

Towards smarter HIV laws: considerations for improving HIV-specific legislation in sub-Saharan Africa

Patrick Michael Eba

Senior human rights and law adviser at the Joint United Nations Programme on HIV/AIDS (UNAIDS)

Correspondence: ebap@unaids.org

PhD Candidate at the School of Law, University of KwaZulu-Natal, South Africa

Abstract: *As of 31 July 2014, some 27 countries in sub-Saharan Africa had adopted HIV-specific legislation to respond to the legal challenges posed by the HIV epidemic. However, serious concerns raised about these laws have led to calls for their repeal and review. Through the theory of “smarter legislation”, this article develops a framework for analysing the concerns relating to the process, content and implementation of HIV-specific laws. This theoretical framework provides specific guidance and considerations for reforming HIV-specific laws and for ensuring that they achieve their goals of creating enabling legal environments for the HIV response. © 2016 Reproductive Health Matters. Published by Elsevier BV. All rights reserved.*

Keywords: HIV/AIDS, Legislation, sub-Saharan Africa, HIV-specific laws

Introduction

Experience and evidence from more than 30 years of the HIV epidemic have shown that enabling legal environments – including protective legislation – can play an important role in advancing the HIV response.¹ However, early reviews of the legal environment relating to HIV in countries across the world found that existing legislative frameworks were not adapted to the legal, social and human rights challenges raised by the epidemic.² Many countries have taken legislative measures to address the legal and human rights issues relating to HIV.³ In sub-Saharan Africa, the majority of countries adopted HIV-specific legislation. As of August 2014, 27 sub-Saharan African countries had adopted such laws (see Figure 1).

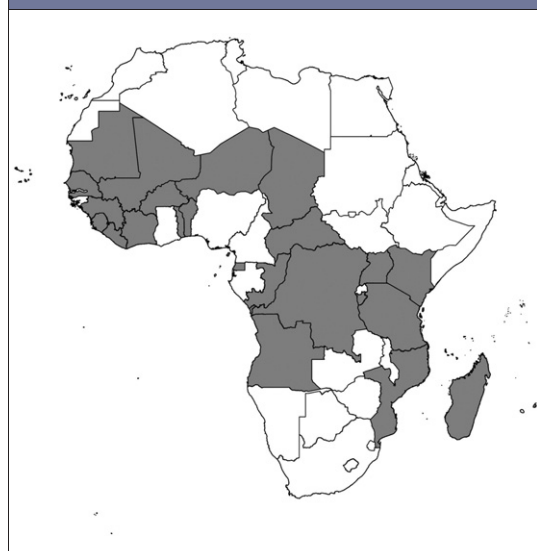
HIV-specific laws, a single piece of legislation exclusively dedicated to HIV, cover issues such as HIV education and information, HIV testing and counselling, biomedical HIV research, non-discrimination based on HIV status, HIV prevention, treatment, care and support as well as penalties for various acts such as HIV non-disclosure, exposure or transmission.⁴

Since their adoption, the great majority of HIV-specific laws have raised serious concerns relating to coercive provisions.^{4,5} Research has also identified several flaws in the content of HIV-specific laws, such as lack of clarity, contradictory

provisions, and failure to identify implementation agencies.⁶

These concerns have generated questions about the rationale, process, content and implementation of most HIV-specific laws in sub-Saharan Africa. However, repealing HIV-specific laws in sub-

Figure 1. Sub-Saharan African countries with HIV-specific laws as of 31 July 2014



Saharan African countries will prove challenging, with likely resistance from parliamentarians and other stakeholders at country and regional levels who have supported their adoption.⁷ In addition, the removal of HIV-specific laws will create gaps in national HIV legal frameworks because in many countries they are the only legally binding instruments that explicitly guarantee some protection for people living with HIV and address legal issues relevant to the epidemic. On the other hand, efforts to review and improve HIV-specific laws have proved successful in a few countries in the region, including Sierra Leone, Guinea and Togo, thus suggesting that this approach is worth pursuing.⁴

This article explores the application of the principles and approaches of “smarter legislation” to guide the review of HIV-specific laws. Following an overview of the human rights and implementation challenges in HIV-specific laws in sub-Saharan Africa, the article introduces the notion of “smarter legislation” and its application on key issues and challenges in the context of HIV-related law-making.

Human rights and implementation concerns in HIV-specific laws

Analyses of HIV-specific laws adopted in sub-Saharan Africa have shown that they contain some human rights protections covering areas such as non-discrimination, access to HIV information and education, protection in the workplace and informed consent in the context of research relating to HIV.^{4,5} These laws also contain various forms of restrictive and coercive measures.^{4,5} A recent review of HIV-specific laws in 26 sub-Saharan African countries found that 17 countries have broad provisions that allow for involuntary disclosure of HIV status of people living with HIV to their sexual partners,

and 24 countries have provisions allowing for criminalisation of HIV non-disclosure, exposure or transmission (see Table).⁴

These coercive provisions not only infringe upon human rights, including the rights to autonomy, privacy and security; they have also been proved to negatively impact efforts to advance effective responses to HIV, as highlighted by the *International Guidelines on HIV/AIDS and Human Rights*:

“People will not seek HIV related counselling, testing, treatment, and support if this could mean facing discrimination, lack of confidentiality and other negative consequences...[C]oercive public health measures drive away the people most in need of such services and fail to achieve their public health goals of prevention through behavioural change, care and health support.”⁸

A further concern in HIV-specific laws is the limited or lack of attention to the legal and human rights issues affecting many key populations, such as women and girls, sex workers and men who have sex with men, in spite of evidence on their greater vulnerability to HIV.⁴

More than ten years after the first HIV-specific laws were adopted, there is limited evidence of their effective implementation and enforcement. Findings from surveys conducted in a number of countries that have adopted HIV-specific laws suggest that there is insufficient awareness of these laws among key stakeholders, including people living with HIV, who are arguably their primary beneficiaries.⁹ In several countries, critical implementation measures that are expected to translate or accompany these laws have not been adopted several years after they were passed.¹⁰

Intrinsic flaws in the normative content of HIV-specific legislation are considered to have

Table 1. Example of coercive and restrictive provisions in HIV-specific laws

Provisions/measures	Countries
Overly broad partner notification	17 countries: Angola, Benin, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Côte d'Ivoire, DRC, Guinea Bissau, Kenya, Madagascar, Mali, Niger, Senegal, Tanzania and Uganda
Criminalisation of HIV non-disclosure, exposure or transmission	24 countries: Angola, Benin, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Congo, Côte d'Ivoire, DRC, Guinea, Guinea Bissau, Kenya, Liberia, Madagascar, Mali, Mauritania, Mozambique, Niger, Senegal, Sierra Leone, Tanzania, Togo and Uganda

Download English Version:

<https://daneshyari.com/en/article/7527158>

Download Persian Version:

<https://daneshyari.com/article/7527158>

[Daneshyari.com](https://daneshyari.com)