

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

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# 90-90-90 Targets Workshop

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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 messenger-ing*]
- 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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