

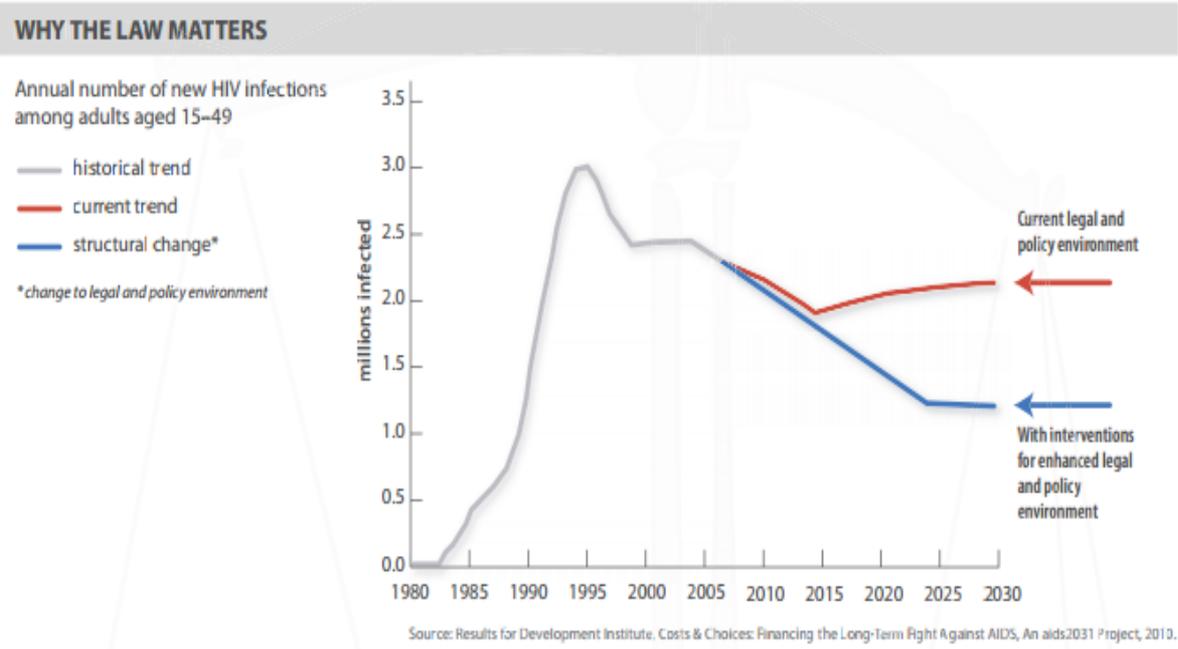
# **HIV and Access to Justice**

Inaugural Seminar  
of the HIV, Human Rights and  
Development Network

Prof Avrom Sherr

Institute of Advanced Legal Studies,  
University of London

# “HIV and the Law: Risks, Rights & Health” the HIV Law Commission’s flagship publication, July 2012



In just three decades, over 30 million people have died of AIDS, and 34 million more have been infected with HIV. The HIV epidemic has become one of the greatest public health challenges of our time. It is also a crisis of law, human rights and social justice. The good news is that we

HIV are fueling the epidemic. These legal practices create and punish vulnerability. They promote risky behaviour, hinder people from accessing prevention tools and treatment, and exacerbate the stigma and social inequalities that make people more vulnerable to HIV

# Law as a **shield for** people affected

- 123 countries have legislation to outlaw discrimination based on HIV;
- 112 legally protect at least some populations based on their vulnerability to HIV;
- See e.g. disability hate crime protection in England and Wales
- But these laws are often ignored, laxly enforced or aggressively flouted.

# Law as a **sword** against people affected

- In over 60 countries it is a crime to expose another person to HIV or to transmit it, especially through sex.
- At least 600 individuals living with HIV in 24 countries have been convicted under HIV-specific or general criminal laws.
- **But** see “ACPO Investigation Guidance relating to Criminal Transmission of HIV” and BHIVA Guidelines.

- Women and girls are half of those living with HIV-  
profound gender inequality makes them more  
exposed and often the law does not help
- The law can dehumanise those at highest risk for  
HIV: sex workers, transgender people, men who  
have sex with men (MSM), people who use drugs,  
prisoners and migrants.
- The law renders these “key populations” more  
vulnerable.
- 78 countries make same-sex activity a criminal  
offence.

- Criminalisation of sex work, drug use etc. create climates in which civilian and police violence is rife and legal redress for victims impossible.
- Fear drives key populations underground, away from HIV, and harm reduction, programmes.
- Incarceration and compulsory detention exposes detainees to sexual assault and unsafe injection practices, while condoms are contraband and harm reduction measures (including antiretroviral medicines) are denied. See English report – Independent 7-5-2013

# The AIDS Paradox – a paradox of our times



# The AIDS Paradox –

## The Hon. Michael Kirby

- “It is a paradox, one of the most effective laws we can offer to combat the spread of HIV is the protection of persons living with HIV, and those about them, from discrimination. This is a paradox because the community expects laws to protect the uninfected from the infected. Yet, at least at this stage of this epidemic, we must protect the infected too. We must do so because of reasons of basic human rights. But if they do not convince, we must do so for the sake of the whole community which has a common cause in the containment of the spread of HIV.”

# Effective legal aid

- Can make justice and equality a reality for people living with HIV.
- This can contribute to better health outcomes.
- Advocates can creatively use traditional law in progressive ways to promote women's rights and health.
- Court actions and legislative initiatives, informed by fairness and pragmatism, can help nations shrug off misconceived criminalisation, introduce gender-sensitive sexual assault law and recognise the sexual autonomy of young people.

# People Living with HIV

- Need the same access to law as others, for welfare issues, housing, employment, family, immigration, discrimination etc.
- Need specialist advocates to weigh the balance between legal, social and political approaches in making their lives better and deal with multiple discrimination and stigma
- Need specialist law centres? Cf. Immunity, Terrence Higgins Trust etc.

# Stigma

- National Aids Trust – recent survey-
- 69% feel there is still a great deal of stigma in the UK around HIV
- Especially within communities most affected by HIV – gay and bisexual men and African men and women

# Discrimination and legal redress

Sherr et al

- Data collected from 108 HIV positive individuals in UK (83.2% male, 87.3% UK born, x age 36.1 yrs, 30.6% minorities)
- 82.4% had fears or concerns of discrimination.
- Only 6.5% did not hesitate telling people their diagnosis
- 19.4% told not to tell at time of diagnosis

# EXPERIENCE OF DISCRIMINATION

---

<b>Subtle Discrimination</b>	<b>57.4%</b>
<b>Mild acts of discrimination, hard to quantify but hurtful</b>	<b>56.5%</b>
<b>Obvious acts of discrimination</b>	<b>47.2%</b>
<b>Acts of discrimination resulted in:-</b>	
<b>i. Hurt feelings</b>	<b>67.6%</b>
<b>ii. Exclusion</b>	<b>49.1%</b>
<b>iii. Loss</b>	<b>42.6%</b>
<b>iv. Physical damage</b>	<b>12%</b>
<b>v. Mental damage</b>	<b>54.6%</b>
<b>vi. Financial damage</b>	<b>40.7%</b>

# NATURE OF LEGAL PROBLEM

- Employment (41.4%)
- Immigration (13.8%)
- Grievous Bodily harm (10.3%)
- Harassment (6.9%)
- Child issues (3.4%)
- Breach of Confidentiality (6.9%)
- Medical treatment (13.8%)
- Discrimination pure (3.4%)
- Discrimination main 18.5%; linked 19.4%

# Impact of Discrimination

<b>Emotional Trauma</b>	<b>63%</b>	
<b>Secondary Physical</b>		<b>38%</b>
<b>Deterioration of health</b>		<b>44%</b>
<b>Despair</b>		<b>55%</b>
<b>Fear of recriminations</b>		<b>50%</b>
<b>Reluctance to proceed</b>		<b>45%</b>
<b>Stigma</b>		<b>48%</b>
<b>Depressed</b>		<b>63%</b>
<b>Confidentiality problems</b>	<b>46%</b>	
<b>Concern for dependants</b>	<b>31%</b>	
<b>Reluctance to seek help</b>		<b>59%</b>
<b>Suicidal</b>		<b>37%</b>

# Level of action taken

- 34.3% kept it to themselves
- 31.5% report to health care worker
- 25% seek formal legal advice
- 11.1% note legal action
- Only 5 people (4.6% of the sample) had gone to court on the issue.

# Use of the Law

- 76 Clients recounted at least one experience
- 35.5% believed not actionable in law
- 22% lack of energy
- 17% time barrier
- 19% expense
- 22% exhaustion
- 20% confidentiality worries



# Lawyer Study

- Sharp contrast where lawyers questioned (*Sherr et al Jama* )
- Most cases went to trial. Reflecting nature of case (criminal/legal aid) or intensity of issue once it gets to lawyers
- Filtering stage of advice seemed to be absent

# The HIV cases going to court conundrum

**Clients – tip of the iceberg**



**Lawyers –inverted iceberg**

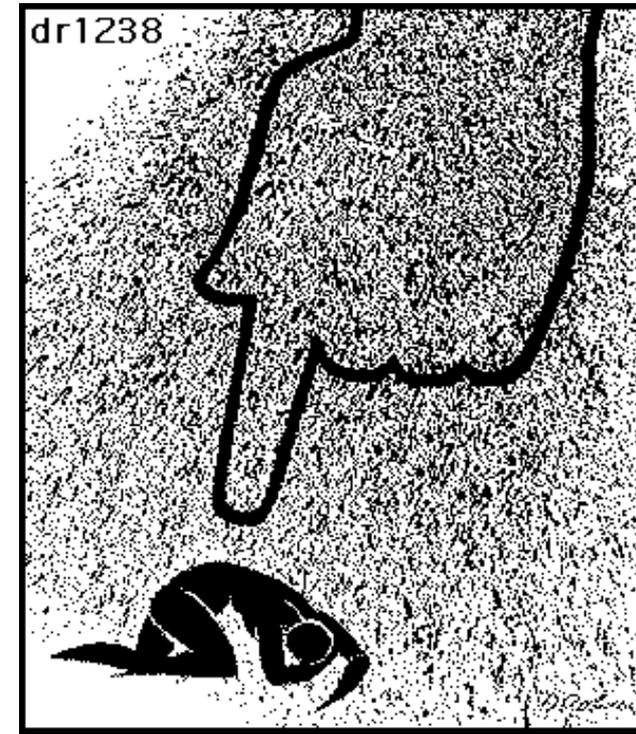


# What does the law mean to HIV positive clients?





- Safe haven
- Respite from discrimination
- Route to justice
- Route to understanding
- Last hope
- Objective
- Professional
- Long arm of the law
- Criminalisation
- Prosecution
- Guilt/blame



# Law in HIV prevention

*Change over time from protection to prosecution*

- **SHIELD**

- protects all, the HIV+ve, the HIV-ve
- takes a total view, balancing stigma, illness judgements and responsibilities
- ensures access and protects public health



- **SWORD**

- against transmission
- against harm
- against injustice
- against profiteering
- against human rights abuse

# Internationally

- Global fund problems – failure to detect corruption among local officials
- Needs guiding framework on governance of HIV/AIDS Investment to enhance decision making, strong leadership, and accountability

# UNAIDS Strategic Investment Framework and Six Interventions

- Antiretroviral therapy for both treatment and prevention.
- Preventing children from becoming newly infected with HIV and keeping their mothers alive
- Voluntary medical male circumcision in countries with generalised epidemics and low prevalence of circumcision
- Promoting condom use
- Integrated activities for key populations at higher risk of HIV infection, and
- Programmes to promote behaviour change to reduce people's risk of exposure to HIV

# Critical Enablers for Strategic Intervention

In addition to the six interventions, there are 'Critical Enablers' which are on two levels namely:

- Community Mobilisation eg social factors
- **Legal and Institutional Framework**