Advancing Reforms to Repeal Laws and Policies that Impede Equitable Access to HIV Services for All People

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Overview of Presentation

• Restrictive laws and policies
• Looking beyond the formal legal system
• The *Puppeteer* – hands behind the scene
• Another look at the human rights frame
• What we have learned
Who is most impacted by restrictive laws and policies?

- Adolescent and young people, particularly adolescent girls and young women
- People living with HIV
- Sex workers
- Gay, bisexual and other MSM
- Transgender persons
- People who use drugs
- Prisoners and other detainees
What law are creating the most barriers?

- Parental consent laws for adolescents under 18 seeking HIV and SRH services
- HIV transmission criminalisation laws, many of which are based on moral panic rather than science
- Laws that criminalise some or all aspects of sex work
- Laws that criminalise consensual sexual conduct between same sex persons
- Laws that prohibit gender recognition, access to identity document and restrict gender expression
- Punitive laws on drug use and mandatory detention of PWUD as treatment
- Laws and policies that curtail access to services for prisoners; unduly long detention of persons awaiting trial
Are we defining ‘law’ too narrowly?

You can decriminalise anti-homosexuality laws, but will you also decriminalise the Holy Quran, because that is the law that impacts my lived reality daily – gay youth, Senegal

• Many countries recognise customary law and religious laws, together with the formal legal systems, are concurrent normative legal frameworks

• We need to rethink and be more innovative about our discourse on ‘legal reform’, a sole focus on parliaments as the primary actors on legal reform may be counter-productive in many high prevalence settings
Cultural and religious institutions: why should they matter to us?

Why we cannot afford to ignore religious and customary legal systems and their ‘policymakers’

- Between 30 – 60% of healthcare services are provided by faith-based institutions [The Lancet, 2015]
- Religion-motivated discrimination survey is a top barrier to access to services for KPs [AMSHeR, 2013]
- Religious leaders are actively pushing more restrictive legislation and policies through formal legal and policy platforms
- Fear of political suicide [elected officials]
- The threat of an increasingly well-organised and resourced, mostly Western-driven, anti-SRH religious rights is real in many parts of the Global South
- Religious and traditional leaders enjoy significant level of trust, authority and legitimacy in many parts of the world
The human rights frame: Is it still relevant to the response?

• These key human rights principles are central to ensuring access for key and vulnerable populations -
  • Availability, accessibility, acceptability and quality of service
  • Non-discrimination and equality
  • Privacy and confidentiality
  • Respect for dignity and autonomy
  • Meaningful participation

• The growing global political apathy, suspicion and hostility toward human rights language cannot be ignored

• Innovation requires that we present human rights principles in language that speaks to broader audience
What have we learned?

• States need support to understand the state of the legal and policy environment on their AIDS response [LEAs]

• Reforming the ‘big Ps’ can be very long-term, expensive, unduly bureaucratic and prone to media sensationalisation; focus on the ‘small Ps’ [Utetezi Model]

• Focus on key national agencies who work impact more directly on the application of law and policies [NHRIs, law enforcement agencies]

• Encourage judicial activism through strategic litigation and everyday lawyering
What have we learned?

• None of the above, will be successful if we ignore religious and customary laws/institutions

• Speak to values that resonate within these institutions; speak in a language they understand; ‘unpack the human rights box’

• Cultivate non-traditional allies [*strategic messengering*]

• Solidarity of our struggles; eschew exceptionalism

• Strengthen the capacity and voices of affected communities to understand and engage with legal and policy processes at every level
Thank you!

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