



Issue 1: HIV and the Law



A UNAIDS initiative

In 2004, UNAIDS launched the Global Coalition on Women and AIDS (GCWA) www.womenandaids.unaids.org.

SOPHIA is the UK branch of the Global Coalition

The Coalition is a loose alliance of civil society groups, networks of women living with HIV, and United Nations agencies. It works at global and national levels to highlight the effects of AIDS on women and girls and to stimulate concrete and effective action to prevent the spread of HIV.

The SOPHIA Forum Network is an initiative founded by former GCWA Leadership Council members Alice Welbourn and Lesley Bulman-Lever, and by Sara Tye, to engage prominent players from a range of UK institutions to address issues related to women and AIDS.

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Welcome to the first monthly Sophia e-newsletter!

One of our key goals at Sophia is to promote HIV awareness.

Our aim is to keep you informed about news and policy updates, to provide a resource which you can forward to friends and colleagues.

“Join the network; Spread the word; Call for action”

Criminalizing HIV spread will not help!

As Uganda prepares to criminalize the transmission of HIV, concern increases about the negative repercussions such a move could have on an already intensely vulnerable demographic, particularly women.

There can be little disagreement that the intentional and malevolent transmission of HIV to another person is a criminal offence; however, such willful transmission is a rare event – and can be handled with existing legislation, such as grievous bodily harm. The difficulty comes when well-intentioned parliamentarians hope that new punitive legislative procedures will succeed where public health measures have failed to curb transmission.

Therefore, the decision by Uganda’s parliamentary committee on HIV/AIDS to introduce

a law which punishes people who deliberately pass the virus to others, along with President Museveni’s warning that culprits be condemned to death by hanging, has been observed with apprehension by AIDS advocates.

Criminalisation is often positioned as a way of protecting women yet, according to Richard Pearshouse, director of research and policy at the Canadian HIV/AIDS Legal Network, the law’s broad definition of willful transmission could be used to prosecute HIV-positive women for transmitting the virus to their babies during pregnancy, childbirth or breastfeeding.

Michaela Clayton of the AIDS and Rights Alliance for Southern Africa has argued that because women test for HIV in greater numbers than men, it is women who are

more likely to be arrested and prosecuted. She also warned that the laws would create mistrust between people living with HIV and health care providers and may actually deter women from accessing HIV testing and services aimed at preventing mother to child transmission of the virus.

The International Community of Women living with HIV/AIDS (ICW) in a recent letter to the Human Rights Commission of Sierra Leone, has stated: “Many women, despite contracting HIV from a husband or partner, are physically and mentally abused, thrown out of their families, abandoned and stigmatized upon partners finding out about their HIV status.”

Since being diagnosed HIV positive in 1991, I have seen many changes in the impact HIV has on the lives and health of people living with HIV. In those days I was able to access services which supported me and provided care, but HIV treatment was almost non-existent. My involvement with the International Community of Women Living with HIV/AIDS (ICW) made me acutely aware of the lack of treatment, services and health care available for many of our members in less economically developed countries, and I was proud to be a part of an organization which supported HIV positive women to become aware of and demand their rights, and which continues to do so now.

Many years have passed since then, and the situation has changed dramatically though not always for the best. A very positive change has been that in economically developed countries most people have access to treatment and in less economically developed countries treatment is becoming more available, although it is limited.

However around the world people living with HIV continue to face stigma and discrimination and are not protected by national laws despite immense efforts to turn stigma and discrimination into support and solidarity. In many countries, the dire situation of HIV positive women is further exacerbated by a lack of laws protecting the rights of women and women's reduced status in society. In some economically developed countries, for example the UK, support services have been whittled away, at a time when more and more people are being encouraged to test for HIV.

In some countries laws exist which protect our rights, but in many of these and other countries, regressive and draconian laws are either being developed or utilised to criminalise the transmission of HIV and incarcerate people living with HIV.

ICW welcomes all governments' efforts to develop and implement laws which protect the rights of people living with HIV to peace, safety and security in their homes, neighbourhoods and work. However, the creation of laws to criminalise *transmission* of HIV and the individuals concerned is a very different matter and needs to be addressed with great caution

"Criminalising transmission of HIV will undermine the progress we have made to end stigma and discrimination against men and women living with HIV" Beri Hull, Global Advocacy Officer, ICW.

Kenya's law serves as an example of the criminal transmission of HIV. As articulated in the HIV/AIDS Prevention and Control Act, Section VI (24), *"A person who is and is aware of being infected with HIV ... shall not, knowingly and recklessly, place another person at risk of becoming infected with HIV unless that other person ... voluntarily accepted the risk of being infected."* If found guilty of transmission an individual could receive a prison sentence of up to 7 years.

"People living with HIV and AIDS have led the response in the fight against HIV. We cannot make criminals out of these individuals and we cannot do this in the name of good public health policy," states Lillian Mworeko Regional Coordinator for the ICW East Africa Office.

The implementation of these laws is unclear and is open to interpretation by courts which are often not sensitised to issues relating to HIV. The range of misinformation in the courts and its resulting injustice was illustrated in the United States when a judge recently sentenced an HIV positive man to 35 years in prison for spitting on a police officer.

Impact on HIV positive women

Women will experience criminalisation of transmission in very nuanced ways which courts are not equipped to assess:

- Women are made into criminals for having HIV positive children in resource poor settings where they have no access to PMTCT services.
- Routine testing of women leads to the assumption that women know their status. If a woman cannot disclose her status to her partner due to violence and continues her sexual relationship with her partner (whether consensual or not) she could be prosecuted.
- Women's realities, including a strong economic dependence on men, do not dictate that they can negotiate condom use which is a potential mitigating factor in the criminal offence of transmission.

Women who are already marginalised, i.e. sex workers and drug users, could be further targeted by the government through gaps in the law which would allow for the prosecution of positive people who "should reasonably know" that they have HIV.

It feels more and more as though we are taking backward steps so far as the rights of people living with HIV are concerned, back to a bleak time before I was diagnosed when fear and ignorance made life intolerable. In an age when treatment is positively transforming our lives, I call on you all to help to stop the criminalisation of transmission.

For more information about women living with HIV and the criminal transmission of HIV, please visit <http://www.icw.org/node/354>.

Fiona Pettitt

International Community of Women Living with HIV/AIDS
www.icw.org

What SOPHIA Says: Criminalization of HIV transmission is bad policy and should be avoided at all costs. If you would like to read more on this, and for more information about the background to these punitive laws, as well as arguments against them see :

ICW criminalization page: (www.icw.org/node/354) and (<http://www.icw.org/files/Letter%20to%20Chairperson%20King.pdf>)

International Planned Parenthood Federation: 'Verdict on a Virus: Public Health, Human Rights and the Criminal Law'. (www.ippf.org)

Justice Edwin Cameron, Supreme Court of Appeal, South Africa: transcript and webcast of plenary speech at International AIDS Conference, Mexico, 2008: (http://www.kaisernet.org/health_cast/hcast_index.cfm?display=detail&hc=2941)

National AIDS Trust: (<http://www.nat.org.uk/Our-thinking/Law-stigma-and-discrimination/Criminal-prosecutions.aspx>)

Open Democracy: "A war against women". (http://www.opendemocracy.net/article/5050/international_womens_day/hiv_aids)

UNAIDS criminalization policy brief November 2008 (http://data.unaids.org/pub/Manual/2008/20081110_jc1601_polbr_criminalization_long_en.pdf)

Positively Women

The rise of criminal prosecution of HIV transmission has had a real impact on the lives of women living with HIV in the UK. I facilitate many support groups and in the past couple of years I have seen more and more women who find it totally impossible to enter in a relationship. Hospitals have warned them that if they do not disclose before entering a sexual relationship they put themselves at risk of being taken to court and going to prison. Obviously women are terrified and many go into a forced celibate.

Disclosing your HIV status to a potential partner has always been extremely difficult for women. Moreover criminal prosecution has reinforced a culture that represents HIV+ women as a threat and has made disclosure impossible for many of us. Living with the irrational fear of being a potential life long danger to those we love is an incredibly heavy burden to carry. Many of us are depressed and lonely.

What infuriates me is that all the scientific evidence shows that transmission of HIV can be prevented very easily. Male and female condoms are extremely efficient in reducing transmission and when they are paired up with ARVs that reduce the virus to undetectable levels the risk of transmission is so low that scientists have defined it as 'neglectable'. This was widely discussed at the latest International AIDS Conference in Mexico during the debate around infectiousness on treatment. According to evidence based scientific research there is not reason why women should be made feel that they are a threat to their partners. When treatment and condoms are in place sex can be safe and pleasurable.

For us women to feel safe to disclose early on in our relationships we need a lot of support, we need a culture and society that makes it easier to talk about sex and HIV. Criminalizing HIV transmission does just the opposite: instead of creating a culture of shared responsibility in sexual decisions it reinforces notions of blame and shame which discourage open communication around sex and relationships.

Sylvia Petretti

Positively Women

<http://www.positivelywomen.org.uk/>



The Reality of 'this justice'

'Criminalisation is a blatant disincentive to testing. Why should a woman in Kenya want to go for an HIV test when she knows that it will expose her to seven years in jail?'

*Justice Cameron. IAS Conference. Mexico August 2008

VERDICT ON A VIRUS
PUBLIC HEALTH, HUMAN RIGHTS AND CRIMINAL LAW

The criminal law is a blunt instrument for HIV prevention. It raises serious human rights concerns and risks undermining our hard won gains in the global response to HIV.

Join us for the launch of a new campaign and publication – 'Verdict on a Virus: Public Health, Human Rights and the Criminal Law' – which spotlights the human rights implications of criminalisation and advocates for alternatives.

13 November 2008,
10am – 12pm
Foreign Press Association,
11 Carlton House Terrace,
London SW1Y 5AJ

"Today one of the most pressing issues in the AIDS epidemic is the use of criminal statutes and criminal prosecutions against HIV transmission. Such laws are increasingly wide in their application and frightening in their effects. HIV is a virus, not a crime. That fact is elementary, and all-important. Too often law-makers and prosecutors overlook it."
Edwin Cameron, Justice of the Supreme Court, South Africa

Notes on obstacles to healthcare access...

In the South African context, HIV-related stigma, discrimination and other violation of rights continue to be the main obstacle for accessing HIV prevention, testing, treatment, care and support services – both governmental and non-governmental services. Women are disproportionately affected by these challenges, based on a variety of reasons, including that women are more likely to access healthcare services and are thus, more likely to be ‘coerced/forced’ to test for HIV; that women continue to be blamed and shamed – and often violated and abused – and continue to be seen as the ‘vectors of the disease’; and that women are seldom in the position to access adequate HIV prevention, testing, treatment, care and support services, primarily due to the gendered and discriminatory societal context in which these services are provided and to be accessed.

While there seems to be the trend of ‘routine’ HIV testing in antenatal healthcare setting, there is also an increasing tendency that healthcare services, especially sexual and reproductive healthcare services, are denied until such time that the client/patient undergoes HIV testing. Moreover, prevailing judgemental and discriminatory attitudes and practices among healthcare providers are a further deterrent for women, especially young women, to access sexual and reproductive healthcare services, including HIV prevention services. As a result, people are less likely to access these services, as there is the fear to have to test for HIV at a time where there is no readiness, preparedness or informed consent to do so – leading to delayed access to healthcare and/or refusal to access healthcare all together. As for HIV prevention services, these remain largely inaccessible for women, particularly young women, irrespective of whether or not their HIV prevention information are available.

Lack of assured confidentiality, especially in the context of HIV testing services, is a further challenge in South African healthcare settings, leading to lack of access to healthcare services and/or delayed access to healthcare services. As for HIV testing services, there is great fear that test results are not kept confidential and thus, fear that a person’s HIV positive status may be disclosed/become known, without the person’s consent. In the context of persistent HIV-related stigma, discrimination and other violation of rights, including violence and abuse, loss of income and subsequent destitution, there remains a great reluctance to test for HIV. As and when people are ready and willing to know their HIV status and are seeking testing services, it seems to be a frequent occurrence that people travel for up to 60km to a different area to access these services – hoping that their confidentiality is more likely to be protected, as the person is unknown in the different community. Recognising the costs involved in accessing HIV testing services at such a distance, this ‘option’ is largely inaccessible for most people, especially women – resulting in situation that HIV testing services, even as and when people are ready and prepared to test for HIV, will not be accessed.

Despite the fact that South Africa’s constitutional and legislative framework guarantees everyone the right to equality and non-discrimination, the right to autonomy, and the right to informed consent, these practices are more and more common in healthcare setting across the country.

Johanna Kehler

AIDS Legal Network (ALN), South Africa
<http://www.aln.org.za/>

Anecdotal evidence from both healthcare providers and healthcare users are increasingly available, confirming these alarming trends.

SOPHIA has an 11-member steering committee.

Supporters are any individuals - especially women - who wish to take an active interest in HIV as it affects women and girls.

Many supporters contribute experience from business, law education and other sectors, all of which have some connection with the many and complex issues at play in this global pandemic

www.sophiaforum.net



Sophia

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