



# FROM N'DJAMENA TO SADC & EAC MODEL LAWS & BEYOND:

Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure






"HIV/AIDS is no longer a death sentence. Can we believe that in this day and age, people living with HIV are spending decades in prison for biting and spitting?" 2016 Beyond Blame Pre-Conference Hon. Dr. Patrick Hermine, Previous Speaker of Parliament, Seychelles.



About the AIDS and Rights Alliance of Southern Africa (ARASA):

Established in 2002, the AIDS and Rights Alliance for southern Africa (ARASA) is a regional partnership of over 115 non-governmental organisations working together to promote a human rights approach to HIV and TB in southern and east Africa through advocacy and capacity building.

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Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure  
Produced by the AIDS and Rights Alliance of Southern Africa (ARASA)



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# INTRODUCTION: ABOUT THE REPORT

## 1. About the AIDS and Rights Alliance for Southern Africa (ARASA) and HIV Justice Worldwide



The AIDS and Rights Alliance for Southern Africa (ARASA) is a regional partnership of 115 non-governmental organisations, working together in 18 countries in Southern and East Africa; to promote a human rights based response to HIV, TB, sexual and reproductive health and rights services (SRHR) in southern and east Africa, through capacity strengthening and policy advocacy.

HIV Justice Worldwide is an initiative made up of global, regional and national civil society organisations – most of them led by people living with HIV – who are working together to build a worldwide movement to end HIV criminalisation. All of the founding partners have worked individually and collectively on HIV criminalisation for a number of years.

## HIV JUSTICE WORLDWIDE

HIV Justice Worldwide comes at a time when there is an urgent need to capitalize on current advocacy successes in some parts of the world and to resist new and proposed laws in others. It is also evident that preventing and remedying HIV criminalisation is going to take many years, if not decades, and so we need to work together because:

- HIV criminalisation is an international issue, having grown in scope and severity over the last two decades;
- International actors such as UNAIDS, UNDP, the Global Commission on HIV and the Law and others have been – or need to be – involved in this issue, and civil society needs to be able to effectively engage with these actors;
- International pressure can often be helpful in responding to problematic regional or national developments; and;
- A global movement can help raise awareness and build capacity of local actors around the world by sharing knowledge, experience, strategies, tools and mobilizing resources.





## 2. Executive summary

HIV continues to be viewed as a global pandemic. The proliferation of HIV-specific laws has been one of the avenues that governments have turned to; in an effort to prevent and control the HIV epidemic. Legislation was perceived from a societal perspective, to be a protective mechanism of people living with HIV and those affected by it. These laws were specifically intended to foster non-discrimination and protect the rights of People living with HIV in the sphere of employment, and equitable access to health and government services. The reality as it seems, has been a proliferation of prescriptive and restrictive pieces of legislation, which are often accompanied with punitive measures, levelled against people based on their HIV-status. Provisions relating to ‘compulsory testing’, ‘involuntary partner notification’, ‘non-disclosure’ and ‘transmission’ of HIV, often feature within the provisions of these HIV specific laws. The overly broad and vague nature of most HIV specific laws, accompanied with the imposition of criminal sanctions without empirical or scientific support, further underpin the rift between public health goals and the protection of human rights.

Four years after the introduction of the N’Djamena Model law. The Southern African Development Community (SADC) Model Law was adopted by the SADC Parliamentary Forum in 2008 in reaction to the coercive measures of criminalisation of HIV transmission, compulsory testing of pregnant women and involuntary disclosure. The SADC Model Law was aimed at being more inclusive of the needs of already marginalised groups, women, children, Sex workers as a response to HIV whilst upholding the protection of human rights.<sup>1</sup> In tracking the trajectory of developments related to HIV specific legislation and increased efforts by civil society to decriminalise HIV in the SADC and East African Community (EAC),<sup>2</sup> it is evident that gains have been made over the past ten years since the inception and application of Regional HIV model laws. Global, regional and national campaigns driven by champions who vehemently object to HIV criminalisation have contributed to these successes. This is evidenced within the SEA region, specifically in countries that have opposed and rejected existing provisions contained in draft legislation, which push for criminal sanctions against people living with HIV, based solely on their status. Examples of these pressures, have been seen in countries such as Mauritius, Comoros and Mozambique, where successful campaigning has led to less draconian laws.

The AIDS and Rights Alliance for Southern Africa (ARASA) has played an active and pivotal role in the fight to ‘end HIV criminalisation’ in the region and globally. The organisation has interfaced and continues to parliamentarians, members of the judiciary and advocates; through various initiatives and platforms. Partnerships and collaborations are crucial in this fight and ARASA as

**“Before November 2005, only three countries in sub-Saharan Africa (Angola, Burundi and Equatorial Guinea) had adopted HIV-specific laws. The 2004 development of model legislation on HIV/AIDS for West and Central Africa (also known as the N’Djamena Model Law) transformed the legislative landscape on HIV in sub-Saharan Africa and, particularly, in West and Central Africa. Four years later, some West and Central African countries had adopted HIV-specific laws largely based on the N’Djamena Model Law. Although presented as a model approach to legislating on HIV, it has been criticised for its embrace of coercive approaches that violate human rights and risk undermining the existing response to HIV.”**

<sup>1</sup> [http://www1.chr.up.ac.za/index.php?option=com\\_content&view=article&id=131&Itemid=166](http://www1.chr.up.ac.za/index.php?option=com_content&view=article&id=131&Itemid=166)

<sup>2</sup> N’Djamena Model law (2004), SADC model Law, (2008)

a member of the global movement, HIV Justice Worldwide (HJWW) enabled with the support of Robert Carr Civil Society Networks Fund has had the opportunity to sustain and illuminate the battle to put an end to criminalisation.

Despite certain feats, what has emerged is the need to mobilise partners from the various regions and diverse groups around the continent and the global north; to revisit alternative approaches towards criminalisation and to accelerate a sustained momentum, strengthen collective action. In taking stock of the regional efforts; ARASA in collaboration with the HIV Justice Worldwide (HJWW) Consortium, convened a two-day meeting involving policy and law makers, members of the judiciary, lawyers, parliamentarians and representatives from civil society organisations from the East African, SADC regions and global North.

The meeting had three main objectives:

#### **Objective 1:**

- To develop and strengthen much-needed regional capacity through dialogue between the relevant stakeholders to ensure continued advocacy against HIV criminalisation, and to sustain this capacity in order to further advocate against related punitive laws, policies and practices aimed at people living with HIV which impede the HIV response.

#### **Objective2:**

- To reflect on the challenges and opportunities within the HIV Discourse, including the shrinking civil society space and the dwindling funding base.

#### **Objective 3:**

- To identify key partners who can support efforts at a regional level to challenge criminalisation and to facilitate discussions around an early warning system so that problematic provisions can be addressed at Bill stages.

### Key Emerging Issues

The two-day dialogue created a platform for civil society organisations, lawyers, parliamentarians and law makers to interface on the issue of HIV criminalisation. The revelation of the impact of criminalisation on both a global and regional front resulted in robust discussions, critique and information sharing on best practices and interventions towards decriminalisation of HIV exposure, transmission and non-disclosure.

Key Issues which emerged from the two- day dialogue:

- The increasing trend of the criminalisation of HIV non-disclosure and exposure has had an adverse impact on public health needs and outcomes for certain populations, especially women. Laws which criminalise HIV exposure or non-disclosure ultimately “maintain and widen the divide between public health needs and human rights obligations.”
- Punitive measures imposed through criminal sanctions within HIV specific and non-specific legislation,perpetuategenderinequality,furthermarginalisingandstigmatisingKeypopulations who are already criminalised on the basis of their gender identity and/ or sexual orientation. Thus, there is a need to focus on the inter-sectionalities within the HIV criminalisation discourse.

- The need for coordination and collaboration amongst legislators, members of the judiciary, parliamentarians, health care workers and broader civil society where advocacy efforts are concerned; in the movement and beyond HIV criminalisation in SADC, EAC, ECOWAS.
- The misalignment between regional laws and national laws on country or state level. Tackling issues of ‘sovereignty’ so as to cascade the strength of regional efforts down to country level.
- Existing convictions and on-going cases in the African continent reflected the dearth of evidence based data, to contest cases of HIV criminalisation. Data collection in addition to both social and scientific empirical evidence remain crucial in defence of such convictions in a court of law.
- Monitoring of cases (and information) as part of a body of jurisprudential evidence, was also reflected as an important tool, in tracking interventions and progress.
- Capacity challenges of paralegals, members of the judiciary and availability of resources to litigate cases, continue to have an undesirable effect on the matters that are brought before the criminal justice systems in varying contexts pertaining to HIV criminalisation. Thus, the need for support and creation of partnerships was seen as a pressing need.
- Transformative approaches to the Criminalization of HIV, require both social and legal reforms. Social reforms in the form of community level sensitisation and additionally sensitizing the media around responsible reporting and constructive messaging of such matters, was seen as lacking, but critical.

The focal group challenges and issues raised during the two-day interchange led to the emergence of the following outcomes;

### Outcomes

1. Increased levels of knowledge on HIV criminalisation and the impact the punitive measures have on people living with HIV. Levels of knowledge could be strengthened through inter- and intra-regional information exchange.
2. Identification of global, regional and national challenges and the development of practical and applicable responses to these challenges, could be useful in the discourse and in advocacy
3. Identification of other partners and resources to support and sustain advocacy efforts nationally, regionally and globally
4. Development of commitments to regional economic bodies such as the SADC Secretariat and EAC and ECOWAS Commissions for instance, required a ‘common strategy’ from partners, in order to galvanise efforts to revolutionise approaches to criminalisation of HIV.

The immediate outcomes reflected that the meeting objectives had in fact been achieved. The success of the dialogue led to the development of a practicable advocacy strategy which required national level adaptation and implementation, so as to sustain collective actions against HIV criminalisation.

The strategy comprised of five pillars or areas of focus are addressed below. Each pillar has clearly defined activities or action steps which are attainable and can be adapted according to contextual relevance.



Below are the five strategic pillars:

Strategic Pillar	Action Step
1. Strategic litigation and strengthening legal systems	<ul style="list-style-type: none"><li>• Unpacking the discourse around public health and how it interfaces with the law</li><li>• Documenting evidence of cases as they happen at a community level. Although this is being done by colleagues at a national level, there was agreement that supporting the on-going efforts of partners like GNP+ and their Global Criminalisation Scan, could be a key avenue, to centralise this data.</li><li>• Creation of a platform to share cases sensitively so there is knowledge about what is happening in the region. This could be done through supporting efforts of HJWW, in order to maintain a central database</li><li>• The need for expert evidence, this could be done through supporting the Global Consensus Scientific document/ paper</li><li>• Increasing the capacity members of the judiciary and policy makers, especially by targeting Judicial training institutions</li><li>• Developing paralegal capacity, through leveraging on the work currently being done organisations such as IDLO</li><li>• Creating prosecutorial guidelines drawn from examples in the United Kingdom</li></ul>
2. Adopting advocacy strategies for national contexts	<ul style="list-style-type: none"><li>• Making use of ‘anonymity orders’ so victims and complainants are not stigmatised.</li><li>• Supporting existing traditional justice systems and incorporating them as many African countries operate within these dual systems of</li><li>• Developing a comprehensive and holistic strategy to be integrated into existing national advocacy strategy that organisations currently have, in order for efforts to be driven at a national level. These could include;</li><li>• Community level sensitisation efforts to include modules on HIV criminalisation</li><li>• Inter-sectionality within civil society engagement [e.g. working with other groups who are also addressing the criminalisation of key populations for instance]</li><li>• Strategic engagement of the media, to promote responsible reporting</li></ul>
3. Recognizing the role of the media with regards to awareness+ sensitisation of the media in carrying the message.	<ul style="list-style-type: none"><li>• Utilising social media to galvanise change especially amongst the youth.</li></ul>
4. Collectively/singularly being proactive to undertake resource mobilisation to support efforts to end the Criminalisation of HIV	<ul style="list-style-type: none"><li>• ARASA and other partners to assist in looking at opportunities for resource mobilisation</li></ul>
5. Identification of champions to advocate for the agenda at policy level and to reach out to the community	<ul style="list-style-type: none"><li>• Identifying people of influence who can champion the cause; nationally, regionally and globally</li></ul>



### 3. The journey so far... Setting the scene

#### HIV criminalisation

“We have all agreed with the Sustainable Development Goal of ending HIV and tuberculosis by 2030. We cannot get there while we are arresting the same people we are supposed to ensure are accessing treatment and living positively.” These were the concluding remarks from the keynote address delivered by Dr. Ruth Labode, a member of Parliament and medical practitioner from Zimbabwe. These closing remarks were significant in not merely setting the scene but further highlighting the impact on criminalisation.

The presentation highlighted the damaging effects of HIV criminalization laws on women particularly in intimate partner relationship, resulting in increased vulnerability, gender based violence and women specifically being ostracized within the home and community, as they were more likely to get tested and disclose their status.

Criminalisation impedes access to sexual reproductive health services such as access to condoms, HIV testing and treatment. It further discourages HIV positive women from accessing ante-natal care which leads to increased maternal and child mortality. In contexts where child marriages are rife, young girls face increased vulnerabilities. Criminalisation further exacerbates and legitimizes discrimination of certain key population groups, who are already on the periphery of care, protection and access to public health services. Such groups include sex workers, Lesbian, Gay, Bi-sexual, Transgender and Intersex (LGBTI) individuals, people who use drugs). The presentation emphatically highlighted that in essence criminalisation of HIV transmission and non-disclosure has failed to have any positive impact on health policies.

An impassioned plea was made for reflection and discussion through the opening debate and public discussion, to illuminate the negative impact of HIV criminalization within the social and political agenda through the review of public health acts and Constitutional reviews.

The keynote address reflected that although inroads have been made from in the SADC region post 2008, there is still room for more work with regards to implementation of the SADC HIV Model law at a national level. Currently only six countries in the SADC community have implemented the model in their statutes, whilst others still lag behind. In order effectively create change there needs to be increased movement on country level as well strategies to concertedly engage members of parliament to further transformation.





Dr. Labode shared her experiences as medical practitioner and the devastating consequences that her clients often faced when they disclosed their HIV-status to their partners. Recalling a story, she lamented on one of her clients, who was pregnant and diagnosed with HIV. As a medical practitioner, she compelled the woman to notify her husband [who was waiting for her outside the medical room] of her HIV status. She recalls being very surprised by the husband's reaction. "He looked disgusted by this news and put a coin down at the feet of his wife – this a traditional symbol that he was declaring divorce". This is one of the numerous case studies that Dr. Lebode shared; which spoke to the negative implications on the rights of the partner/spouse. "We were the ones who lobbied for HIV-specific laws to protect women, but the reactions shocked me."



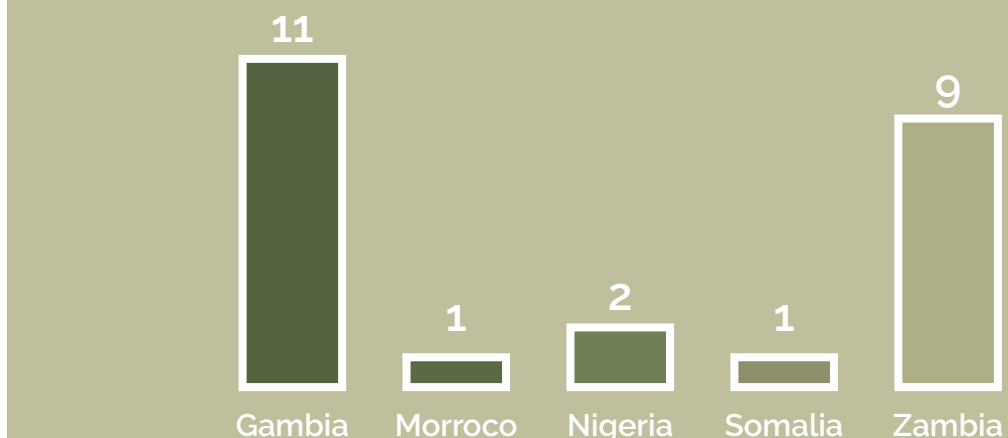
“ Dr. Labode further expressed that where criminalisation of HIV is concerned there ought to be a clear delineation of those who intentionally infect and expose individuals to HIV through sexual violence, particularly where child marriages are concerned. ”

## What do we know about HIV criminalisation globally?

Interventions around criminalization are reliant on context-specific data, which shows proof of incidence and prosecution rates in addition to social, health and legal responses. The HIV Justice Network (HJN), has managed create a barometer to gauge the extent to the Criminalisation of HIV on a global scale. According to HJN, the top three countries in the world with the highest conviction rates for HIV are Russia, the United States and Canada. Russia ranking the highest criminalisation rates in the world.

This informative presentation reflected the extent to which HIV specific laws with draconian criminalisation provisions, have been enacted globally, have been challenged and often failed. According to research conducted from April 2016 to date, 72 countries have enacted HIV specific criminal laws. This translates to 101 jurisdictions, if individual states within the United States are included. HIV criminalisation takes on two forms; prosecutions which take place in countries that have HIV specific laws and countries that lack laws and have applied general laws as penal sanctions for non-disclosure, transmission or exposure. The following was highlighted through the HJN global scan.

HIV specific criminal laws in Africa:



What emerges from these results is the reality that the advocacy is low in these contexts. From the period of 2014-2016, 13 new HIV specific laws were enacted whilst seven were not passed on the continent. With regards to the seven that were not passed this was attributed to increased advocacy in 10 jurisdictions in the seven countries which either challenged, improved or repealed the HIV laws. For many participants present at the dialogue the revelation of this data was eye-opening, particularly those who represented Nigeria and Zambia. There was a lack of knowledge around the number of convictions.

Data from the *HIV Justice Report: Advancing HIV Justice 2* delves deeper into the criminalisation laws globally by monitoring progress and impact of criminalisation between 2013-2016. From the information shared in the report it is interesting to note that countries that have proposed HIV laws and not succeeded in enacting them consist of the United States (Texas, Alabama, Michigan, Rhode Island and Missouri) Costa Rica and the Czech Republic. It is noteworthy to highlight on the African continent, countries such as Ghana, Kenya and Mozambique were listed as countries that had improved legal environments where criminalisation laws were challenged or opposed during this period. Other countries and jurisdictions that were also listed globally were Victoria, Mongolia, Greece, Venezuela and Switzerland. (For more detailed information on the research, please refer to the presentation delivered by Laurel Sprague, Director, GNP+.)



The research reflected in the two Reports, Advancing HIV Justice Report 1&2, is integral in reflecting the status quo which exists globally and tracks the challenges and developments made which can directly be aligned to advocacy efforts.

Both reports and monitoring activities conducted by the HJN highlight an “urgent need to capitalise on current advocacy successes in some parts of the world and to resist new and proposed laws in others. We need to build on this momentum and establish a stronger, more organised civil society engaged in the issue.”

## Key Considerations from this session:

- Advocacy efforts ought to include targeting a combination of actors in the fight against HIV criminalisation. These would include (but are not limited to) law and policy makers, members of the judiciary, scientists (health and social scientists) healthcare workers, law enforcement officials, members of parliament, the media and representatives from affected communities.
- Unfortunately many cases remain unreported. This lack of data in certain contexts need not necessarily reflect that criminalisation is not taking place, whilst other laws such as sexual violence legislations may be used to criminalise people who are living with HIV. Therefore documentation while critical, needs to be shared, to inform an evidence-based response
- Vigilance needs to be applied to existing active HIV criminalisation laws and “silent laws” (laws that have been enacted but are not been utilised). Resources such as the Advancing HIV Justice Report serve as good barometer to monitor and scan global trends and developments.

# 4



## 4. TACKLING CRIMINALISATION BEYOND LEGAL REFORM

Although HIV-specific laws are well intended, they have often been too general and have failed to address the diverse concerns individuals living with HIV experience. For example, discrimination, which often occurs by proxy. An example cited was of how children may face discrimination based on their caregiver or parent's status or vice versa. Not only do the provisions of these laws lack specificity, but are also corrective and restrictive in nature, while the social context within which these laws are implemented, are not thoroughly examined or understood, so as to fully appreciate the detrimental effects they have.

These were the perspectives shared by the Johanna Kehler, Director of the AIDS Legal Network (ALN). The presentation from the ALN reflected the importance of taking cognizance of the social backdrop under which these laws operate. The presentation highlighted that beyond the fundamental approaches of alliance building, law reform and capacity building; there ought to be a realization of the connection between agency and the role of criminalisation. The lack of agency becomes the cause and effect of criminalisation until individual agency can be reclaimed, people will not benefit.

Thus, advocacy efforts need to tackle situations where agency has been stifled or removed and focus on how it can be reclaimed. In order to effectively transform approaches to any form of criminalisation; a combination of societal and legal reforms are required. Social reform would ensure that socially-driven stigma is being addressed and not overlooked. Research needs to be conducted to ascertain the levels at which the perpetuation of stigma at a societal level, fuels criminalisation of HIV.

The presentation clearly illustrated practical examples of how the lack of agency leads to HIV criminalisation and inversely how criminalisation results in the absence of individual agency.



### Suggested approaches on how advocacy could be strengthened:

- Lack of agency = limited control over conditions of sex
- Lack of agency = risk of HIV exposure
- Lack of agency = risk of HIV transmission
- Lack of agency = heightened risk for HIV criminalisation by law
- Lack of agency = increased risks of human rights violations
- Lack of agency = less protection by the law in country and regional
- HIV criminalisation = lack of agency re sexual and reproductive choices
- HIV criminalisation = lack of agency re HIV testing
- HIV criminalisation = lack of agency re HIV disclosure
- HIV criminalisation = lack of agency re HIV treatment, care and support
- HIV criminalisation = lack of agency re access to services
- HIV criminalisation = lack of agency re human rights protections

### Suggested approaches on how advocacy could be strengthened:

- Including HIV testing in the discourse and advocacy on HIV criminalisation.
- Involuntary partner notification to be included in the discourse and advocacy on HIV criminalisation, currently this normally lies in the hand and discretion of health care worker.
- Ensure HIV criminalisation and advocacy approaches are focused on law reform and tackling social stigmas.
- Opposing all forms of criminalisation not merely HIV but the decriminalisation of key populations, (sex workers, drug users, gender non-conforming and LGBTI individuals).
- Advocacy efforts ought to include targeting a combination of actors in the fight against HIV Criminalisation. These would include (but are not limited to) law and policy makers, members of the judiciary, scientists (health and social scientists) healthcare workers, law enforcement officials, members of parliament, the media and representatives from affected communities.
- Unfortunately many cases remain unreported. This lack of data in certain contexts need not necessarily reflect that criminalisation is not taking place, whilst other laws such as sexual violence legislations may be used to criminalise people who are living with HIV. Therefore documentation while critical, needs to be shared, to inform an evidence-based response.
- Vigilance needs to be applied to existing active HIV criminalisation laws and “silent laws” (laws that have been enacted but are not been utilised). Resources such as the Advancing HIV Justice Report serve as good barometer to monitor and scan global trends and developments.



## 5. Contextual realities of Criminalisation: Cases in the Southern African Development Community (SADC), East African Community (EAC) and Economic Community of West African States (ECOWAS)

Representatives from Uganda, Nigeria, Niger, Zimbabwe and the Southern Africa Litigation Centre (SALC) highlighted the realities faced by lawyers in their litigation of HIV criminalisation cases. The session focused on shared in-country perspective and was beneficial in outlining common challenges faced by lawyers working on these matters. It provided insight into functional approaches in legal strategies, which could be employed in other contexts.

### *The Coalition of Lawyers for Human Rights - Nigeria*

To date three states in Nigeria have enacted HIV-specific laws. Laws such as the HIV and AIDS Non-Discrimination Act of 2014 are intended to prevent incidences of discrimination within the workplace, communities and institutions. To date 10 out of 36 states have implemented this law. Despite the existence of HIV specific laws, other laws are used by various states, to target already marginalised groups such as sex workers, people who use drugs and LGBTI individuals. These include the Same Sex Marriage (Prohibition) Act 2013, Abuja Environmental Board Act 1997, and the National Drug Law Enforcement Agency Act 1989. Lawyers continue to face resource and capacity challenges when litigating cases. Within this context capacity building of policy makers and members of the judiciary and support were raised as a need within this context.

### *Uganda Network on Law, Ethics and HIV& AIDS(UGANET) - Uganda*

Uganda alongside Nigeria is one of the few countries on the continent that have enacted HIV specific laws known as the HIV and AIDS Prevention and Control Act (2014). The Act is clear on the imposition punitive measures for non-disclosure and intentional transmission. Sanctions for intentional transmission carry a conviction of five years' imprisonment or a fine.

A case was shared involving the conviction of a nurse who accidentally pricked herself whilst trying to inject a child. The parents of the child accused her of intentionally trying to exposing the child to HIV. The nurse was HIV positive and on Antiretroviral Therapy (ART). The child tested negative. Despite this the nurse was sentenced to five years' imprisonment. She served a year in prison and her sentence was commuted and was accused of being negligent.

<sup>4</sup> Section 18 HIV and AIDS Prevention and Control Act- Speaks to the Disclosure and release HIV results and criminalisation for non-disclosure. Section 41 & 43 Criminalises intentional transmission.

Although the case of Nurse Namubiru came to the fore before the Act was promulgated, it highlighted the damaging effects and impact irresponsible media reporting could have, as the media incited public violence against the nurse. She was labelled as the “killer nurse” and accused of attempted murder in media.

Advocates and activists have seen sought to challenge the law and the constitutionality of the criminalisation provisions. UGANET has been instrumental in this process. Currently three sections of the ACT are being challenged. The provision relating to ‘exposure and close and continuous contact of bodily fluids’ which remains unclear and will be challenged in the Constitutional Court. Other provisions which will be challenged relate to mandating a medical worker to disclose their status. Sections 41 and 43 which speak to criminalisation of intentional transmission will also be contested, particularly where the affected person has not been infected.

UGANET in partnership with the International Commission of Women Living with HIV (ICW) continues to work on the ground to gather evidence around cases of criminalisation that further expose the vulnerability of women within the public health and the impact to access public health services. Specific reference was made to mandatory testing and involuntary disclosure.

**Ugandan media outlets have run headlines referring to a “baby killer”, “heartless medic” and “killer nurse”. One published an article titled: “When health centres become death traps”. - <http://www.dailymail.co.uk/wires/afp/article-2853002/Uganda-HIV-nurse-released-jail.html>**

Zimbabwe has not enacted HIV specific legislation. Alternate laws are often used in the criminalisation of HIV exposure and non-disclosure. Section 79 of the Zimbabwe Criminal Law (Codification and Reform) Act 23 of 2004 has been utilised to bring about cases to court. ZLHR has been at the forefront of the cases and has challenged the Constitutionality of the provision. Although the ‘crime’ in Section 79 is called “deliberate transmission of HIV”, a wide range of variables are possible that involve neither being deliberate nor actually transmitting HIV. The provision has been criticised as being overly broad and vague.

During the session, reference was made to a case of a man who slept with an under-aged girl. During the court case proceedings, three medical practitioners gave evidence in court to confirm his positive HIV status. The accused however was not aware of his own status, at the time. He was sentenced to 15 years imprisonment with a suspended 5 year sentence. The accused died in prison. What this case shows, is the negative impact there was from the press and how it impacted on the case, need for press censorship.

Zimbabwe Laws for Human Rights have since embarked on an advocacy campaign against HIV Criminalisation in Zimbabwe. A video was recorded, with testimony from one of their clients who was prosecuted under this section, to assist as an advocacy tool in this plight. Numerous other cases have been brought to the courts in Zimbabwe, under this provision.

### ***Southern Africa Litigation Centre (SALC) Regional - Malawi:***

The Southern African Litigation Centre (SALC) litigates human rights matters regionally. SALC has done extensive work in Malawi with a focus on arbitrary arrests and detention. Malawi is in the process of drafting HIV specific legislation. The case of EL v Republic was shared and serves as a landmark success case against criminalisation of HIV exposure. “EL” a woman living with HIV who was convicted for breastfeeding another woman’s child at a community meeting and was convicted under 192 of Penal Code, which creates an offence for any unlawful, negligent or reckless act which is likely to spread a disease dangerous to life.

She was sentenced to nine months hard labour and was imprisoned with her child whom she was breastfeeding. An appeal was launched and the prosecution and sentence were suspended.

- The case highlighted that she neither intentionally or negligently breastfed the child.
- There was no evidence that there was no transmission as breastfed child remains negative.
- Expert evidence was provided to support this case and highlighted the risk of transmitting HIV through single exposure to breast milk of an HIV positive woman on ART was “infinitesimally small”
- S192 of the Penal code was broad and broad and lacked constitutionality with regards to protection EL’s basic rights.
- The sentence imposed was deemed to be excessive and not in the best interest of her children as she was incarcerated with her child.

As a result, EL’s conviction and sentencing were set aside. The case illuminated many issues around Prevention of Mother to Child transmission (PMTCT) along with the United Nations Guidelines on Breastfeeding.

The criminal justice system failed to uphold EL’s human rights



### ***Zimbabwean lawyers for Human rights(ZLHR) – Zimbabwe:***

<sup>5</sup> An example of was cited of men with expecting partners being mandated to get tested, they are not going to get tested. Women remain vulnerable and continue to present themselves to get tested.





through the conviction and sentencing to further aggravate this she was vilified in the community and society through the stigmatising language that was portrayed in the media. An Anonymity order was applied and the names and personal information of all concerned in the matter (complainant, survivor and the children) were to be anonymised.

The court ruled, “Fundamentally, in this human rights era, the law should remember to uphold the accused person’s rights to privacy, dignity and due process.

What worked in this case?

- Locating legal arguments in the broader context of HIV criminalisation.
- Where non- specific laws are used, it is important to challenge the constitutionality of the law.
- Focusing on the empirical effect of the law- presenting credible scientific evidence.
- Ongoing advocacy and community sensitisation through the help of community based organisation such as COLWHA who continue to engage in mediation, psychosocial counselling, HIV support network on community level and partnership with traditional leaders.

Niger

In 2015, there was the adoption of law which replaced the old law by the parliamentary assembly However, non- specific laws in Niger, such as the Penal Code of 2003 continue to perpetuate criminalisation. In Niger gender inequality continues to perpetuate, vulnerabilities of women involuntary disclosure imposed by health care providers. The focus in Niger has been on the review and application of legal framework. With regards to case law, cases of women who disclosed their status to their partners more so in a marriage are often left in a vulnerable position. They are victimised and blamed for bringing the disease into the family. This is often accompanied by domestic violence. In Niger, civil society organisations continue to meet with members of the judiciary to impact on advocacy efforts. Despite the use of Penal Codes to criminalise HIV, sentences are lifted through the annual presidential pardon. Amnesty is often provided to those criminalised through the presidential pardon.

Common challenges and concerns arising	Suggested approaches to criminal offences for HIV transmission and exposure
<ul style="list-style-type: none"><li>• Culture and religion and its impact on criminalisation particularly with regards to disclosure in marriages and child marriages.</li><li>• Insufficient data collection</li><li>• Capacity of lawyers to litigate cases</li></ul>	<ul style="list-style-type: none"><li>• The use expert scientific evidence</li><li>• Limiting overly broad interpretation of law</li><li>• Sensitising and building the capacity of members of judiciary and judicial institutes</li><li>• Linking the impact of criminalisation to public health needs</li><li>• Community and media sensitisation, partnering with community based organisations and structures to minimise stigma around transmission and exposure.</li><li>• Ensuring that privacy, dignity is upheld</li></ul>



## Amplifying the voice of survivors of criminalisation- A conversation with Kerry Thomas

Whilst the two-day dialogue illuminated the legal and social nuances of criminalisation and focused on various approaches to address it, the story of Kerry Thomas reinforced the unjust nature of these laws. A conversation via Skype with the Mr. Kerry Thomas from prison, enabled the participants to engage with a person who was prosecuted for HIV non-disclosure and the sentence that he is serving.

Speaking from a state correctional facility in Boise Idaho (U.S.A), Mr. Kerry Thomas is an activist and considers himself a survivor of HIV criminalisation. He is not merely a survivor of HIV criminalisation, but also a family man, a husband, father and grandfather whose family life and relationships have been deeply affected by HIV criminalisation.

The presentation clearly illustrated practical examples of how the lack of agency leads to HIV criminalisation and inversely how criminalisation results in the absence of individual agency.

Kerry is currently serving his 8th year out of a 30-year sentence for non-disclosure to his 'then' partner, despite there being no proof of transmission and the fact that he had consensual and protected sex. Kerry's appeal on the unconstitutionality of Idaho's non-disclosure law, was overturned in the District courts in 2016. Idaho remains one of the many states in the United States that has failed to modify some of its statutes, whilst more of the Eastern States are beginning to engage in more legal reform. Despite the legal battle he is faced with, coupled by the isolation and social stigma, he remains optimistic. His story has reached many people on the outside and those bound within the confines of the correctional facilities across the United States. Mr. Thomas continues to educate inmates on HIV and sexual reproductive health rights through peer-to-peer educational classes.

He contributes to a newsletter for inmates and shares information not merely limited to HIV, but also issues affecting inmates. This has provided him an opportunity to disseminate information widely and interact with other inmates. He indicated that a lot of support is still required for those who have been affected by criminalisation of HIV. Support in the form resource mobilisation to cover legal costs in addition to those advocates who take on cases of this nature remains an exigent need. Thomas highlighted that about 1000 individuals have been sentenced facing 20 years or more. The reality is that these cases remain under reported in the media.

Kerry's story reflected the unjust nature of HIV Criminalisation, the stripping away of his right to privacy and dignity through the stigma attached. He ended off the conversation by reflecting that prevention is a collective responsibility for both positive and negative people and very often the burden is placed on the individual who tests positive. The conversation with Kerry was poignant in reflecting the damaging impact of criminalisation, it roused emotions and focused discussions around shared responsibilities in relation to non-disclosure and the importance of establishing alternatives to incarceration as opposed to adding to an already burdened prison population. One participant reflected upon Kerry's story and many others who are punished for non-disclosure in highlighting, "criminal courts should not be the place to adjudicate relationships."

Kerry's case raises the questions around the right to privacy where someone has disclosed their status to their partner there should be the right to privacy for carrying that information.



**“Disclosure in an intimate relationship is often accompanied by negative impacts, which results in having the most intimate part of your life exposed. Everyone has a status and it's important to take precautions and get tested, however criminalisation does not assist in that way.”  
- Kerry Thomas**

# 6

## 6. What has worked? Current approaches and interventions

Despite the many concerns raised regarding the need for both legislative and social reform, it is noteworthy to highlight the positive steps and approaches taken towards coordinating regional communities, as well as the application of effective advocacy strategies in certain contexts. Two organisations were provided with an opportunity to share examples of effective interventions and approaches from two divergent settings. These were Kenya legal and Ethical Network HIV/AIDS (KELIN) and Positive Women's Network-USA (PWN).

### Positive Women's Network-USA

The Positive Women's Network -USA, shared its approach to tackling criminalisation as a collective of organisations, focusing on gender minorities within the United States of America. According to PWN-USA, women of colour (specifically black and Latinx <sup>6</sup>), immigrants, transgender and gender non-conforming persons; are impacted the most by HIV criminalisation. In California for instance, 51% of Black and Latinx individuals are living with HIV and of these, 67% are criminalised. It was also highlighted that 13% of the population in the State of California comprise of women who are living with HIV and 43% of these are criminalized. This again reinforces the inter-sectionalities which occur within criminalisation and further how already marginalizes populations have further sanction because of their social positioning within society. PWN's response to this reality has been to apply a gendered lens. Using existing models such as the Power and Control Wheel <sup>7</sup> to unpack and elucidate the impact HIV Criminalisation on women. PWN outlined the impact criminalisation of HIV non-disclosure has on women through specific examples. Criminalisation in this context perpetuates discrimination of women within their communities; it deters access to housing, employment and state aid and the right to parenting or carrying out parental duties and obligations.

It was interesting to note that these realities highlighted by PWN reiterate ALN's position, in that criminalisation eliminates an individual's agency and the lack of agency leads to criminalisation. The application of a gender sensitive approach to PWN's work has enabled the organisation to take a two-tiered stance to criminalisation which consists of interventions which involve:

- National reform
  - Provision of guidance to the Department of Justice
  - Informing the national HIV/AIDS strategy
  - Contributing to legal reform of the recent reintroduction Repeal Act
  - Research on HIV criminalization
  - Engaging in State-based law reform
  - Partnerships with HIV Justice Worldwide
- State reform
  - Implementation of training through the HIV Is Not a Crime Training Academy.
  - IOWA first state to repeal HIV specific criminalisation statute. 2014.
  - 2016 The organisation collaborated with State public health Department in Colorado. And a network of PLHIV to repeal two criminalization statutes.
  - Influencing two state reforms in the States of California and Florida.

PWN shared five key policy recommendations were shared which are integral in their interventions.

1. Elimination of all exposure laws
2. Community engagement
3. Maintaining Human rights when prosecutions occur
4. Alleviating barriers to disclosure
5. Upholding Human rights for all

### KELIN focusing on the East African Community (EAC)

KELIN based in Kenya, is a civil society network, which aims to protect and promote health related human rights through capacity building, advocacy and facilitating and participating in strategic partnerships. In April 2017, KELIN mobilised partners in the East African region to convene a Regional Stakeholder's Sensitisation Forum in Nairobi. The forum was convened as a result of promulgation of the East African Community HIV Prevention and Management Act in 2012 and its eventual operationalisation and assent into law in 2016, by all member states. The Act was intended to address gaps and discrepancies occurring on a national level whilst creating more synergy and uniformity amongst varying HIV related legislation in the region. Whilst the focus of the Act is on access to health and HIV related services to all members of the population within the EAC, it remains silent and vague around criminalisation of HIV transmission. KELIN continues to work with the EAC Secretariat, and will make submissions to see whether the Act can be amended to reflect a much more clear position around the criminalisation of HIV.

Next steps noted during the presentation included

- (i) To coordinate EAC member states for the realignment of their national laws in line with EAC HIV law
- (ii) To use provisions of the Act in cases at country level
- (iii) To approach the Council of ministers to make recommendations on criminalization:

<sup>6</sup> Latinx – Gender neutral spelling for people of Latin- American descent

<sup>7</sup> Resource/ tool used in understanding the gendered power dynamics that accompany gender based violence. The wheel reflect how power and control is at the centre of emotional, physical and sexual abuse and violence within intimate partner relations that are characterised by GBV.



**“This is the first ever sensitisation forum on the East Africa HIV Prevention and Management Act since its enactment. East African countries have varied gaps in their National HIV laws. However, we are fortunate to have this law which can be used to complement our National HIV laws. This forum therefore provides an opportunity for us to comprehend the provisions of the Act and advocate for a rights based approach to service delivery in East Africa”**

- **Bwijo A. Bwijo, UNDP Tanzania Program Specialist on HIV and AIDS. – KELIN Regional stakeholders’ sensitization forum on the provisions of the East African HIV, Prevention and Management Act.**

Most East African countries have either criminalised or are contemplating the criminalisation of wilful HIV transmission. Despite these challenges, the EAC Act serves as a good benchmark for coordination and collaboration on a regional level. The regional sensitisation forum convened by KELIN on 12 to 13 April 2017, provided a platform to sensitise partners around the criminalisation of HIV and led to an analysis of efforts. Gaps were identified as well as the need for ongoing monitoring at a country level. Like many regional models the challenges remain in exploring avenues to ensure that the strength of efforts regionally will be transferred to country level.

### Key summary point from the Plenary discussions

The question arose of how to tackle issues of sovereignty of EAC laws to national levels. In response to criminalisation, one of the priorities is health care so for all countries in the region, for member states that have ratified the treaty there is an obligation which is binding, based on this non- compliance on national level can be escalated regionally.

- In contrast with this SADC- model laws are in existence but are not binding on a national level. Country- level challenges as some member states become apathetic with regards to ratifying protocols and there is often a reliance on civil society to take action.
- It’s important to not fall into the trap of “copy -paste” interventions at the national assembly. Research is imperative especially research focusing on context specific social determinants and how this will impact on implementation.

A recommendation was provided of developing a scorecard system to monitor progress on a regional level for the purposes of accountability.

- Despite differences in contexts there remained a seamless uniformity with regards to effective mechanisms for policy recommendation

***The key take home message: “Should our governments and legal systems spend scant resources towards criminalising HIV or should they be directed towards services geared towards ending HIV?”***

# 7

## 7. Revolutionary approaches: Activating the global movement as a vehicle for change

ARASA shared a presentation on HIV Justice Worldwide (HJWW) and the global movement to end the criminalisation of HIV. HJWW comprises of a coalition of organisations and individuals affected by and living with HIV on a global, national and regional scale. The coalition of individuals seeks to create a worldwide movement to eliminate criminalisation. The HIV Justice Global consortium with support of the Robert Carr civil society Network Fund (RCNF) and aims to strengthen a global movement committed to attaining HIV justice worldwide. The movement seeks to reinforcing existing efforts and activities of the HIV Justice Network and comprises of a core group of human rights and advocacy civil society organisations<sup>8</sup>. The HIV Justice Worldwide (HJWW) movement is realistic in its aims, in that it is cognisance of the fact that countering criminalisation of HIV, is not an event; it is a process will take years and decades of collaborative efforts. A short documentary was screened which provided the partners from the core group an opportunity to expound on the aims and efforts of the movement thus far. A model of how their efforts would contribute to realisable change was highlighted in ARASA's presentation and below;



<sup>8</sup> ARASA, HIV Justice Network, UNAIDS, Global Network of People living with HIV(GNP+), International Community of People Living with HIV(ICW), Positive Women's Network- USA, SERO project, Canadian HIV/AIDS legal Network.

The initiatives were shared through the short documentary and presentation provided a deeper insight into the aims of the movement through the multi-pronged and coordinated efforts that are set to drive the movement towards an end goal. Participants emerged well informed and were provided with tangible resources on how to join the movement.

### Bridging the divide between science and the law: A global scientific consensus statement

Most cases of HIV criminalisation have not merely highlighted the unjust nature of the convictions imposed but are often conflicting to factual scientific evidence or proof. What has thus emerged is a need develop a consensus statement consisting scientific evidence or proof regarding the scientific proof around exposure and transmission of HIV. This is ongoing work that is being spearheaded by HIV Justice Network. The intention of a scientific consensus statement is to have a "focus on the scientific evidence of causality." Such statements would be useful in the defence of convictions for transmission. The purpose of the statement would further support the fact the levels of harm have differed with the introduction of antiretroviral treatment (ART).

Four scientific consensus statements have been developed thus far mainly from global North and from high income countries. These statements concretise the most up-to-date scientific advancements of HIV transmission. The objective of the presentation by HJWW was to encourage thought around what a global consensus statement would look like taking into consideration contextual specific challenges which fuel the divide between science and the law; especially the HIV prevention, treatment and care access realities faced by countries in the global south. There remains a common thread around most cases of HIV criminalisation and this needs to be pulled into a scientific position that could potentially be a bridge of the common areas in all contextual settings.

Dr. Sprague highlighted existing similarities: (i)Most cases involve an HIV positive person having sex without disclosing status. (ii)Many cases include exposure and not transmission(iii)No or negligible risk and (iv)Unjust examples of cases worldwide.

Currently a group of twenty scientists are working on developing the global consensus statement with the hope that it can be applied in varying contexts. The factors under consideration are scientific but the terminology or descriptive language used was important to review. The word "risk" was ambiguous and often subject to varying interpretation when aligned to transmission. Often interpretation in a court of law is made contrary to scientific evidence. The term "possibility of transmission" is reflected in the statement and this possibility of transmission would be defined from a range of low, negligible and no reported transmission:

- Low: having unprotected sex with someone with a detectable viral load.
- Negligible: very rarely partner has an undetectable viral load
- Never: no reported transmission or risk of exposure.

The global statement will have three focus areas when looking at transmission, Risks, Harm and Forensics.

- **Risks:** sex, vertical transmission, biting and spitting
- **Harm:** focus on the benefits of HIV treatment, including on life expectancy, quality of life and reproductive health, taking into accounts side-effects
- **Forensics:** Phylo-genetics, and other use of scientific tests as evidence/proof in the context of the criminal law.

The duration for completion of the statement is uncertain. Scientists are still in the process of gathering information, completion is tentatively set for the end of 2017. The presentation was

very informative for the participants, many questions and concerns were raised which are reflected below.

Plenary discussion on what the scientific statement should contain;

- Within certain contexts and countries where scientists and medical practitioners are called upon in a court of law to provide scientific evidence, these professionals may be affiliated with the government and bias may occur when testifying in a court of law.
- Bound by ethics, the purpose of a scientist would be to deliver unbiased scientific facts and evidence when summoned in a court of law. Scientists and health professionals ought to be accountable to an ethics board to mitigate such concerns
- A Critical question was raised regarding whether a scientific statement may unintentionally support criminalisation in that those with undetectable viral loads would be “protected” or and granted “amnesty” from a criminal conviction versus those who may have a detectable one through the evidence provided.
- There is a need to consider circumstantial factors such as breastfeeding and exposure through Prevention and Mother to Child transmission within an African context. The Malawian case was a point of reference. Issues of breastfeeding need to be looked at in the context of someone who has been incarcerated with a child and has to breast feed.
- A global consensus statement was deemed to be a positive step in clarifying language and scientific facts for members of the judiciary. It should be accompanied by a distribution and sensitisation strategy
- However, although the scientific evidence is provided, too much power may be left in the power of the judiciary in some contexts to decide matters regarding effective treatment and viral load.
- Study may further alienate those who are already vulnerable who do not have access to treatment.
- The notion of “Intent” and its meaning need to be clearly outlined in the statement. Language needs to be looked at so it is clearly presented in court.
- The global statement may need to expand on empirical evidence that is not merely clinical. There may be instances where somewhere hasn’t had access to treatment or hasn’t taken Treatment due to existing socio-economic factors. A recommendation was made to have a “Social science” consensus statement that includes social factors or evidence.
- Recommendation: To have an accessible list of clinicians who would be willing to testify for specific cases.
- Recommendation from DRC: To put together an independent body of medical doctors who are protected after they have provided evidence or information. Special consideration ought to be made for doctors to have immunity, this may assist with 80% of cases in DRC, so this would be viewed as something that is beneficial.
- There ought to be a consideration of a legal defence that takes into consideration the different strains of HIV. Limits and possibilities of forensic evidence will be reflected



## 8. A path forward to sustaining the movement

The final session of the two-day meeting comprised of focused discussions intended at looking at practical measures which would be required to bring about practical measures which would be applicable to both the SADC and EAC contexts. Plenary sessions were utilised to divide and lead the discussions around two focus areas. Community level advocacy with a focus on documenting evidence and addressing criminalisation of HIV in the media. The second group intended for law makers, advocates and members of judiciary focused on laws, Policies and access to justice. The participants in both groups were tasked with unpacking the current environment and analysing what measures have been effective and what measures have failed and in view of this formulate realistic practicable solutions. These would lead to action steps or activities which would be aligned with the five strategic pillars. Below are the outcomes of the two plenary sessions.



## What we can do with existing resources?

**IDLO (Regional)** - It is important to continue to draw from precedents and support experts. The issue of criminalisation of HIV to be incorporated in the curriculum of criminal law

**The Coalition of Lawyers for Human Rights (Nigeria)** - Scientific consensus statement is something that is important to the African context. The Coalition will engage the Nigerian Judicial Institute and National Judicial services commission once the Statement is ready

**KELIN (Kenya)** - Continue work around sexual offences, discussions to continue around HIV and criminalisation. And reaching out to partner organisation. Engage community sensitization in EA and to engage EAC.

**CISL (Niger)** - working more with women's organisation to reduce impact of criminalisation of HIV.

**SADC PF (Regional)** - Information needs to filter down from parliamentary level to community level. Target bi-annual events of SADC and invite ARASA to introduce criminalisation of HIV in the women's caucus- women's parliament in June speaking at plenary session. ARASA is scheduled to attend this session in June to utilise this opportunity to engage on the issue.

**Zambia Human Rights Commission (Zambia)** - Revolution will have to take place at a slower place the revelation. The 9 reported cases in Zambia were an eye opener. Members of the judiciary, members of parliaments and lawyers need to be targeted. To ensure that no laws go through parliament that criminalise HIV.

**AIDS Law Project (Kenya)** - More support and information has been provided in this platform in terms of how to support litigation, engaging media and other players. Offer of support for strategic litigation to be offered.

**UGANET (Uganda)** - Youth led organisation to start engaging the youth in the movement and to begin documenting social impact amongst the youth

**Malawi Human Rights Commission (Malawi)** - Lawmakers. Documenting and sharing cases. Law society and Women Lawyers association to focus on the provision of Pro- Bono services.

Ombudsman and Human rights institutions and legal aid to look at taking on cases.

**Member of Parliament (Zimbabwe)** - Member of Parliament will be going on a tour and meeting with KP (sex workers and LGBTI) (Global fund ZLHR, UNFP) to get ZLHR to present criminalization of HIV.

**BONELA (Botswana)** - The dialogue was beneficial in highlighting the complexity of criminalisation and the representative from Botswana was able to see strategies towards prevention in her context. A commitment was made to look at the social issues and human rights issues and engage with parliament.

**Legal Assistance Centre (Namibia)** - There are no HIV criminalisation laws in Namibia. Currently, Isolated reports of those intentionally infecting other individuals have come to the fore. LAC will now be able to advise individuals who need related legal advice.

**Positive Women (Swaziland)** - no specific laws exist in Swaziland. Information from the meeting will be relayed to civil society organisation with the intention of scanning laws and policies that would indirectly criminalize or discriminate HIV people

**ARASA (Regional)** - Start and email list to communicate and disseminate information to all present. ARASA will be hosting online course on criminalisation in June.

**PWN-USA**-It was beneficial to get context specific information and realise that the social determinants are the same.

**SALC (Regional)** - Commit to consult on cases and to support those in the room. Develop jurisprudential thought and support future cases.

**UNDP (South Africa)** - looking into opportunities for funding and support.

**AFRIYAN (Zimbabwe)** - Commits to join the HJWW global network

**High court Judge (DRC)** - To introduce issue to parliament

**ARASA (Regional)** - Scan if there are available grants and resources for those requiring supports.

**Malawi High Court- Malawi** - The discourse around Public health needs to be deconstructed. A guide ought to be developed which expounds on public health for members of the judiciary.

**Aids Legal Network (South Africa)** - This forum was important in encouraging discussions around revolutionary approaches to decriminalisation and the commitment towards extricating all forms of criminalisation. Law reform and social aspects need to be taken into consideration.

GROUP A: Policies and access to Justice		
What was worked?	What hasn't worked?	Action Step
<ul style="list-style-type: none"> <li>• Need to work with key players from criminal justice system</li> <li>• Regulatory guidance</li> <li>• Engage policy makers who become legislative champions</li> <li>• Working upstream working with students</li> <li>• Litigation should be strategic</li> <li>• Importance of support networks of community based organisations and encouraging community based organisations to document incidents</li> <li>• Engaging judges</li> <li>• The value of working with</li> <li>• paralegals- they have the ability to understand local context far better than judges do in some instances</li> <li>• Delocalising court cases – moving to a different jurisdiction prevent backlash and protect lawyers and protracted processes</li> <li>• Supportive funders particularly litigation support</li> <li>• Anonymity orders- both victims and complainants are not stigmatised</li> </ul>	<ul style="list-style-type: none"> <li>• The court itself can become a place of violence: clients need to be protected (vulnerable witnesses)</li> <li>• Training should not be focused on progressive judges only</li> <li>• Acceptance of silent laws</li> <li>• What holds up as evidence in the court</li> <li>• Stigmatisation of defence lawyers</li> <li>• Social revolt/opposing civil society</li> <li>• Policy cycle timing – networks need to be maintained</li> </ul>	<ul style="list-style-type: none"> <li>• Expert evidence- rally for good proof in the work</li> <li>• Regulatory guidance “score cards” prosecutors taken on as allies in understanding legal framework.</li> <li>• Creating prosecutorial guidelines draw from examples in the United Kingdom</li> <li>• Role that lawyers can assist in gathering evidence</li> <li>• Funding support for litigation</li> <li>• Strategic litigation to understand what the meaning of public health means in the context of the law.</li> <li>• Develop paralegal capacity</li> <li>• Cultural sensitive information kits</li> <li>• Lists of rights of PLHIV/ defined information</li> <li>• Shared responsible messaging</li> <li>• Supporting traditional justice systems, how to work around existing systems e.g. Malawi- traditional leaders hear cases and hold courts and create by laws</li> </ul>

GROUP B: Documentation, working with the media and Advocacy	
What has worked?	What is needed?
<ul style="list-style-type: none"> <li>• Use of facts sheets (Review of the “10 reasons why criminalisation doesn’t work”- need to review this with scientific data.)</li> <li>• Identification of Champions to advocate for the agenda to reach at different levels of the community</li> <li>• Focus on access to justice to individuals who have directly felt the impact of criminalisation</li> <li>• Create a platform to share cases sensitively so there is knowledge about what is happening in the region</li> <li>• Engaging civil society organisations so they can mainstream the agenda to national level. This will help with sustaining the movement</li> <li>• Making a concerted effort to capacitate the media around issues of criminalisation and sensitization</li> <li>• Documentation weak at community level, more data needs to be documented and shared across the networks</li> <li>• Take the agenda of moving beyond criminalisation as a campaign name</li> </ul>	<ul style="list-style-type: none"> <li>• Anonymity orders</li> <li>• Simplify material so it can be accessible at different levels to different actors</li> <li>• Vigorously utilise social media to reach an array of target groups especially the youth in order to galvanize the movement</li> <li>• Civil society need to be proactive to find funds to sustain the agenda</li> </ul>

Annexures

Annexures A: Meeting Agenda

Day 1: Monday, 24 April 2017		
Time	Session	Facilitator
08:30 – 09:00	Arrival, registration, tea/coffee and networking	ARASA
09:00 – 09:15	Word of Welcome & introductions by meeting participants	Lynette Mabote (ARASA)
09:15 – 09:30	Opening remarks / Keynote address	Dr. Ruth Labode I Zimbabwe
09:30 – 10:00	The journey so far: Regional outlook on the criminalisation of HIV within sub-Saharan Africa	Dr. Johanna Kehler I Director, AIDS Legal Network
10:30 – 10:45	HIV criminalisation globally: What has been documented so far?	Dr. Laurel Sprague I Director, GNP+ & HIV Justice Network
10:30 – 10:45	Plenary Q&A and morning Reflection	
10:45 – 11:15	Tea and Networking	
11:15 – 12:45	Talk-show style Plenary panel discussion: Criminalisation does Harm	
	What is the law (prosecutions/ proposed legislation) and how do you respond to it? Experiences around HIV criminalisation through case law  • Immaculate Owomugisha I UGANET (Uganda) • Ms. Annabel Raw I Southern African Litigation Centre • Mr. Rommy Mom I Coalition of Lawyers for Human Rights (Nigeria) • Mr. Ibrahim Kassoum I (Intersectoral Coordination of STI / HIV / AIDS (CISLS), Niger	Session provides an overview of various legal landscapes, as colleagues share their experiences. The aim is to highlight the common patterns in contextual struggles with HIV Criminalisation  <b>Facilitator:</b> Tinashe Mundawarara I Zimbabwe Lawyers for Human Rights
12:45 – 13:00	Plenary Q&A and morning Reflection	
13:00 – 14:00	Lunch	
14:00 – 15:15	Platform sharing: Looking at recent efforts/ interventions in various regions	
	• Farida Aligy Ussen Mamad I Mozambique Human Rights Commission (Skype) presentation I Responses by Mozambique HR Commission to these cases • Rebecca Mattherson I ICW Global I Experiences of HIV positive women in certain contexts • Timothy Wafula I Report back from the East African Community HIV Prevention and Management Act Stakeholder’s Sensitisation meeting • Arneta Rogers I Positive Women’s Network (USA) I impact of criminalization on women under current US laws	Session aims to look at various ways in which people have been responding to the laws and to those who have been targets of prosecution  <b>Facilitator:</b> Jacinta Nyachae I AIDS Law Project, Kenya
15:15 – 15:45	Plenary Q&A and morning Reflection	
15:45 – 16:15	Tea and Networking	
16:15 – 17:00	Criminalisation survivor speaks Kerry Thomas, Idaho (GMT -5)  Conversation / Q&A Led by: Dr. Laurel Sprague	
17:00	END of DAY 1	

Day 2: Tuesday, 25 April 2017			
Time	Session		Facilitator
09:00 – 09:30	Recap of Day 1 proceedings		Lesley Odendal, ARASA
09:30 – 11:00	HIV Justice World Wide		
PART I	Introducing HIV Justice Worldwide (video and discussion) • What is the Initiative about and what has shaped it thus far • Current plans for 2017 • How to get involved?		Lynette Mabote (ARASA) Lesley Odendal (ARASA)
PART II	Connecting the Dots: Scientific Consensus Statement Until now, scientific consensus statements challenging HIV criminalisation have come from the Global North. A presentation will describe current efforts to create a global scientific consensus statement and then participants will work in groups to identify what African advocates want and need such a statement to include		Dr. Laurel Sprague (HIV Justice Network)
11:00 – 11:30	Tea & Networking		
11:30 – 13:00	Break-away GROUP Discussions		
	Breakaway Group 1:  <b>Documenting evidence community level advocacy:</b> [Guidance thoughts: How have we traditionally approached the advocacy in HIV Criminalisation? What do we need to change about our advocacy around HIV criminalisation? Is there a way of documenting these stories better to influence the agenda in a more proactive manner?]  <b>Advocacy across the silos:</b> [Working together across movements for justice. How do we create synergies within our advocacy approaches around HIV Criminalisation, criminalisaiton of key populations, identities? Mapping out campaigns that we could galvanise around]  Soraya Matthews (ARASA) Arneta Rogers PWN, (USA)	Breakaway Group 2:  <b>Addressing Criminalisation of HIV in the Media:</b> [Looking at messaging that has made media headlines and the public impact, are we engaging the media in a productive manner? Are there alternative avenues in approaching our work with the media?]  Which other media platforms should we be considering to strengthen our advocacy? How do we constructively involve the youth movement in the advocacy?  Lesley Odendal (ARASA) Nyasha Sithole (AfriYan)	Breakaway Group 3:  <b>Laws, policies and access to justice:</b> [Negative legal trends/ precedents in environments where there is dwindling donor support and access to justices and legal services? How do we leverage on alternative mechanisms, such as the quazi- judicial mechanisms]  <b>Strategic litigation:</b> Challenging HIV criminalisation through strategic cases  Annabel Raw (SALC)/ Belice Odamna (IDLO)
13:00– 14:00	Lunch		
14:00 – 15:00	Rapporteur reports from break-away group discussions		
15:00 – 15:30	Exploring pathways of Advocacy from break-away group recommendations and Prioritising next steps (plenary discussion)		Dr. Laurel Sprague (HIV Justice Network)
15:30	Closing		Lynette Mabote (ARASA)



Participants List:From N'Djamena to SADC and EAC Model Laws and Beyond 24 – 25 April 2017 l Johannesburg			
Country	Name	Organisation	Contact Details
Botswana	1. Cindy Kelemi (Director)	BONELA	cindyk@bonela.org
DRC	2. Jean Paul Midagu	Judge	jpmidagu@gmail.com
	3. Aime Mbugeki	Member of Parliament	mbughekiaime@gmail.com
Kenya	4. Timothy Wafula	KELIN	twafula@kelinkeny.org
	5. Jacinta Nyachae	AIDS Law Project	jnyachae@aidslawproject.org
Malawi	6. Sarai Chisala-Tempelh/	Director of Gender and Women's Rights, Malawi Human Rights Commission	Sarai.chisala@gmail.com
	7. Justice Ken Manda	Malawi High Court	kenmanda@yahoo.com
	8. Clara Banya	ICW (Malawi)	clarabanya@yahoo.com
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Presentations for the two day proceedings:

<https://drive.google.com/file/d/0B30Iu5YBJcQdVnFZYTZiLUNmekU/view?usp=sharing>

Resources

<http://toolkit.hivjusticeworldwide.org/>

The 10 Reasons Why Criminalisation Harms

The Oslo Declaration on HIV Criminalisation

African Commission Study on HIV, Human Rights and the Law

Advancing HIV Justice

<http://www.hivjustice.net/site/topics/>