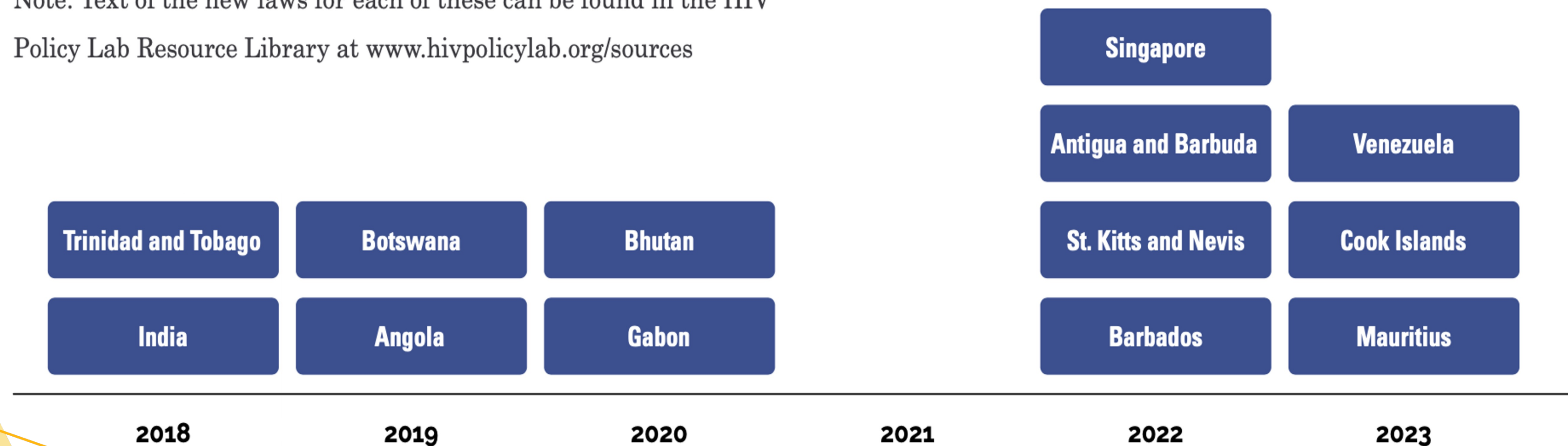
Every country that fully decriminalized in recent years started by not enforcing criminalizing laws.

Today **24 countries** have a *de facto* policy of non-enforcement.

Between 2017-2023, thirteen countries removed laws criminalizing same-sex sexual activity

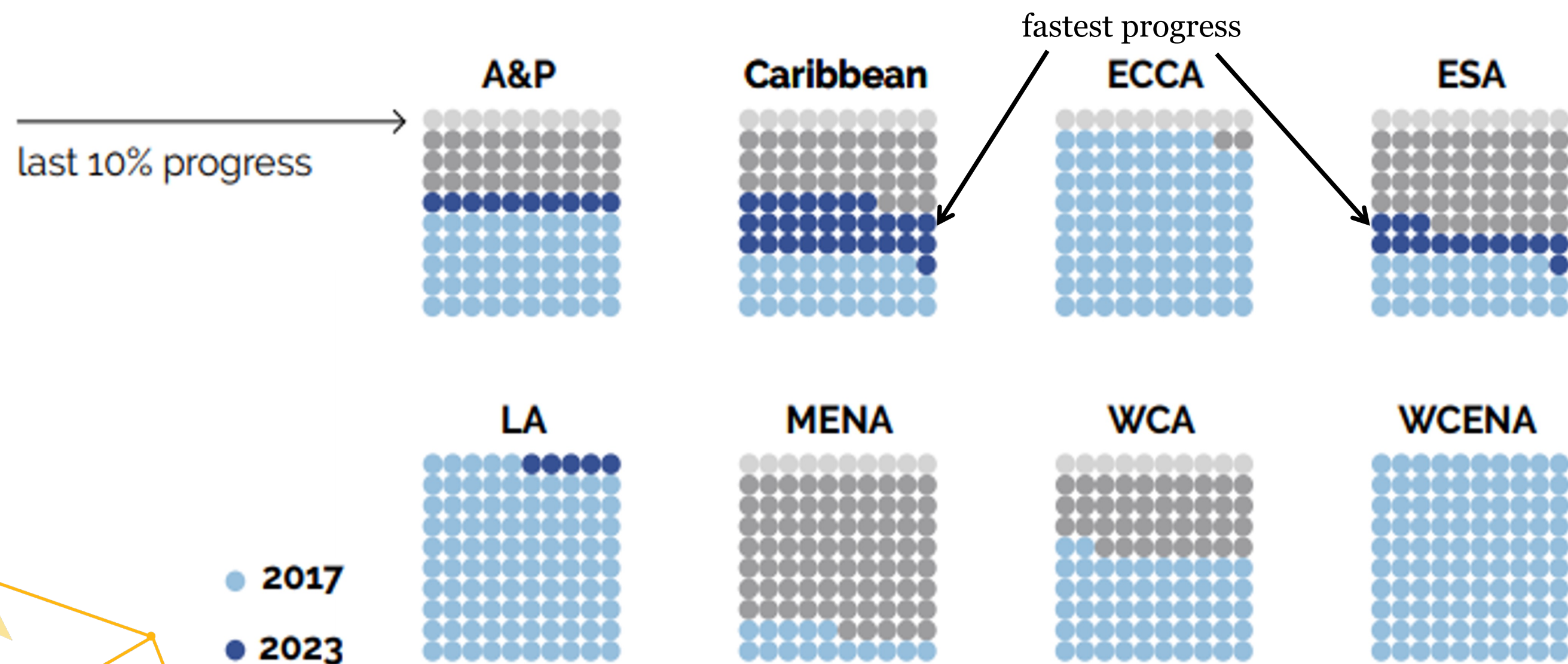
Figure 1: Decriminalization of Consensual Same-Sex Sex Under Law (2018-2023)[¶]

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



Regional state of play: Decriminalization

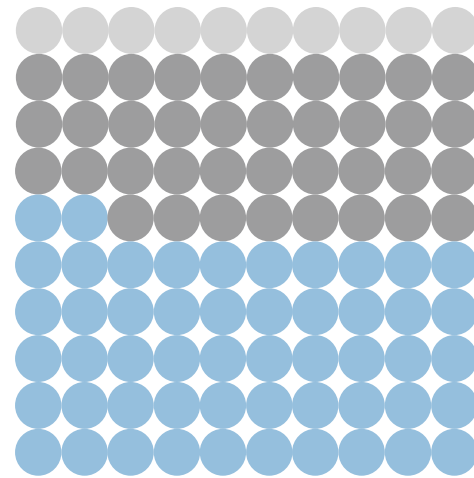
Countries from multiple regions have decriminalized same-sex sex, bringing some regions closer to 10-10-10 targets



P: Asia and Pacific, **ESA**: Eastern and Southern Africa, **ECCA**: Eastern Europe and Central Asia, **LA**: Latin America, **MENA**: Middle East and North Africa **WCA**: West and Central Africa, **WCENA**: Western and Central Europe and North America

Decriminalization of same-sex sex in Africa

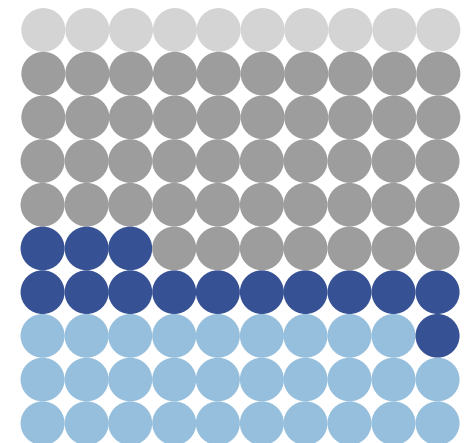
WCA



West & Central Africa:

More than half (52%) of countries

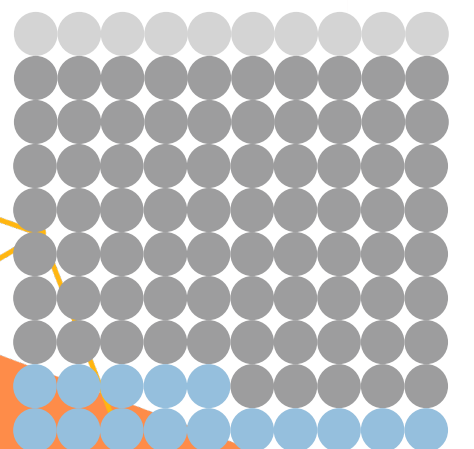
ESA



Eastern & Southern Africa:

Nearly half (43%) of countries

MENA



Middle East & North Africa:

Less than half (20%) of countries

Do not criminalize (20)

Angola	Gabon
Benin	Guinea-Bissau
Botswana	Lesotho
Burkina Faso	Madagascar
Central African Republic	Mali
Congo	Mauritius
Côte d'Ivoire	Mozambique
DRC	Niger
Djibouti	Rwanda
Equatorial Guinea	South Africa

Criminalize
*but no reported
prosecutions (7)*

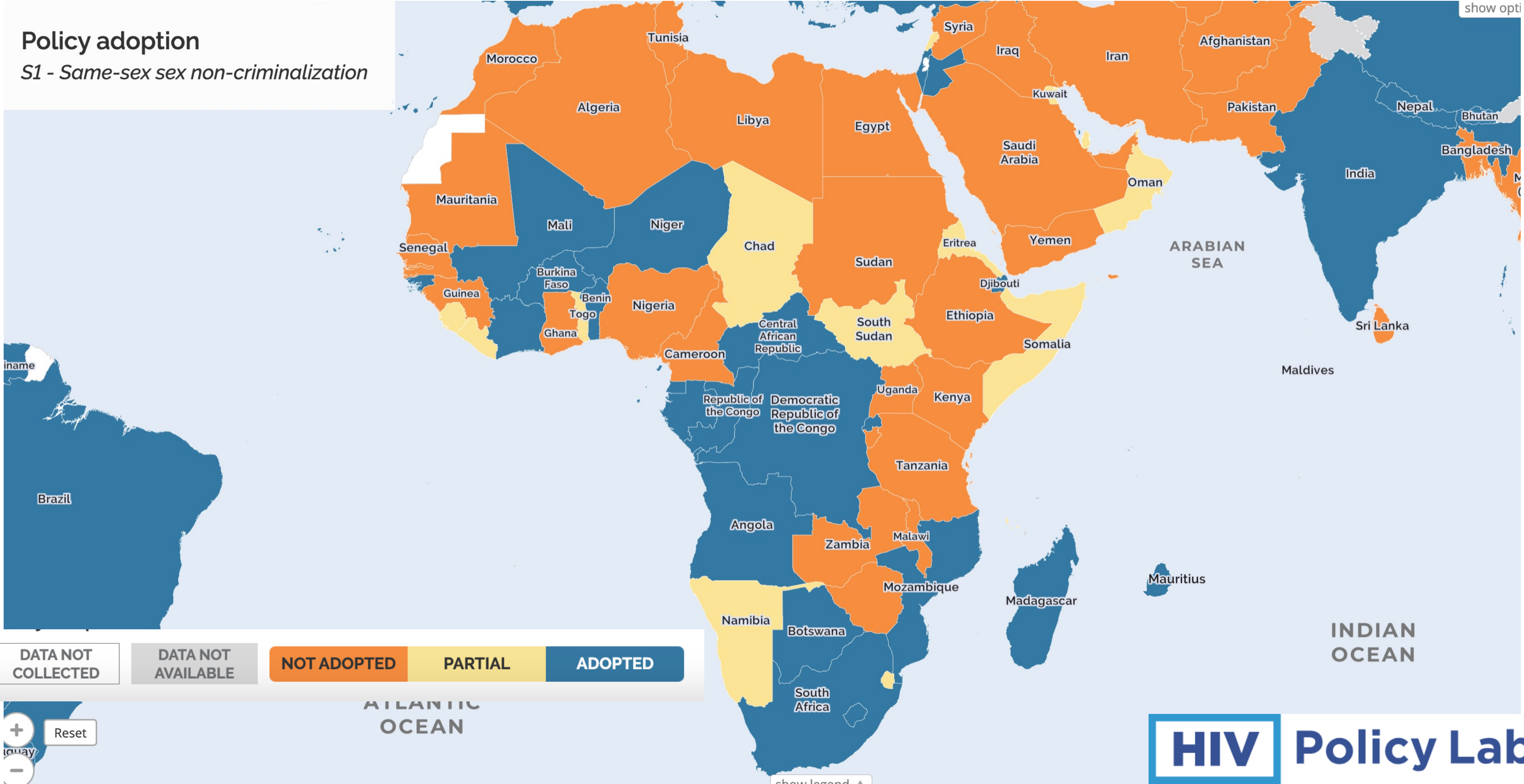
Eswatini
Kenya
Liberia
Namibia
Sierra Leone
South Sudan
Togo

Criminalize

Algeria	Mauritania
Burundi	Morocco
Cameroon	Nigeria
Chad	Senegal
Egypt	Somalia
Eritrea	Sudan
Ethiopia	Tanzania
Gambia	Tunisia
Ghana	Uganda
Guinea	Zambia
Libya	Zimbabwe
Malawi	

Policy adoption

S1 - Same-sex sex non-criminalization



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**^a



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**^b



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**^c

Public Health Evidence

- 📍 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.

Much of this momentum is coming from coordinated global political attacks

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

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

Over 500 anti-trans bills introduced between January and September 2023 in US state legislatures

May 2021: Hungary bans legal gender recognition

Feb 2023: Bulgaria's Supreme Court denies legal name change of trans people

July 2023: Russia signs into law bill banning gender affirming care which was approved in May 2023

Non-discrimination protections

Figure 6: **Anti-Discrimination measures on the basis of sexual orientation** (Number of countries without criminalizing laws), 2023

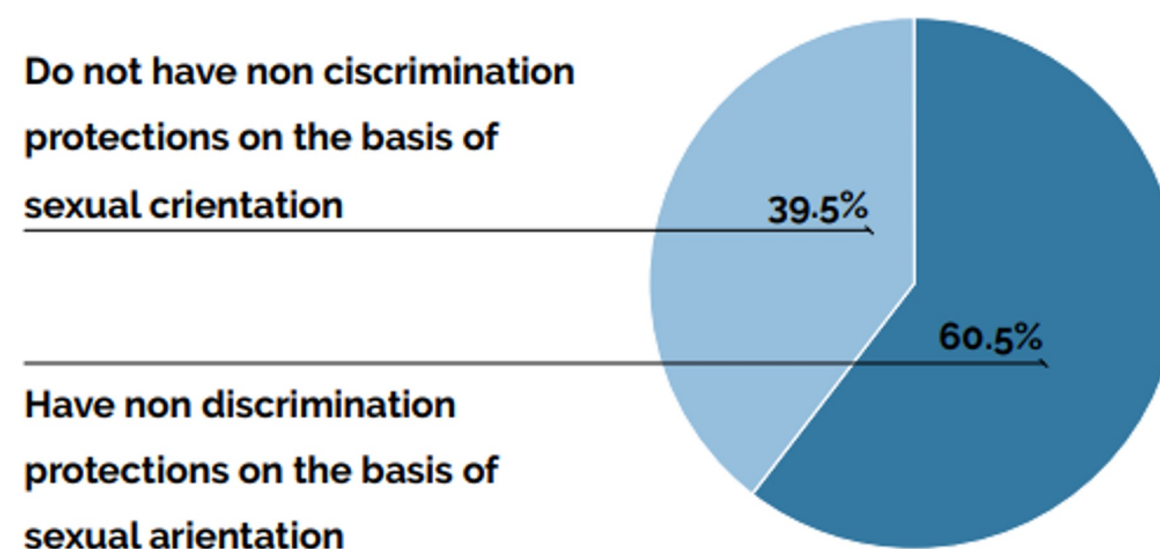
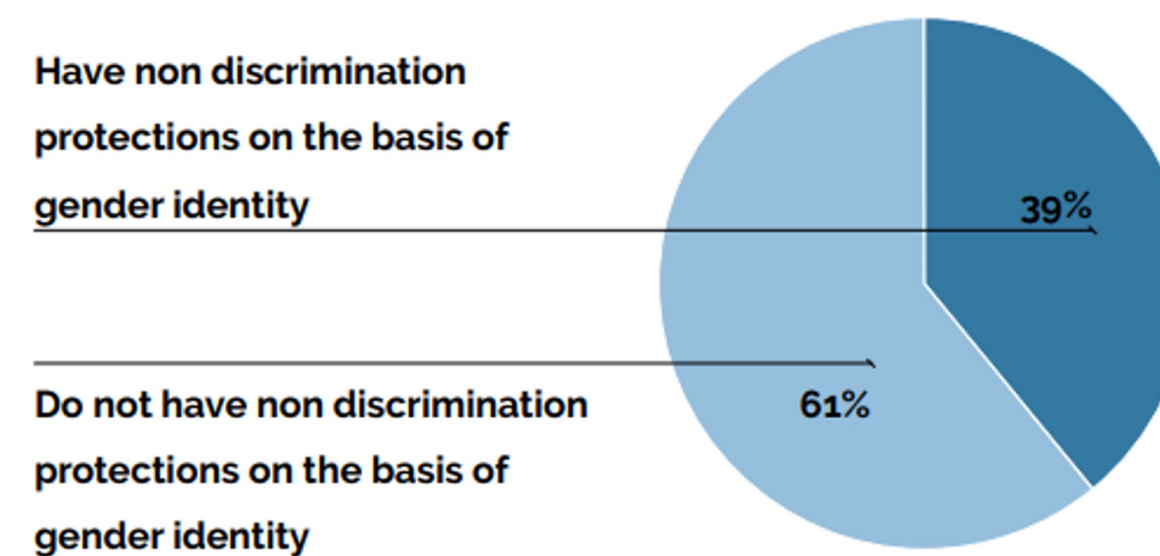


Figure 7: **Anti-Discrimination measures on the basis of gender identity** (Number of countries without criminalizing laws), 2023



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.

Additional elements of the Report



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



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Available now at

www.HIVPolicyLab.org

