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Effective Laws to End HIV and AIDS: Next Steps for Parliaments

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“We now have all the evidence and tools we need to radically slow new HIV infections and stop HIV-related deaths. Paradoxically, this comes at a time when bad laws and other political obstacles are standing in the way of success.”

Risks, Rights and Health, Report of The Global Commission on HIV and the Law, 2012

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Executive summary

This publication is intended to inform parliamentarians about the types of laws that are helpful and unhelpful in the AIDS response. It gives examples of legislation from around the world that have been effective in limiting the spread of HIV, and draws lessons from the experiences of the parliamentarians involved.

Some laws can create unnecessary barriers to ending the HIV epidemic. These laws – such as those criminalizing the behaviour and conduct of men who have sex with men (MSM), transgender people, sex workers and people who inject drugs – drive the people who are most vulnerable to HIV away from the health and social services that could protect them.

HIV treatment today can reduce an individual's infectiousness to almost zero. Therefore, there are clear public health benefits to ensuring that those most affected by HIV are encouraged to participate in voluntary testing and supported with appropriate treatment. This requires creating a conducive legal environment. In marginalizing or criminalizing the conduct of vulnerable groups, also known as “key populations”, nations not only neglect the health and human rights of individuals but also weaken the wider AIDS response.

Many countries have taken legislative steps to decriminalize the behaviours of key populations with positive results, as shown in the following case studies in this document:

- **New Zealand:** Decriminalization of sex work
- **Portugal:** Decriminalization of personal drug use
- **Mongolia:** Ending discrimination against people living with HIV
- **South Africa:** Legal recognition for transgender and intersex people
- **Switzerland:** Decriminalization of unintentional HIV transmission and exposure.

These legal changes represent important steps towards realizing international commitments on HIV by world leaders at the United Nations. They have rarely been easy and have often taken a number of years to achieve. The parliamentarians involved have had to use various careful strategies illustrated in this document, from coalition building, to last-minute amendments and careful media handling, in order to succeed in their campaigns. They have had to draw on advice from people most affected, and on international laws and evidence, to ensure that their proposals are viable.

Ultimately, the parliamentarians featured in this publication have not only won the votes they needed to pass the laws, they have also convinced their electorates. Their countries are feeling the benefit of their convictions. The Inter-Parliamentary Union (IPU) and UNDP hope that their experiences can be useful to you, as fellow parliamentarians, working towards the end of AIDS.

Introduction

The work that people living with or affected by HIV, governments, scientists, donors and other activists have done to tackle HIV is paying off. There has been huge progress in addressing the epidemic. The number of new infections each year is going down. There were 33 per cent fewer new infections in 2012 than there were in 2001. The number of AIDS-related deaths has also reduced. In 2005, about 2.3 million people died of AIDS, whereas in 2012 that number had dropped to 1.6 million.¹ Hundreds of thousands of people are alive today, looking after their children, contributing to their economies and living well because of global and local efforts to respond to HIV.

However, many of the people left behind in the AIDS response are the hardest to reach, including people who are affected by stigma and marginalization and whose conduct is criminalized; these include sex workers, men who have sex with men, transgender people or people who inject drugs. UNAIDS refers to those most likely to be exposed to HIV or to transmit it as “key populations”.² In many of these key populations prevalence remains very high.³ It is time to work harder to make sure that the AIDS response reaches everybody – including key populations – with appropriate services and support. They have partners and families and live and interact with society at large. Their vulnerability to HIV is everybody’s vulnerability.

Research supported by the United Nations shows that criminal law is rarely an effective tool for addressing HIV in key populations.⁴ Criminalizing the conduct of key populations drives them underground, reduces their access to services and increases risk-taking behaviour. Transforming government responses from punitive approaches to approaches based on sound public health rationales can, in contrast, have positive results.

1. *Global Report: UNAIDS Report on the Global AIDS Epidemic 2013*, UNAIDS (2013), p. 4.

2. UNAIDS defines key populations as those “most likely to be exposed to HIV or to transmit it – their engagement is critical to a successful HIV response i.e. they are key to the epidemic and key to the response. In all countries, key populations include people living with HIV. In most settings, men who have sex with men, transgender persons, people who inject drugs, sex workers and their clients, and seronegative partners in serodiscordant couples are at higher risk of HIV exposure to HIV than other people.” In *UNAIDS terminology guidelines*, UNAIDS (2011), p. 18.

3. *Global Report: UNAIDS Report on the Global AIDS Epidemic 2013*. See text box below: Progress on HIV frustrated for specific referenced examples.

4. For example, *Risks, Rights and Health*, the Global Commission on HIV and the Law, (2012), p. 7.

This publication draws on a growing body of international evidence to inform parliamentarians about the types of laws that are helpful and unhelpful in the AIDS response. There is a focus on “key populations” since these are often the target of legislation: however, many of the lessons apply to any legislation that impacts on HIV. Such lessons may be useful for legislators who wish to review their existing laws, avoid passing unhelpful laws or put into motion new, positive legislation.

Parliamentarians may face particular challenges when legislating on controversial matters touching on sexual health and human rights. This guide suggests strategies to overcome them. It uses case studies from Europe, Africa, Asia and Australasia to illustrate good law making – including decriminalization of the behaviours of key populations – and demonstrates that, even on difficult issues, legal change that helps combat HIV is politically possible.

Progress on HIV frustrated: Key populations and their relationship with the law ⁵

People who inject drugs

- “Although people who inject drugs account for an estimated 0.2–0.5 per cent of the world’s population, they make up approximately 5–10 per cent of all people living with HIV. All regions report high HIV prevalence in this population.”
- “HIV prevention coverage for people who inject drugs remains low [...] Among 35 countries providing data in 2013, all but four reached less than 10 per cent of opiate users with substitution therapy. [...] An effective AIDS response among people who inject drugs is undermined by punitive policy frameworks and law enforcement practices, which discourage individuals from seeking the health and social services they need.”

Sex workers

- “Globally, female sex workers are 13.5 times more likely to be living with HIV than other women. In countries in West Africa, substantial proportions of new infections (10–32 per cent) were estimated to occur as a result of sex work; in Uganda, Swaziland and Zambia, 7–11 per cent of new infections are thought to be attributable to sex workers, their clients and clients’ regular partners.”
- “For sex workers [...] programmatic deficits are compounded by social and legal disadvantages that increase vulnerability and deter individuals from obtaining the services they need.”

5. Unless otherwise referenced, all quotes in this box are taken from *Global Report: UNAIDS Report on the Global AIDS Epidemic 2013*.

Men who have sex with men (MSM)

- “Globally, prevalence among men who have sex with men appears to have increased slightly, and has been at very high levels in recent years [...]”
- “Stigma, discrimination and oppressive legal environments in many settings discourage MSM from seeking HIV testing and appropriate, high-quality prevention, care and treatment services. National programmes should endeavour to remove legal obstacles to [...same-sex relationships], increase sensitivity to the health needs of men who have sex with men, improve access to health services and build programmes to intensify HIV preventive behaviours in this population through improved access to condoms and lubricants and by creating a cultural norm of safer sex.”

Trans-gender people

- “A global review of available data found that transgender women [a male-to-female transgender person with a female gender identity] are 49 times more likely to be living with HIV than women overall.”⁶
- “To address the devastating effects of stigma and discrimination on transgender persons [...] anti-discrimination laws should be implemented across the country. Sensitivity training should be provided for health-care workers, employers, service providers and researchers.”



Parliamentarians speak out

“Some people do not want to engage with issues of key populations for moral or religious reasons. But key populations have rights too. And ignoring those rights helps nobody. When people living with HIV have access to testing and know their status they are more likely to take precautions to avoid passing on their infection. Once they have the virus under control through effective treatment, their infectiousness will be reduced and it is very unlikely they will pass on their infection. Everyone wins.”

J.D. Seelam, MP, India, 2013.

6. JoAnne Keatley and Walter Bockting, *What are Male-to-Female Transgender Persons' (MtF) HIV Prevention Needs?* (University of Minnesota, September 2008), p. 2.

Ending HIV and AIDS: A job for politicians – not just health professionals



Ending the legal discrimination of those with HIV and AIDS in many parts of the world is critical to parliamentary efforts to put a full stop to the disease.
© Reuters 2010

A variety of approaches are needed for an effective AIDS response. It is not enough just to work on prevention, treatment or care and support; all three programmatic dimensions are needed for a holistic and robust response to HIV. Such public health responses need to occur in the appropriate social and legal environment. Effective treatment may be available but persons who think they are infected may not benefit if they are too afraid to undertake an HIV test. They may be afraid to test because of the potential social rejection, or legal implications that may follow. So, while science continues to improve treatment options and public health works to enhance healthcare systems, politicians who care about halting the HIV epidemic need to think about their role in making sure the social and legal environment are conducive to encouraging people to access information and services to look after their health.

World leaders have committed to do this on several occasions in United Nations General Assembly resolutions.⁷ In the 2011 UN declaration, UN

7. 2001 UNGASS Declaration of Commitment on HIV/ AIDS; 2006 General Assembly Political Declaration on HIV/AIDS; 2011 UNGASS Political Declaration on HIV/AIDS.

Member States committed to “create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV and promote access to HIV prevention, treatment, care and support and non-discriminatory access to education, health care, employment and social services, provide legal protections for people affected by HIV”. They also committed to “review, as appropriate, laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV”.⁸

States are expected to report back to UNAIDS each year on progress made towards their commitments.⁹ Many countries have already made excellent progress by reviewing laws and thinking of new ways to create the best environment for progress on HIV. One of the countries inspired to take action by its 2011 commitments, Mongolia, is featured in a case study in this publication.

However, in 2013, 60 per cent of countries still report to UNAIDS that they have laws, regulations or policies which present obstacles to effective HIV prevention, treatment, care and support.¹⁰ Indeed some countries are going backwards by considering laws that are likely to hinder the AIDS response.

8. 2011 UNGASS Political Declaration on HIV/AIDS.

9. For more information on reporting requirements see *Global AIDS Response Progress Reporting 2013: Construction of Core Indicators for Monitoring the 2011 UN Political Declaration on HIV/AIDS*, UNAIDS, UNICEF, WHO, (2013).

10. *Global Report: UNAIDS Report on the Global AIDS Epidemic 2013*, p. 8.

What kinds of laws are helpful and which laws undermine the AIDS response?

A. Laws that criminalize the behaviour or conduct of key populations, or discriminate against them, undermine the AIDS response

The law is a blunt and often ineffective instrument for responding to behaviours that are deeply personal and/or rooted in complex social and economic circumstances. Simply treating sex workers, people who inject drugs, men who have sex with men and transgender people as criminals is unlikely to change their risk-taking behaviour and is usually counterproductive in the AIDS response.

Unhelpful laws for HIV – to be avoided or repealed

Laws that discriminate against or criminalize the behaviour or conduct of groups that have a higher risk of contracting HIV: including MSM, transgender people, sex workers and people who inject drugs.

Why?

These laws:

- **Deter health seeking behaviour.** Key populations may hesitate to interact with health services for fear of criminal sanctions.
- **Promote discrimination in service delivery.** Criminal status lends legitimacy to discrimination, increasing the likelihood that health services are insensitive or ineffective.
- **Are a barrier to effective HIV programme design and implementation.** Stigmatised populations whose behaviour is criminalised, hesitate to interact with policymakers to design HIV programmes that work.
- **Expose individuals to increased violence.** Populations whose behaviour is criminalised hesitate to interact with the justice system. This makes them easy targets for abuse, which in turn exposes them to HIV risks.
- **Force individuals into risky behaviour.** People with a criminal record or lack of legal status struggle to get jobs and access safety nets such as unemployment benefit. They may turn to sex work or other risky activities for survival. If they are already sex workers they may accept higher risk clients.
- **Lower self-esteem.** This is associated with alcohol and substance abuse, which in turn increases HIV risk.¹¹

For example

- Laws that prohibit sex between consenting adults of the same gender.
- Laws that prevent people who inject drugs from accessing sterile needles and substitution therapies.
- Laws that criminalize sex work.
- Laws that prohibit cross-dressing.

Will removing such laws cause “social breakdown”?

- There is no evidence that harsh laws reduce the number of men who have sex with men and transgender people (even if this was a desirable end) although such laws may drive them underground.
- Studies of countries that have decriminalized injecting drug use and sex work report no increase in those behaviours or conduct and a positive impact on the HIV epidemic (see New Zealand and Portugal case studies).

Unhelpful laws for HIV – to be avoided or repealed

Laws that discriminate against or criminalise the behaviour of people living with HIV.

Why?

- These laws create a disincentive for people to know their HIV status and seek appropriate care and treatment. This is bad for them, their partners and their children.
- Such laws can also compromise medical confidentiality, making effective HIV responses difficult. These laws also fuel human rights violations and stigma.
- Criminalization of HIV non-disclosure, exposure or transmission risks creating a false sense of security among the general public, with each individual having responsibility to protect themselves against HIV.
- UNAIDS recommends that countries review their laws in order to “limit criminal prosecution in the context of HIV to cases that involve intentional HIV transmission”.¹² Such cases can usually be dealt with through non-HIV specific criminal law.

For example

- Laws which criminalise HIV transmission, exposure or failure to disclose, including laws that explicitly or effectively criminalise mother-to-child transmission.
- Laws that restrict the travel of people living with HIV.

Will removing such laws cause “social breakdown”?

- There is no evidence that criminalisation of HIV non-disclosure, exposure or transmission changes the sexual behaviour of people living with HIV in any positive way¹³ and much to suggest that people take social and personal considerations (e.g. stigma and rejection) into account ahead of legal ones when making decisions.¹⁴ General criminal law can be used in the very rare cases of actual, intentional, malicious transmission.

Positive/Helpful laws for HIV	Laws prohibiting discrimination against people living with HIV.	Laws that recognize and respect the human dignity of key populations.
Why?	<ul style="list-style-type: none"> • If people living with HIV feel empowered to be open about their status, they can access the right medical treatment and social support and protect their partners. 	<ul style="list-style-type: none"> • Key populations need to feel confident about interacting with services that can protect them from HIV, including for example feeling able to report violence to the police.¹⁵ • Genuine interaction with key populations – only possible if individuals do not fear prosecution – enables governments to better “know their epidemic”, design tailored HIV programmes and measure their impact.
For example	<ul style="list-style-type: none"> • Laws that prohibit employment-related HIV discrimination. • Laws that remove restrictions on people living with HIV’s access to services. • Laws that guarantee medical confidentiality. 	<ul style="list-style-type: none"> • Laws that recognize persons with alternative genders or who have changed their gender or sex. • Laws that prohibit discrimination based on sexual orientation. • Laws that decriminalize sex work.
Will passing such laws cause “social breakdown”?	<ul style="list-style-type: none"> • People who experience stigma and discrimination report a range of negative effects, including isolation from communities and inability to participate as a productive member of society as a result of their HIV status.¹⁶ An end to discrimination means people living with HIV can contribute to society. 	

11. For examples of how each of these points affects different key populations see: 1) A. Domoslawski “*Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use*” Open Society Institute and Global Drug Policy Program, (2011); 2) Dr Stefan D Baral MD et al. “*Worldwide burden of HIV in transgender women: a systematic review and meta-analysis*” The Lancet Infectious Diseases, Vol 13, Issue 3, (2013); 3) *UNAIDS Guidance Note on HIV and Sex Work* (2009); 4) Ralf Jürgens et al. “*10 Reasons to Oppose Criminalization of HIV Exposure or Transmission*” Open Society Institute, (2008), pp. 214–222.

12. *Ending Overly Broad Criminalization of HIV Non-disclosure, Exposure and Transmission: Critical Scientific, Medical and Legal Considerations. Guidance note*, UNAIDS, 2013.

13. “*Risks, Rights and Health*”, The Global Commission on HIV and the Law, UNDP 2012, p. 20.

14. Sero Project’s National Criminalisation Survey, as reported in Bernard, E.J and Cameron, C. *Advancing HIV Justice*, HIV Justice Network and GNP+, (2013), pp. 21–22.

15. See footnote 2 for a definition of “key populations”.

16. *People Living with HIV Stigma Index*, www.stigmaindex.org



Ending HIV and AIDS – a job for politicians. Vice-Chair of Britain's All-party Parliamentary Group on HIV and AIDS Lord Fowler at an AIDS centre in Kiev. © Reuters, 2012

B. Key questions for parliamentarians when considering HIV-related legislation

When reviewing existing or considering new legislation you may want to ask the following questions:

1. Does evidence suggest this law is/will be effective in tackling HIV?

Legislators can turn to UNAIDS, UNDP or the IPU for advice. Other useful sources of advice and information are listed at the end of this document.

2. Is the law compatible with the legal rights of the people it affects?

Laws which are not compatible with human rights are likely to be counter-productive and can be challenged in courts. Key rights to consider are privacy (medical confidentiality), rights to a fair trial (many laws criminalizing HIV transmission are affected by a poor standard of evidence required), and rights to work, health and equality, including rights to equal access to public services. Most of these rights also apply to prisoners and the text box (p. 18) demonstrates that ignoring them can be exceptionally counter-productive.¹⁷ The Moldova case study box, in Section 4, shows how using a range of national and international laws can help improve HIV legislation.

¹⁷ Data cited in the text box is taken from the WHO Regional office for Europe website: <http://www.euro.who.int/en/health-topics/communicable-diseases/hiv/aids/policy/policy-guidance-for-key-populations-most-at-risk2/hiv-in-prisons>. For more useful advice on prisons see: *Policy Brief: HIV Prevention, Treatment and Care in Prisons and Other Closed Settings: A Comprehensive Package of Interventions*, UNODC, ILO, UNDP (2012, Vienna).

3. Have people living with HIV and other people affected by the proposed legislation been involved and consulted in its development or review?

Laws can have unintended consequences that are difficult for legislators to predict. People who are directly affected are best placed to advise committees or standing committees, on whether the law is working or will work or not. Most parliaments have provisions for bringing in external parties as part of the legislative process via drafting committees or standing committees.



Parliamentarians speak out

“I talk to sex workers a lot about how we can reduce their vulnerability to human rights abuses and HIV infection. There are a lot of opinions in parliament and the newspapers about how to ‘solve the sex work problem’. But hardly any of those speaking have ever taken the time to talk to the people involved. It is not surprising their suggestions are almost always flawed. If we’re serious about tackling HIV we have to talk to the experts – the people most affected.”

Thabitha Khumalo, MP, Zimbabwe, 2013.

Respecting human rights in prisons improves health

People in prisons and closed settings have a higher risk of HIV, due to risk behaviours prior to detention and overcrowding, limited access to health care, continued drug use, unsafe injecting practices, unprotected sex and tattooing inside prison. Risks affect prisoners, those working in prisons, their families and the entire community as prisoners return to society.

There is evidence that government policy has an important impact on HIV in prisons. For example, five countries in Eastern Europe report HIV prevalence among the general prison populations at greater than 10 per cent, including Estonia (which has up to 90 per cent at various prisons). In contrast Western European countries that have adopted prevention programmes typically have an HIV prevalence of under one per cent.¹⁷

The UN Office on Drugs and Crime recommends 15 policy measures to reduce the levels of HIV in prisons and closed settings. These include access to information, voluntary testing, counselling, treatment, care and support. They also include prevention measures such as provision of condoms, needle and syringe programmes and programmes to reduce sexual violence.

Working on controversial legislation



Globally, female sex workers are 13.5 times more likely to be living with HIV than other women. Here, sex workers in India learn how to better protect themselves.

© Reuters 2010

Laws that are relevant for HIV often deal with social taboos. Some of the least helpful laws – which should not be passed, and if they already exist, should be repealed – take a punitive and often populist approach to dealing with key populations.

As a parliamentarian interested in HIV, you may find that you need to respond to government proposals to criminalize the behaviour and conduct of key populations. Your response may involve using your contacts with ministers, mobilizing your political party to take a joint stand, building cross-party caucuses or simply feeding into debates via committee and plenary sessions and obtaining the accurate evidence to present counterarguments.

As well as being ready to react to government proposals, you may wish to take a proactive approach to legal change. Here are ten common approaches to initiating controversial legislation taken from the case studies presented in this publication and elsewhere that have proved valuable in the past.

Leadership and team work

A leader within parliament is a huge advantage to any campaign. The most effective parliamentary campaign leaders are those with strong internal and cross-party networks who know how to generate institutional backing – whether it is backing from the relevant Standing Committees (for example Health or Justice Committees), political party structures or from government itself.

The lead MP can coordinate activities, table bills, motions, and amendments, advise on strategy and engage in lobbying. The lead MP will benefit from a team of internal and external support. Fellow parliamentarians, people living with HIV, people directly affected by the proposals and policy experts are all likely to be a part of a successful team. Working together enables sharing of the administrative burden associated with effective campaigning.

The Mongolia and New Zealand case studies in this publication demonstrate the importance of leadership and the ability of backbenchers to lead and have an impact on HIV.

Be ambitious but realistic

If a proposed law seems too controversial, consider what steps could be taken in the short to medium term to demonstrate why it would work and bring public opinion on your side. As the New Zealand case study in this publication shows, it took 12 years from when decriminalization of sex work was first suggested to the government, to the date the law was passed. During that time, policymakers did not simply wait for public attitudes to change, but made the decision to fund programmes that could influence public attitudes and develop the argument in favour of change.

Have a clear goal

If you are proposing a change to the law, develop a draft Bill or draft the necessary amendments to existing or proposed legislation. Drafts may change over time as you consult, improve and compromise, but they give a clear basis for discussions.

Use every legislative opportunity

Private Members' Bills, such as the one featured in the New Zealand case study, can be difficult to table and even more difficult to pass. It may be more effective to look at other legislative opportunities. A stand-alone Bill may attract more controversy and be harder to achieve than a clause in another Bill proposed by government. The case study from Switzerland demonstrates that proposing amendments to a wider Bill can be a successful strategy. Other strategies could include using parliamentary oversight mechanisms, such as policy committees, to call for amendments to exist-

ing laws. National and international legal commitments may also provide platforms to call for amendments.

Drawing on national laws and international treaties to make your argument

Case study: Moldova improves its HIV law¹⁸

In 2012, Moldovan MPs adopted amendments to the HIV law, removing travel restrictions, workplace discrimination, and strengthening confidentiality and personal data protection. The following international and European legal norms were used to support the changes:

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified through Parliament Decision No. 87-XIII of 28 April 1994;
- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- UNAIDS Action Framework on women, girls and gender equality, its Operational Plan and the relevant national plan;
- EU Directive 95 (on the protection of personal data); and
- Office of the High Commissioner for Human Rights (OHCHR) and UNAIDS Guide on Human Rights and HIV.

MPs drafting amendments also drew on national laws to make their case. In particular:

- The Constitution of Moldova: Article 16 (on equality) and Article 4 (on the primacy of international human rights norms);
- Law No. 5-XVI of 9 February 2006 on equal opportunities for women and men and the National Gender Equality Programme for 2010-2015;
- Law No. 17-XVI of 15 February 2007 on protection of personal data.

Build a strong argument (drawing on facts and feelings)

Laws that are useful for HIV can be counter-intuitive and it can be difficult for people to understand the links between protecting stigmatized groups and limiting the spread of HIV. Try to communicate the arguments in favour of your legislative change as simply as possible and prepare answers to objections that your proposal is likely to face. You may want to focus on a single, simple campaign message, which can be backed up by more detail for those who are interested.

18. The new HIV law in Moldova can be downloaded from <http://aids.md/aids/index.php?cmd=item&id=1379>.

A good campaign should also monitor and engage with people's feelings, since these may have a greater influence on voting patterns than evidence. A campaign to support stigmatized groups starts from a difficult base in terms of public attitudes, but is an opportunity to dispel some of the myths and fears surrounding these groups and demonstrate their humanity. Putting those who benefit from your legislation at the centre of your campaign and supporting them to tell their own stories will not only ensure that the laws you propose match needs, but may help to change public views. People who are not used to engaging with parliamentarians or the media may need your help with developing presentational skills and techniques that work best for the target audience.

Your arguments should be backed up by professional-looking campaign materials. This need not be expensive and the team supporting you outside of parliament should be able to help. A web page or website is particularly important.



Parliamentarians speak out

"I campaigned for years for a safe injecting site for drug users in Vancouver. The issue attracted plenty of opposition. But my constituents continued to vote for me. Now that we have the safe injecting site, the police support it, so do local businesses, the board of trade, and municipal politicians. In fact you'd be hard pushed to find anyone who would want to go back to the situation we had before."

Libby Davies, MP, Canada, 2013.

Check your assumptions about your constituents

Your constituents may be more willing to consider new ideas than you think. They may be happy for you to take on specific personal interest campaigns if you can continue to serve them in the other everyday ways they expect. This makes it all the more important for you to get all the help you can with running the campaign.

Mobilize cross-party support

It is important that efforts are made to mobilize cross-party support. While having the support of the majority party on the final day of the vote is a huge asset, campaigns can take years and today's opposition may be tomorrow's government. Smaller parties should not be ignored. Every vote counts. New Zealand's law decriminalizing sex workers passed by a single vote.

If possible, therefore, lead advocates for the proposed legislative changes should be identified in each major political grouping, supported and encouraged to lobby their political peers. Personal relationships are key to lobbying successfully and sceptical MPs will respond better to arguments made by their political allies.

The support of permanent parliamentary staff, such as committee clerks or parliamentary caucuses, can also help provide campaign continuity in the face of the uncertain electoral cycle.¹⁹

Work with people outside parliament

You should develop a range of extra-parliamentary advocates. The most effective advocates are often the least expected – the ones whom people would assume would think differently. These may be religious leaders or other respected high-profile individuals. Doctors, scientists and other experts will give your campaign factual credibility. Those most affected by the proposed changes should be at the centre of advocacy efforts.

Having a wide range of advocates also presents challenges. It is inevitable that there will be differing views on the detail and approach of your campaign. Try to resolve arguments behind closed doors and present a coherent, united front in public. A common area for arguments among advocates and campaign team members is to what extent you should allow legislation to be amended to facilitate its passage through parliament. It is important to discuss what the minimum requirements are for the legislation to be worthwhile.

19. For more advice on setting up cross-party caucuses on HIV, see *Raising the Profile of HIV and AIDS in Your Parliament*, IPU, 2012. <http://www.ipu.org/pdf/publications/hiv-aids-guide-e.pdf>

You should also work with your opponents. Make time to meet them and engage with their arguments. Understanding their position will help strengthen yours.

Working with the media

Have a media strategy. This could be as simple as “do not attract the media” or it could be a detailed campaign to gain positive coverage. This will depend on your judgement about the media in your country and the ability of any opposition to use it against you. If you think the law can pass quietly, this may be the best option. If not, take control of the story. Working with stigmatized groups often sparks media interest and you may find it easy to get coverage. However, there is a risk that coverage will further stigmatize vulnerable groups or individuals. Interaction with the media should therefore be handled with care. The UK HIV policy organization, the National AIDS Trust (NAT), has a useful guide for editors and journalists on reporting on HIV-related issues.²⁰ This is also worthwhile reading for campaigners so they can be aware of the common mistakes journalists make and help avoid them.

Don't give up!

Legislative change takes time. Build in safeguards against political change by ensuring you have cross-party support. Set yourself midway targets, such as successful committee hearings, to maintain focus and momentum.

²⁰. *Guidelines for Reporting HIV*, NAT (London, June 2010) in www.nat.org.uk.

Case studies

New Zealand: Decriminalisation of sex work



Sex workers afraid to show their faces as they wait for an HIV test.
© Reuters 2009

Name of act: Prostitution Reform Act (PRA) 2003

Summary: The Act promotes the human rights, welfare and occupational health and safety of sex workers. It makes it an offence to arrange for or to receive commercial sexual services from a person under 18. It requires operators of prostitution businesses to be licenced and it requires them, sex workers and clients to adopt and promote safer sex practices. Infringements are punishable by fines. The Act provides powers to enter premises for the purpose of inspection for compliance with health and safety requirements.

Why the law is important for HIV: Sex workers and their clients are usually parents, partners, husbands and wives. Protecting sex workers and their clients from HIV helps protect everyone. Decriminalization can help reduce sex workers' vulnerability to HIV. Hurried, illegal negotiations, for example on street corners or in cars, leave little opportunity for sex work-

ers to insist on condom use. Transferring sex work from the underground, illicit sphere to a regulated profession allows for health and safety policies, including regulations on condom use and access to specialized health services. This reduces transmissions and encourages early diagnosis and treatment.

How and why was the decriminalization of sex work raised in parliament?

The Labour government first considered decriminalization of sex work in the late 1980s as a means of tackling what was then a growing HIV epidemic. It decided it was too controversial for immediate legislation. Instead, the Health Minister decided to strengthen the voices of groups in favour of decriminalization, specifically the New Zealand Prostitutes Collective, by funding them to do HIV prevention work. This funding was maintained by the Conservative Government, which was in power between 1990 and 1999.

The Prostitutes Collective began to raise awareness of the relationship between criminalization and barriers to health care, and build support among women's and health non-governmental organizations (NGOs). Political support from the government came from a small number of junior ministers and backbenchers, notably women and libertarians. The key supporter on the government side was Katherine O'Regan, MP.

In 1996, Tim Barnett, MP, was elected and decided to lead the campaign on the opposition (Labour) side, because of the big sex work presence in his constituency. He won the endorsement of his party on the matter and many aspects of the Bill were included in the 2000 party manifesto. By the time the Bill was introduced into parliament, over 12 years of groundwork had been done to prepare politicians across all parties and civil servants to support the idea. In 2000, Barnett, whose party was now in government, submitted a Private Members' Bill to decriminalize sex work. This Bill was drawn in a ballot and therefore could proceed through the House.

Was cross-party support secured and, if so, how?

The Bill had buy-in at the highest level of government. The new Prime Minister, Helen Clark, was the Health Minister who almost 10 years earlier had decided to fund the Prostitutes Collective. However, the issue did not divide neatly along party lines – there were proponents and dissenters on all sides. Barnett worked to get as much cross-party support as possible and had a convener and coordinator for each of the parties in parliament. His parliamentary office, supported by interns, handled much of the lobbying and media.

Effective lobbying involved varying the focus of the arguments to reflect the interests of individuals. For example, many conservative MPs supported the Bill on the basis of libertarian arguments about the freedom of individuals to take decisions about their own bodies. Barnett and his pro-Bill team worked to link MPs who were either against or unsure with articulate advocates from the Prostitutes Collective. They took care to link MPs to people with whom they had something in common (ethnic background, regional background, etc.). These one-on-one meetings were important. Engaging the opposition throughout was crucial. It was also important to be flexible on the content of the Bill and show willingness to compromise. There were therefore significant amendments at the committee stage.



Parliamentarians speak out

“Any complaints I got from people I tried to address by visiting people personally. It humanized me. Some of the people were fairly personal in their attacks, but when you engage with opposition you often find points of common interest.”

Tim Barnett, former MP, New Zealand, 2013.

How was a majority vote secured?

When it came to the final vote in the full House, the Bill passed by just one vote. A third of those who voted in favour were MPs who had started off either being unsure or against the idea. Barnett therefore concluded that the lobbying worked. “It was tight beyond belief but we got it through... We had to go right across the political spectrum to get the support we needed.”²¹

How long did it take to pass the law?

It took three years from the time the Bill was first tabled to its adoption in 2003. However, the Bill had a much longer history.

21. Interviews with Tim Barnett, 23 August 2013.

Which stakeholders outside of parliament were consulted or involved in the process?

External stakeholders were involved every step of the way. The Bill was drafted by a prominent New Zealand legal academic with the input of the New Zealand Prostitutes Collective, the Family Planning Association, the YWCA, and the Presbyterian Church. During the committee stage, hearings were held in parliament and around the country, to enable the committee members to fully understand the issue and hear from those who would be affected. Advocates from a wide range of backgrounds – religious, academic, health – and those directly involved in sex work contributed to lobbying efforts such as press conferences and meetings with MPs. By the time the Bill reached third reading it was a topic of intense public debate.

How is implementation of the law overseen?

The PRA requires the cooperation of a number of different government agencies, from law enforcement to local government and health and safety. A Prostitution Law Review Committee was established under the Bill to review its impact after five years.

What impact has the law had? Has there been any impact on the HIV epidemic?

There is no national data on HIV among sex workers. However, clinical studies indicate a low prevalence. A study of 51 sex workers between 2007 and 2012 at a clinic in Wellington, for example, did not find a single case of HIV.²²

The Report of the Prostitution Law Review Committee found that “On the whole, the PRA has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously”. It also found no evidence that the numbers of people engaged in sex work had risen since the law was introduced.²³

The New Zealand AIDS Foundation says that this piece of legislation, combined with HIV programming “have helped New Zealand become one of the best countries in the world at managing the spread of HIV [...] Decriminalization empowers sex workers, decreases stigma and discrimination, increases access to HIV and sexual health services and the overall result is high levels of condom use”.²⁴

22. Dr. Michael Roguski, *Occupational Health and Safety of Migrant Sex Workers in New Zealand*, New Zealand Prostitutes Collective (New Zealand, March 2013).

23. *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act*, New Zealand Ministry of Justice (New Zealand, 2003).

What were the political challenges of passing the law and how were they overcome?

The key challenge was to reassure politicians and the public that this law was not too radical and risky. This law was first considered in the 1980s but it was decided at that point that the best approach was to develop the argument, and to support sex workers to be their own advocates. In the 1990s, when lobbying for the Bill began in earnest, Tim Barnett, MP, Katherine O'Regan, MP, and the Coordinator of the Prostitutes Collective, Catherine Healy, took a cross-party delegation of MPs to New South Wales, Australia, where a similar decriminalization law had been passed. This international visit gained significant positive media coverage in New Zealand and reassured MPs that the proposals had been tested elsewhere. Finally, a review mechanism was built into the Bill, which reassured Members that if things went wrong, the Bill could be revoked.

Key lessons from this case study

Don't rush. If a law seems too controversial to be passable, work on building the argument and supporting the voices of those best placed to make it.

24. *Ban on Prostitution in Manukau Will Negatively Impact HIV Management* at www.nzaf.org.nz, <http://www.nzaf.org.nz/voices/view/ban-on-prostitution-in-manukau-will-negatively-impact-hiv-management> [accessed 1/11/2013].

Portugal: Decriminalisation of personal drug use



People who inject drugs account for an estimated 0.2–0.5 per cent of the world's population but make up between 5–10 per cent of all people living with HIV.
© Reuters 2009

Name of law: Law 30/2000 – commonly referred to as the Drug Decriminalisation Law.

Summary: This law, an amendment to an old Act, moves drug-related offences where small amounts of drugs are involved from the criminal to the administrative sphere. Using or possessing drugs for personal use is still illegal but instead of facing prison sentences and/or criminal records, people who use drugs face fines or other sanctions and are offered help to end their habit. Instead of the police and the justice system leading the response, the Department of Health does so. The law comes alongside a series of programmatic changes to improve access to prevention and rehabilitation services for people who use drugs. Criminal penalties are still applied to drug growers, dealers and traffickers.

Why the law is important for HIV: People who inject drugs are at a higher risk of HIV because of contaminated needles and other risk-taking behaviour associated with drug use. They more likely to seek help if they do not fear prison sentences or criminal punishment. This means that they can be offered early testing for HIV and treatment. Effective treatment and access to prevention programmes – such as the provision of clean syringes – will improve their health and reduce their chances of passing on their infection.

How and why was drug decriminalization raised in parliament?

Surveys in Portugal in the late 1990s revealed that drug abuse was one of the public's top concerns. HIV rates were rising and there were strong links between the two. About half of all new HIV cases diagnosed in Portugal were among people who injected drugs and HIV prevalence in this group was the highest in Europe.²⁵

In 1998, the government decided it needed to tackle the problem and set up a committee of specialists – doctors, sociologists, psychologists, lawyers and social activists – and asked them to make recommendations for the most effective way of limiting drug consumption and addiction. The committee reported back after eight months, recommending a package of measures, including decriminalization, prevention, education, harm reduction, improvements in treatment programmes and activities to help people who use drugs maintain or restore their connections to family work and society. This and subsequent consultations with specialists and the public fed into a National Strategy for the Fight against Drugs.

In 1999, the Council of Ministers adopted the National Strategy and a few months later, in 2000, the Government introduced a Bill.²⁶

Was cross-party support secured and, if so, how?

The proposals did meet objections, particularly from right-wing politicians, traditional sectors of society and some mass media. There were fears that Portugal would become a global drug tourism capital and overall use would increase. However, the Bill's passage "was never in doubt because the government had a simple majority at the time".²⁷ Furthermore, according to The President of the Institute on Drugs and Drug Addiction, Joao Castel-Branco Goulao, the public was sympathetic because "it was hard to find, in those times, a Portuguese family without problems related to drug addiction. It was universal to all classes – from marginalized people to middle or upper classes, and people felt 'my son is not a criminal, he is a patient who needs help'".²⁸

How long did it take to pass the law?

It took just over two years between the Council of Ministers' approval of the drugs strategy in April 1999 and the implementation of decriminalization in July 2001.

25. Caitlin Hughes and Alex Stevens, *The Effects of Decriminalization of Drug Use in Portugal*, The Beckley Foundation Drug Policy Programme, (USA, 2007), p. 3.

26. G. Greenwald, *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies*, Cato Institute (2009), p. 7.

27. Domoslawski, A., *Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use*, Open Society Foundation (2001), p. 24.

28. E-mail from the President of the Institute on Drugs and Drug Addiction, Joao Castel-Branco Goulao, of 11 October 2013.



Parliamentarians speak out

“This law will [...] encourage new investments and will draw addicts from the streets [...] offering them support and opportunities for treatment. [...]It] does not facilitate the increase in trafficking [...]or] consumption! On the contrary [...] this law implies a more active attitude on the part of all of us in relation to drug dependence.”

Vitalino Canas, now an MP, Portugal, speaking as Secretary of State for the Presidency of the Council of Ministers in 2001
(in *Diario da Assembleia da Republica*).

Which stakeholders outside of parliament were consulted or involved in the process?

The 1999 experts' report, which recommended decriminalization and a host of other measures to tackle drug addiction, was published on the Internet and several hundred copies of it were sent to organizations involved in tackling drug addiction. This resulted in dozens of written responses. Public hearings were also organized throughout the country. The proposals received particular support from doctors and psychiatrists. Pro-decriminalization activists made contact with politicians and worked directly with relevant ministries.

How is implementation of the law overseen?

Decriminalization means that although personal drug use and possession remain illegal, violations are dealt with outside of the criminal law and treated as administrative violations. Therefore, Portugal's health system has oversight of the law, not its Ministry of Justice. The Ministry of Health manages the Commissions for the Dissuasion of Drug Addiction (CDTs). The police are still involved in identifying people who use drugs and referring them to CDTs. They also retain responsibility for trafficking offences, which remain criminal offences.

What impact has the law had? Has there been any impact on the HIV epidemic?

The Portuguese drug laws have been widely hailed as a success.²⁹ The impact on HIV levels among people who inject drugs has been clear. HIV among this group has dropped year on year, as have the number of AIDS cases.³⁰ There has also been a reduction in drug-related deaths. These reductions were very stark in the first three years of the new policy.³¹

There has been an increase in the uptake of drug-related treatments and rehabilitation services. For example, the number of people in substitution treatment rose from 6,040 in 1999 to 14,877 in 2003.³² Joao Castel-Branco Goulao says that in the 10 years since the legal changes, problematic drug use has halved³³ and “the impact [of illegal drugs] in the life of families and our society is much lower than it was before decriminalization”.³⁴ The law has reduced the burden of petty drugs cases on police time and prison places, reducing prison overcrowding.³⁵ Police have had more time to focus on trafficking and high-level drug dealers and there was an increase in the quantity of illegal drugs seized by the police between 1999 and 2004.³⁶

However, there have been increases in the use of some drugs, particularly cannabis. It is difficult to know whether these increases are the result of the policy or of wider global trends. They may also represent an increased public willingness to admit to drug use in the context of decriminalization.³⁷

What political challenges has drug decriminalization faced and how were they overcome?

Decriminalization has become increasingly popular in Portugal since 2001.³⁸ Except for some far-right politicians, very few political factions are agitating for a repeal of the law. However, there is a debate about how treatment is funded and its governance structures.³⁹ The design and cost of the CDTs, the three-person teams that support people who use drugs to end their

29. For example, Greenwald, *Drug Decriminalization in Portugal; and Domoslawski Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use*.

30. *Reitox National Focal Point, 2009 National Report (2008 data) to the EMCDDA: Portugal New Development, Trends and In-Depth Information on Selected Issues*, Institute on Drugs and Drug Addiction, (2009).

31. Caitlin Hughes and Alex Stevens, *The Effects of Decriminalization of Drug Use in Portugal*, p. 3.

32. *Ibid.*, p. 2.

33. AFP, *Portugal Drug Law Shows Results Ten Years On, Experts Say*, 1 July 2011.

34. Maia Szalavitz, *Drugs in Portugal: Did Decriminalization Work?*, Time, 26 April 2009.

35. Caitlin Hughes and Alex Stevens, *The Effects of Decriminalization of Drug Use in Portugal*, p. 4.

36. *Ibid.*, p. 3.

37. *Ibid.*, p. 5.

38. Greenwald, *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies*.

39. *Drugs: Breaking the Cycle*, Home Affairs Committee - Ninth Report (House of Commons, UK, Dec. 2012).

habit, have been particularly controversial.⁴⁰ There are also concerns about budget cuts in the treatment, prevention and rehabilitation programmes that go hand in hand with the law. Such cuts could damage the law's effectiveness.⁴¹

Key lessons from this case study

Support from a wide range of stakeholders, particularly scientists, activists and those involved in working in drug rehabilitation programmes, helped influence public opinion in favour of the policy change. Collaboration with these groups was essential.

⁴⁰. Caitlin Hughes and Alex Stevens, *The Effects of Decriminalization of Drug Use in Portugal*.

⁴¹. *Ibid.*, p. 8; Wiebke Hollersen *This Is Working: Portugal, 12 Years After Decriminalizing Drugs*, Spiegel Online International, 27 March 2013.

Mongolia: Ending discrimination against people living with HIV



Children with HIV in India highlight the need to overcome stigma and discrimination and to give voice to a vulnerable group the world over.

© Reuters 2010

Name of law: Law on Prevention of Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome.

Summary: A law to repeal the 2004 AIDS law and end discrimination against people living with HIV – including ending unrealistic disclosure requirements, discriminatory travel and entry restrictions and discriminatory employment restrictions (e.g. restrictions to working in the food industry). The law also establishes a multi-sectoral body, involving government, civil society and the private sector, to lead the national HIV efforts.

Why the law is important for HIV: Discrimination against people living with HIV acts as a disincentive for people to seek testing. Without testing they cannot be treated, but treatment is crucial for their own health and will reduce the chances of transmission. Discrimination also often leads to serious violations of human rights.

How and why was discrimination against people living with HIV raised in parliament?

HIV activists, led by the National Committee on AIDS, have been lobbying MPs for some time to amend Mongolia's 2004 HIV laws. A delegation of Mongolian MPs attended the UN High-Level Meeting on HIV/AIDS in 2011 in New York. The meeting inspired Mongolia to commit in New York to reviewing its HIV laws. When the delegation returned, it revived the work of an existing Parliamentary Working Group on a draft HIV/AIDS Bill. The Minister of Health, who has a background in public health, was supportive of the proposed Bill.

The new parliamentary working group consisted of several MPs and technical support from HIV experts, including the Ministry of Health, UNAIDS and the Asian Development Bank. A first draft of the law was developed with input from organizations of people living with HIV and Lesbian, Gay, Bisexual and Transgender (LGBT) groups.

Which stakeholders outside of parliament were consulted or involved in the process?

UNAIDS and the parliamentary working group organized consultation meetings, which included people living with HIV throughout the law's development and amendment processes in parliament. This was in addition to the parliamentary working group, which included non-parliamentary experts.

Was cross-party support secured and, if so, how?

There was an election and a change of government before the draft law could progress beyond the parliamentary working group to the next stages in parliament. The government that had pledged the draft law in New York was now in opposition, and so in principle the opposition supported the draft law. The challenge was to ensure the new government would take up the issue.

After the election, a new Chair was identified for the parliamentary working group and persuaded to pursue the campaign. Mr. G. Bayarsaikhan, MP, had a health background and sat on the Standing Committee that was due to consider the draft law, so he was well-placed to lead the campaign. With support from the staff of the Standing Committee, he encouraged his Committee colleagues to include the Bill in its new agenda. Various minor amendments and concessions were made at this stage, which helped build consensus. The Bill was approved and moved to the full House, where it won with about 79.5 per cent of the vote.

How was a majority vote secured?

The most important strategy to build support was one-to-one meetings with MPs. UNAIDS also sponsored a Standing Committee retreat to dis-

cuss the Bill. Mr. Bayarsaikhan worked to win key advocates outside the Committee, such as the Speaker of Parliament, who was very helpful, particularly when the Bill moved to a committee of the whole House.

How long did it take to pass the law?

It took just over a year from the establishment of the new working group to the approval of the law in 2012. However, HIV activists had been lobbying for changes to Mongolia's laws for much longer.

How is implementation of the law overseen?

A multi-sectoral body will be set up in 2014 comprising government, civil society and private sector representatives to oversee the country's HIV and AIDS efforts and help put in place the reforms. In the meantime, the parliament continues to hold the government to account for ensuring the law's timely implementation.



Parliamentarians speak out

"HIV is not widespread in Mongolia but I felt we could do more to improve the lives of those who are already affected by it, and help them to avoid passing it on. It made sense to look at international best practices and adapt our laws. I am very proud that we have now done that."

G. Bayarsaikhan, MP, Mongolia, 2013.

What impact has the law had? Has there been any impact on the HIV epidemic?

It is too early to gauge the impact of the law. However, the law should have a positive impact on the rights of people living with HIV, particularly men who have sex with men, who account for 80 per cent of the reported HIV cases in Mongolia. It should improve standards of medical confidentiality and increase employment opportunities by opening areas of work that were once restricted. It should also improve access to health and social services, which until now were inaccessible due to prevailing stigma and discrimination.

What political challenges did the new AIDS law encounter and how were they overcome?

HIV activists knew that the new law would be quite controversial due to HIV stigma. Parliamentary proceedings in Mongolia are open to the public; however, the key advocates for the Bill made a decision not to further publicize it in the media. There were a few small media articles on the Bill – including some negative coverage – but it never became a big story. Although the proposals had a lot of support from HIV experts outside the country, it was also important that someone who understood Mongolian culture and sensitivities was the lead interface between MPs and activists.

Key lessons from this case study

Staff on the Standing Committee helped keep the Bill on the agenda despite an election and change of government and were instrumental in finding a well-placed MP to lead parliamentary efforts. They gave advice on facilitating the passage of the Bill. UNAIDS funded one Committee staff member to attend the Asia-Pacific High-level Intergovernmental Meeting, which assessed progress against commitments made earlier in the year at New York in the Political Declaration.

South Africa: Legal recognition for transgender and intersex people



With HIV prevalence among men who have sex with men remaining very high, legal recognition for them and transgender populations is vital.
© Reuters 2011

Name of act: The Alteration of Sex Description and Sex Status Act, No. 49 of 2003

Summary: Allows people to change their official registered sex and get updated identity documents via an application to the Department of Home Affairs. Two categories of people are eligible: people who have undergone gender reassignment (either as a result of surgical or medical treatment or of “evolvment through natural development”) and intersex people.

Why the law is important for HIV: A lack of legal identity documents reflecting their evolved gender makes it hard for transgender and intersex people to access HIV services, even though the evidence shows that they are especially vulnerable to HIV. If they are exposed to violence they may not benefit from the protection of the law. Lack of legal status also acts as a barrier to employment opportunities, increasing the pressure to engage in sex work and other HIV-risk activities for economic survival.

How was the issue of the rights of intersex and transgender people introduced in parliament?

The first legal acknowledgment of transexuality under South African law was in 1974 in an amendment to the Births, Marriages and Deaths Registration Act. This amendment enabled changes to an individual's birth certificate following a change of sex but the Act was repealed in 1992, for reasons unrelated to gender reassignment. The legislation that replaced it did not allow for changes to the birth register following gender reassignment.

In 1995, The South Africa Law Commission (SALC) published a report on the "Legal Consequences of Sexual Realignment and Related Matters". The report was concerned that transsexuals became non-persons under the law following their transition and that this could have serious consequences for them and the legal system. A proposed Alteration of Sex Description Bill was included as an annex and lodged with the Department of Home Affairs. The Bill sat in the Department of Home Affairs for over five years, at which point the Home Affairs Portfolio Committee re-energized the debate and asked the Minister to table the Alteration of Sex Description and Sex Status Bill. It was tabled in parliament in July 2003. Intersex issues were only introduced to the Bill at the Committee stage.

Was cross-party support secured and, if so, how? How was a majority secured?

The African National Congress (ANC) supported the Bill and had about a two-thirds majority at the time. Some of the key civil society lobbyists for the Bill had senior contacts in the ANC, which helped. The next biggest party, the Democratic Alliance, also supported the Bill. The African Christian Democratic Party (ACDP) and the National Action were the only parties to vote against the Bill in the National Assembly. The Bill passed comfortably through the House.

How long did it take to pass the law?

It took over eight years, from the first draft of the Bill to its adoption in Parliament. However, when the Bill was tabled in parliament in 2003, it moved quickly to assent.

Which stakeholders outside of parliament were consulted or involved in the process?

Despite attempts to contribute, transgender and intersex activists had no input into the draft Bill that was tabled in the House in 2003. As a result, the first draft contained some serious misconceptions about gender reassignment processes and failed to accommodate the diversity in bodies, gender identities and gender expressions of transgender and intersex persons.⁴² Some activists feared that had the Bill passed as tabled, it would make matters worse for most transgender and intersex individuals, en-

couraging them to undertake unnecessary, costly and dangerous surgery, to become “legal persons”. It put legal recognition out of reach of the vast majority of transgender and intersex South Africans. The view of Sally Gross, Director of the NGO Intersex South Africa, was that “The intention was exemplary. But because they hadn’t consulted the people most directly affected, the drafting was naïve, to put it charitably”.⁴³ However, external stakeholders lobbied to have their voices heard, for example by writing to the Chair of the Home Affairs Portfolio Committee, and were invited to give evidence at the Committee’s public hearings.

Amendments proposed at this stage were not adopted and the Bill remained highly problematic. However, campaigners persisted and were given useful advice from parliamentary staff about possible next steps, including the importance of lobbying South Africa’s other chamber – the National Council of Provinces (NCOP). It was at the NCOP that campaigners persuaded parliamentarians to adopt crucial amendments that culminated in a Bill which, although still not ideal, was a legal step forward for the rights of South Africa’s transgender and intersex community.⁴⁴

How is implementation of the law overseen?

Applications to change one’s sex description are made to the Department of Home Affairs. However, the Department of Justice leads on most policy relating to human rights, including policies to prevent discrimination on the basis of gender and sexual orientation.

What impact has the law had? Has there been any impact on the HIV epidemic?

It is difficult to gauge the impact of the law on HIV in South Africa, partly because no nationwide data is collected on HIV among transgender people. The Department of Health has acknowledged that more research is needed to inform health programmes and health services for transgender people.⁴⁵ A 2012 Survey by Gender DynamiX found that discrimination against transgendered persons in health care settings continues to act as a barrier to HIV testing and treatment.⁴⁶

The law has not resulted in swathes of people changing their legal sex. A response to a 2013 parliamentary question indicated that just 95 people

42. Interviews with Sally Gross and copy of the Request in 2003 by Cape Town Trans Support Group to Home Affairs Portfolio Committee for extended submission period provided by Gender DynamiX on 7 October 2013.

43. Interview on 27 September 2013.

44. Record of 28 July 2011 presentation at Gender DynamiX on Alteration of Sex Description and Sex Status Act, provided by Estian Smit on 11 October 2013.

45. *Sexual and Reproductive Health and Rights: Reviewing the Evidence*, Department of Health, Republic of South Africa, (July 2011).

46. Marion Stevens, *Transgender Access to Sexual Health Services in South Africa: Findings From a Key Informant Survey*, Gender DynamiX (Sep’t. 2012), p. 23.

had legally changed their sex description in the 10 years since the law was passed. These small numbers may partly reflect the administrative hurdles that transgender and intersex people face when they apply for a legal identity change. Nonetheless, recognizing the legal personhood of transgender and intersex people was an important step in the official recognition of transgender and intersex issues in government policy. The National Strategic AIDS Plan now acknowledges that transgender people are a key population for HIV. In 2011, the South African delegation to the United Nations Human Rights Council in Geneva introduced the first-ever UN resolution on the human rights of LGBT persons.⁴⁷



Parliamentarians speak out

“The Bill of Rights as contained in our Constitution guarantees, among other things, the right to privacy, dignity and freedom of choice, and prohibits discrimination based on sex, gender and social [sic.] orientation [...] However, in the absence of this Bill, these basic rights of individuals are ignored and violated.”

South African MP Annelizé Van Wyk, speaking in 2003 (Hansard). She is still serving in parliament.

What political challenges did this law encounter and how were they overcome?

The key challenge has been implementing the law. It remains very difficult for transgender and intersex people to apply to change their sex in the register. According to the South African organization, Gender DynamiX, officials sometimes demand unnecessary requirements to register a change of sex description.⁴⁸ They and others are campaigning for officials to be trained to implement the letter and spirit of the law.

47. Liesl Theron, *Making South Africa A Better Place for LGBTI Persons*, Human Rights First, 16 March 2012.

48. Chris Bateman, *Transgender Patients Sideline by Attitudes and Labelling*, *South Africa Medical Journal*, vol. 101, no.2, Cape Town, Feb. 2011.

Key lessons from this case study

Consultation with affected groups is essential to good legislation. The first draft of the Bill was based on outdated science and did not have any input from LGBTI organizations. It could have been seriously damaging for transgender and intersex people, but the final product, though a compromise, represented a step forward. Legislation, however, is only the first step. More work is still needed to ensure proper implementation.

Switzerland: Decriminalisation of unintentional HIV transmission and exposure



Living with HIV, Fanelwa Glwasshu shows how positive images can help reduce stigma in South Africa.
© Reuters 2010

Name of act: The Epidemics Act 2013

Summary: Repeals and replaces the old Epidemics Act and in doing so, changes Article 231 of the Swiss Penal Code, which in the past has been used to prosecute people living with HIV for transmission and exposure, including cases where this was unintentional. The changes mean that a prosecution can only take place if the motive of the accused is to infect with a dangerous disease. Therefore, there should be no further cases for negligence or cases where the motive was not malicious (i.e. normal sexual relationships).

Why the law is important for HIV: Criminalization of HIV transmission, exposure or non-disclosure creates a disincentive for testing and gives non-infected individuals false confidence that they will be informed of any infection. In reality, their partner may not even know his or her HIV status and everyone should be responsible for protecting their own sexual health. The latest scientific findings have shown that people on HIV treatment who have an undetectable viral load and no other sexually transmitted infections are not infectious. Such people may want to have consensual unprotected sex. Criminalizing them for doing so has no positive public health impact and is an intrusion into their private life. UNAIDS is calling for the repeal of all laws that criminalize non-intentional HIV transmission, non-disclosure or exposure.

How and why was decriminalization of HIV transmission and exposure introduced in parliament?

In 2007, the Swiss Government decided to revise the Swiss law on epidemics. This was not an HIV-specific law and the decision to review it was not HIV-related but due to concerns that Switzerland was not well-placed to deal with other global epidemics, such as severe acute respiration syndrome (SARS) and H1N1. However, HIV campaigners and persons working in public health saw an opportunity to insert a clause into the Act that would amend Switzerland's current Penal Code, Article 231 of which has been used to prosecute people living with HIV for transmission and exposure. Since 1989, there have been 39 prosecutions and 26 convictions under Article 231 in combination with the Swiss law on "grievous bodily harm".

In December 2007, the government began a consultation on a draft Epidemics Bill and campaigners proposed a clause in it amending Article 231 of the Penal Code. In 2010, the government introduced the draft Bill into parliament. However, HIV campaigners were not happy with the new Bill as tabled and campaigned for changes throughout its passage through parliament. Improvements to the Bill were made at the Committee stage but it was not until the final vote at the National Council in 2013 that a last-minute amendment was tabled by Green MP Alec von Graffenried, which achieved campaigners' core aim of decriminalizing unintentional transmission or exposure.

Was cross-party support secured and, if so, how? How was a majority vote secured?

The last-minute amendment was tabled and passed with 116 votes to 40. The key arguments made in favour of the amendment centred on the unsuitability of public health law to deal with private criminal matters. This rather theoretical argument appealed to legislators, many of whom are practising lawyers or have a legal background.⁴⁹ However, the wider case for decriminalization had been made to parliamentarians over a period of many years inside and outside parliament and was reinforced by new scientific announcements and court decisions. MPs across the political divide realized that HIV is no longer a death sentence, but a manageable condition and that the right treatment can reduce an individual's infectiousness to zero. In this context, MPs were more open to the idea of legal change.

During the campaigning period of many years, different arguments were made to appeal to different MPs across the political spectrum. Those on the right often responded best to the notion of an individual's responsibility

49. Interview with Sascha Moore, Groupe Sida Genève, on 14 October 2013.

to protect their own sexual health and those on the left responded better to public health arguments.⁵⁰ Efforts were also made to lobby the head of health departments at the regional level, who were then able to communicate their support for the change to colleagues at the national level.

How long did it take to pass the law?

It took almost six years from the consultation on the first draft of the Bill until it was confirmed by referendum in September 2013. The law will come into effect in January 2016.



Parliamentarians speak out

"I am delighted my amendment was successful. We can still prosecute for malicious, intentional transmission of HIV. But I expect those cases will be very rare. What has changed is that now people living with HIV – which these days is a manageable condition – will be able to go about their private relations without the interference of the law. They can access medical services without fear. All the evidence suggests that this is a better approach for public health."

Alec Von Graffenried, MP, Switzerland, 2013.

50. Ibid.

Which stakeholders outside of parliament were consulted or involved in the process?

HIV campaigners, including people living with HIV, fed into an open consultation on the first draft of the Bill. They had good contacts with the group of sexual health experts officially mandated to advise the government⁵¹ and therefore good contacts with the Federal Office of Public Health, which was the lead Department for the Bill. However, their input was largely “ignored”⁵² in the Bill that was tabled in parliament in 2010 – possibly due to conflicting input from the Ministry of Justice, with which they had less contact.⁵³

Campaigns continued at the committee stage of the Bill, where prominent lawyers and scientists spoke in favour of a prevention-focused approach to encourage infected individuals to come forward for treatment. This led to the removal of a proposed requirement of people living with HIV to inform their sexual partners and recognition by the committee that both sexual partners should take responsibility for their sexual health. However, campaigners were not able to get all the amendments they hoped for agreed at this stage.

When the Bill returned to the whole House, Mr. Von Graffenried, a member of the Justice Committee, tabled an amendment dealing with Article 231 of the Penal Code. He had not been personally lobbied to do this, but had read articles by HIV campaigners, and felt it was a good opportunity to bring the law in line with the science of HIV.⁵⁴

How is implementation of the law overseen?

The law will be overseen by the Federal Office of Public Health.

What impact has the law had? Has there been any impact on the HIV epidemic?

It is too early to tell, since the law will come into effect in 2016.

What political challenges did the law encounter and how were they overcome?

The law was part of a wider Epidemics Bill, which was fundamental to its success but also brought challenges. According to Sascha Moore of Groupe Sida Genève, HIV campaigners would have had “no chance of success if they had tried to introduce a Bill just on HIV” since there would

51. The Swiss Federal Commission for Sexual Health.

52. *Groupe Sida Genève Denounces the Proposed Changes to Art. 231 of the Swiss Penal Code*, Groupe sida Genève, at: <http://www.groupe sida.ch/>, (in French only).

53. E-mail from A. Von Graffenried of 15 October 2013.

54. *Ibid.*, 16 October 2013.

have been insufficient interest or support. However, the success of the HIV amendment was contingent on the adoption of the whole Bill. Some people who supported the HIV amendment voted against the final Bill because of other parts they did not like. Disagreements over contentious aspects of the legislation held up progress, including for example creating the need for a referendum on the Bill, which had already been agreed in parliament. It took patience and coalition-building with other parties who were interested in passing the Bill to overcome this challenge.

Key lessons from this case study

While the Health Department was in favour of removing the criminal sanctions for disease transmission in Article 231 of the Penal Code, the Justice Department was less enthusiastic. This may have held up the process. It was important that the amendment conformed to the Justice Department's guidelines before the Department could support it. Mr. Von Graffenried – a member of the Justice Committee – was well placed to talk to Ministry officials to ensure it conformed. Campaigners and parliamentarians need to ensure that all the relevant departments are lobbied when working on such changes.

Conclusion

Law-making in relation to HIV needs to be treated with extreme care. Laws that MPs may think help limit the spread of HIV, for example those that criminalize transmission, can have the opposite effect. Many such laws have already been passed and need urgent review and repeal. These laws drive people living with HIV or who are vulnerable to HIV infection underground, away from testing, prevention and treatment services, with serious implications for individual and public health.

On the other hand, laws that protect groups most vulnerable to HIV – for example sex workers, people who inject drugs, men who have sex with men, prisoners and transgender people – are usually beneficial in the AIDS response but can be difficult to pass.

This document shows that it is possible to win the support of political colleagues and the public even for the most controversial campaigns, as long as those campaigns are founded on strong evidence and sound political judgement.

The political case for action is compelling. Advances in HIV science and treatment create a win-win opportunity. If everyone living with HIV, including key populations, can benefit from effective care and avoid passing on their infection, the end of AIDS – a vision backed by the United Nations – is genuinely achievable.

But it takes more than medicine for this exciting opportunity to become a reality. It takes the right legal and social environment. Politicians have committed at the United Nations to playing their part. It is time to translate those commitments into local action, country by country, parliament by parliament, law by law. The efforts you make can turn the end of AIDS from a dream into reality.

Further reading

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- *Making the law work for the response to HIV: Brief for parliamentarians*, IPU, UNAIDS and UNDP, 2011, <http://www.ipu.org/pdf/publications/aids12-e.pdf>
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- Ralf Jürgens et al, *10 Reasons to Oppose Criminalization of HIV Exposure or Transmission*, Open Society Institute, (2008). http://www.opensocietyfoundations.org/sites/default/files/10reasons_20081201.pdf
- The Global Health and Human Rights Database:
www.globalhealthrights.org

“If lawmakers do not amend these laws so that all resources are marshalled against the same enemy – HIV, not people living with HIV – the virus will be the victor.”

Risks, Rights and Health, Report of The Global Commission on HIV and the Law, 2012.

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With the global AIDS response becoming increasingly hampered by the criminalization of key populations, this study aims to encourage and assist parliamentary scrutiny of legislation that impedes effective HIV interventions. It highlights the various processes in selected parliaments that led to the adoption of laws with a positive impact on the AIDS response. Although such outcomes were not always easy to achieve, they were mainly the result of inspired leadership by parliamentarians able to overcome the moral obstacles that had stifled socially sensitive issues in political debate.