
ANNEX A

Criminalisation and HIV in Jamaica

Legislation is considered an important aspect of a policy response to HIV that can facilitate or hinder an enabling environment for prevention, care, and treatment. Criminalisation (legislation that makes something illegal) is one form of legislation that shapes the policy environment and the response. The following document provides a brief overview of the situation for key and vulnerable populations in Jamaica, as well as international guidance on criminalisation and sources for more information.

1. MEN WHO HAVE SEX WITH MEN¹

‘Buggery’ and “any act of gross indecency with another male person” are criminalised in Jamaica under Sections 76, 77, and 79 of the Offences against the Person Act although the ‘buggery’ offence does not make a distinction as to whether the act is between a man and another man, or a man and a woman, it is mostly applied to same-sex sexual acts. Despite the recognition by the National Policy, Jamaica 2005 (being reviewed in 2014) and the *Jamaica HIV National Strategic Plan for MSM 2012–2017* that homophobia in Jamaica is a powerful cultural influence which forces men who have sex with men underground, stigma and discrimination represent significant barriers to HIV prevention, treatment, and care for men who have sex with men in Jamaica.

2. SEX WORKERS

Sex work (living on the earnings of prostitution and solicitation) is criminalised in Jamaica under Section 68 of the Offences.

Criminalisation of sex work makes it difficult to reach this mobile and vulnerable population, especially the most invisible between criminalisation and marginalisation of and discrimination against sex workers, and their vulnerability to HIV within the national response, has not translated into legal or policy reforms.

3. WOMEN’S REPRODUCTIVE RIGHTS

Abortion is illegal in Jamaica, and key informants have expressed concerns about safeguards against the lack of full informed consent in routine HIV testing of pregnant women, as well as instances of forced abortions on and involuntary sterilisation of HIV-positive women.

4. TRANSMISSION

Jamaica does not have an HIV-specific criminal law, and there has been no prosecution or conviction related to HIV transmission. HIV transmission can be prosecuted under Section 22 of the Offences against the Person Act A person living with HIV can be isolated under Section 14 (1) of the Public Health Act of 1985. In 2010, a successful submission was made to the Cabinet to have HIV and AIDS removed from the Public Health (Class 1 Notifiable Diseases) Order. Some government officials have advocated for an HIV-specific law to criminalise intentional transmission. Politicians, religious leaders, and the public do not seem to be well-informed about international standards concerning criminalisation of HIV transmission.

5. YOUTH ACCESS TO HEALTH SERVICES AND PREVENTION TOOLS

The Sexual Offences Act creates a criminal offence if a person engages in sexual acts with a girl or a boy under the age of 16, even though data show that many boys and girls have a sexual debut below that age. The Access to Contraceptives Policy for Minors of 2007 outlines the procedure for provision of contraceptive advice, counselling,

¹ UNDP, UNAIDS, National HIV/STI Programme. 2013. *Legal Reforms, Social Change: HIV/AIDS, Human Rights and National Development in Jamaica (HIV and AIDS Legal Assessment Report for Jamaica)*. Geneva: UNAIDS.

and treatment to persons under 16 years of age by a healthcare provider; however, service delivery is at the discretion of health professionals, who may be reluctant for fear of aiding and abetting in criminal acts.

DO PUNITIVE LAWS MAKE A DIFFERENCE?

Criminalisation is much talked about but not extensively and rigorously studied. There is, however, international evidence to support the following conclusions:

1. Criminalisation affects the dynamics of an epidemic, such as prevalence related to HIV
 - a. Criminalisation has not been shown to reduce HIV transmission.
 - b. Evidence points toward the fact that criminalisation creates an environment that hinders prevention efforts.
2. Health access
 - a. Criminalisation impedes access to health and prevention services for key populations.
 - b. A recent report investigated HIV financing and found a powerful correlation between criminalisation of same-sex behaviour and lack of investment in services.
3. Human rights
 - a. Criminalisation is not consistent with human rights accords that countries such as Jamaica have signed.

SOURCES

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International Guidelines

The International Guidelines on HIV/AIDS and Human Rights from the Office of the United Nations High Commissioner for Human Rights and UNAIDS state the following:

1. Guideline 4: Criminal Laws and Correctional Systems

- a. States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV or targeted at vulnerable groups.
- b. Criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal. In any event, they should not be allowed to impede provision of HIV prevention and care services.

2. Guideline 5: Anti-discrimination and Protective Laws

- a. States should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV and people with disabilities from discrimination in both the public and private sectors, that will ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation and provide for speedy and effective administrative and civil remedies.

3. Guideline 8: Women, Children and Other Vulnerable Groups

- a. States should, in collaboration with and through the community, promote a supportive and enabling environment for women, children and other vulnerable groups by addressing the underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.

4. Guideline 11: State Monitoring and Enforcement of Human Rights

- a. States should ensure monitoring and enforcement mechanisms to guarantee HIV-related human rights including those of people living with HIV, their families and communities.

Regional Caribbean guidelines are consistent with these international guidelines.

SOURCES

Office of the United Nations High Commissioner for Human Rights, UNAIDS. 2006. *International Guidelines on HIV/AIDS and Human Rights*. Geneva: UNAIDS.

Pan-Caribbean Partnership Against HIV/AIDS (PANCAP). 2013. *PANCAP Stigma Reduction Framework for HIV and AIDS: National Actions to Reduce HIV-related Stigma & Discrimination and Improve Health Outcomes*. Georgetown: PANCAP