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Kære justitsminister Lars Barfoed

AIDS-Fondet byder din beslutning om at se nærmere på straffelovens § 252, stk. 2 og 3 (straf for at udsætte nogen for risikoen for at blive smittet med hiv) hjertelig velkommen. AIDS-Fondet sætter stor pris på, at Justitsministeriet har været imødekommende overfor de anbefalinger, som AIDS-Fondet tilkendegav i sit brev af 8. oktober 2011.

Siden introduktionen af hiv-medicin er der sket markante forbedringer i de hiv-smittedes levevilkår. Hiv-smittede har i dag en levetid, der nærmer sig gennemsnitsdanske og velbehandlede hiv-smittedes risiko for at smitte andre er meget lav. Det er som bekendt bl.a. på den baggrund AIDS-Fondets opfattelse, at tiden er moden til at undersøge, om hiv i strafferetlig forstand kan ligestilles med andre smitsomme sygdomme. Hiv er den eneste sygdom som efter bekendtgørelse nr. 547 af 15. juni 2001 om livstruende og uhelbredelige sygdomme er og har været kategoriseret som en 'livstruende og uhelbredelig sygdom' omfattet af straffelovens § 252 stk. 2.

I AIDS-Fondet mener vi, at eksistensen af en straffelovsbestemmelse som den nuværende § 252, stk. 2, er skadelig for forebyggelsen, fordi frykten for straf afholder nogle fra at lade sig teste for hiv. Sådanne personer kommer dermed for sent i behandling og øger ikke blot risikoen for selv at blive alvorligt syge, men også risikoen for at smitte andre. Der er i dag ca. 1000 personer, der er hiv-smittede i Danmark, men som ikke kender deres diagnose. AIDS-Fondet har gjort det til en af sine prioriterede indsatser at arbejde for at mindske dette mørketal og samarbejder bl.a. med Sundhedsstyrelsen om denne indsats. Vi mener imidlertid, at straffelovens § 252 stk. 2, er en alvorlig forhindring for succes på dette område.

Det er derfor AIDS-Fondets anbefaling, at hiv i strafferetlig henseende ligestilles med andre smitsomme sygdomme og dermed ikke længere skal være omfattet af en særbestemmelse i straffeloven. Håndteringen af denne sygdom varetages efter AIDS-Fondets opfattelse bedst i sundhedsvæsenet.

Til brug for det videre arbejde med straffelovsbestemmelsen skal AIDS-Fondet anbefale, at Justitsministeriet gør sig bekendt med den internationale konsultationsproces, der er ledet af FN's AIDS-organisation UNAIDS og støttet økonomisk af den norske regering, hvor man arbejder med at belyse videnskabelige, medicinske og retlige aspekter af kriminalisering af hiv-smitte. Processen er iværksat, fordi en række lande ligesom Danmark pt. genovervejer kriminalisering af hiv-smitte. (Se venligst vedlagte UNAIDS feature vedlagt som bilag).

I den forbindelse vil AIDS-Fondet også gerne henlede opmærksomheden på FN Generalsekretærens rapport om "Implementation of the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS", som er afgivet til FNs høj-niveaumøde om samme emne i juni 2011 (Uddrag af rapporten vedlægges som bilag). Her skriver Generalsekretæren bl.a. i afsnit 37:

"Punitive laws and practices also undermine the response. Dozens of countries criminalize HIV transmission, including more than 20 that have enacted such laws in recent years. These laws stigmatize people living with HIV and key populations at higher risk without promoting public health goals"

AIDS-Fondet skal venligst anmode om et møde med ministeren, så snart arbejdsgruppens forslag foreligger. Vi står i øvrigt gerne til rådighed med oplysninger eller anden bistand, såfremt der er behov herfor.

Med venlig hilsen
AIDS-Fondet


Henriette Laursen
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Cc: Sundhedsminister Bertel Haarder
Medlemmerne af Folketingets Retsudvalg
Medlemmerne af Folketingets Sundhedsudvalg

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Agenda item 10

**Implementation of the Declaration of Commitment
on HIV/AIDS and the Political Declaration on HIV/AIDS****Uniting for universal access: towards zero new HIV infections, zero discrimination and zero
AIDS-related deaths****Report of the Secretary-General****SUMMARY**

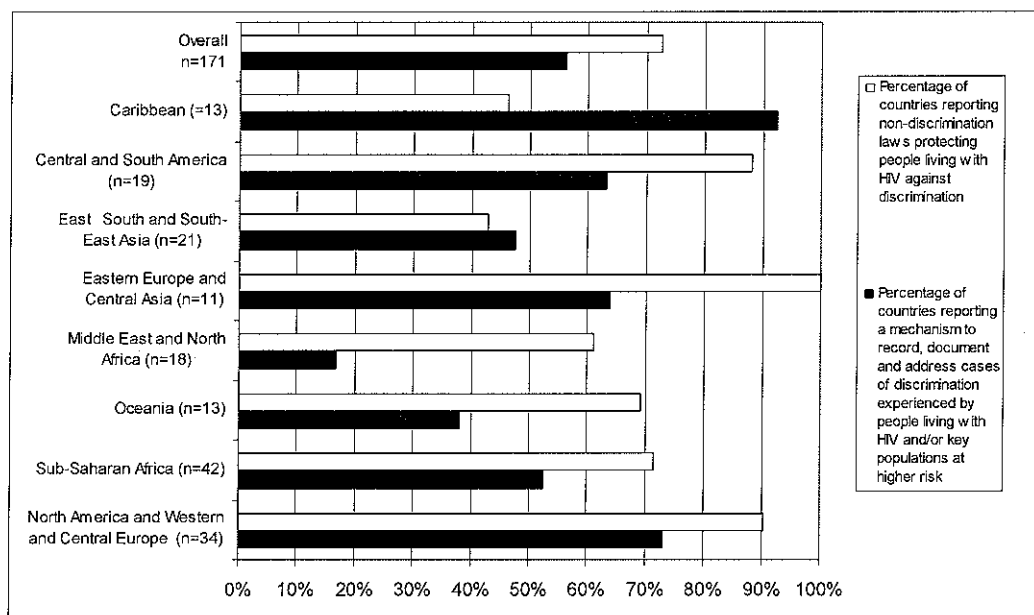
The year 2011 marks 30 years of AIDS. In that time, AIDS has claimed more than 25 million lives and more than 60 million people have become infected with HIV. Still, each day, more than 7000 people are newly infected with the virus, including 1000 children. No country has escaped the devastation of this truly global epidemic.

Nevertheless, HIV programmes are now bearing fruit, with global HIV incidence declining, treatment access expanding, and an unparalleled global movement mobilized to demand respect for the dignity and human rights of everyone vulnerable to, and affected by HIV. The epidemic and the response it has generated have changed our world, elevating global health inequity on the worldwide political agenda and placing people at the centre of health, development and human rights efforts.

These accomplishments, while promising, are insufficient and in jeopardy. Stigma, discrimination and gender inequality continue to undermine efforts to achieve universal access to HIV prevention, treatment, care and support. An unsustainable trajectory of costs and the effects of a global economic downturn combine to threaten progress.

For three decades, evidence of what works has been debated in this General Assembly, parliaments, communities, places of worship and scientific forums. We enter the fourth decade with a vast body of knowledge and an array of new tools to revolutionize prevention efforts and dramatically scale up access to treatment, care and support.

Percentage of countries with legal protections against discrimination for people living with HIV and mechanisms for redress, as reported by nongovernmental sources



Source: UNAIDS Report on the global AIDS epidemic 2010.

34. When anti-discrimination provisions are in place, they often are not effectively enforced. Globally, fewer than 60% of countries report having a mechanism to record, document and address cases of HIV-related discrimination. In many countries, people living with HIV are at high risk of losing their homes, employment, property, and inheritance due to inadequate protection
35. In 2010, the vast majority of countries (91%) addressed stigma and discrimination in their national HIV strategies, and 90% of countries reported anti-stigma activities. However, most countries have no budget for anti-stigma activities.
36. Forty-nine countries, territories and entities impose some form of restriction on the entry, stay and residence of people living with HIV. Recent progress here is encouraging, as China, Namibia, Ukraine and the USA have repealed their respective HIV-based travel restrictions.

Discrimination against key populations at higher risk

37. Punitive laws and practices also undermine the response. Dozens of countries criminalize HIV transmission, including more than 20 that have enacted such laws in recent years. These laws stigmatize people living with HIV and key populations at higher risk without promoting public health goals.



Feature story

Countries questioning laws that criminalize HIV transmission and exposure

26 April 2011



Credit: UNAIDS/P Viroit

On 17 February 2011, Denmark's Minister of Justice announced the suspension of Article 252 of the Danish Criminal Code. This law is reportedly the only HIV-specific criminal law provision in Western Europe and has been used to prosecute some 18 individuals.

A working group has been established by the Danish government to consider whether the law should be revised or abolished based on the best available scientific evidence relating to HIV and its transmission.

This development in Denmark is not an exception. Last year, a similar official committee was created in Norway to inform the ongoing revision of Section 155 of the Penal Code, which criminalises the wilful or negligent infection or exposure to communicable disease that is hazardous to public health—a law that has only been used to prosecute people transmitting HIV.

In the United States, the country with the highest total number of reported prosecutions for HIV transmission or exposure, the National AIDS Strategy adopted in July 2010 also raised concerns about HIV-specific laws that criminalize HIV transmission or exposure. Some 34 states and 2 territories in the US have such laws. They have resulted in high prison sentences for HIV-positive people being convicted of “exposing” someone to HIV after spitting on or biting them, two forms of behaviour that carry virtually no risk of transmission.

In February 2011, the National Alliance of State and Territorial AIDS Directors (NASTAD), the organization representing public health officials that administer state and territorial HIV programmes, expressed concerns about the “corrosive impact” of overly-broad laws criminalizing

HIV transmission and exposure. The AIDS Directors called for the repeal of laws that are not “grounded in public health science” as such laws discourage people from getting tested for HIV and accessing treatment.

Positive developments have also been reported in Africa. In the past year, at least three countries—Guinea, Togo and Senegal—have revised their existing HIV-related legislation or adopted new legislation that restrict the use of the criminal law to exceptional cases of intentional transmission of HIV.

Best available scientific evidence to inform the criminal law

These developments indicate that governments are also calling for a better understanding of risk, harm and proof in relation to HIV transmission, particularly in light of scientific and medical evidence that the infectiousness of people receiving anti-retroviral treatment can be significantly reduced.

To assist countries in the just application of criminal law in the context of HIV, UNAIDS has initiated a project to further investigate current scientific, medical, legal and human rights aspects of the criminalization of HIV transmission. This project aims to ensure that the application, if any, of criminal law to HIV transmission or exposure is appropriately circumscribed by the latest and most relevant scientific evidence and legal principles so as to guarantee justice and protection of public health. The project, with support from the Government of Norway, will focus on high income countries where the highest number of prosecutions for HIV infection or exposure has been reported.

The initiative will consist of two expert meetings to review scientific, medical, legal and human rights issues related to the criminalization of HIV transmission or exposure. An international consultation on the criminalization of HIV transmission and exposure in high income countries will also be organized. The project will further elaborate on the principles set forth in the *Policy brief on the criminalization of HIV transmission* issued by UNAIDS and UNDP in 2008. Its findings will be submitted to the UNDP-led Global Commission on HIV and the Law, which was launched by UNDP and UNAIDS in June 2010.

As with any law reform related to HIV, UNAIDS urges governments to engage in reform initiatives which ensure the involvement of all those affected by such laws, including people living with HIV.

Strategy goals by 2015

Punitive laws

Region/country

Other regions

Related feature stories

13 April 2011