

The Role of Law in the Response to HIV

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What is the role of law?

- The law and its appropriate enforcement are essential tools for creating an enabling environment for effective responses to HIV and to provide access to justice for those affected by HIV.
- Law can either be protective of human rights (anti-discrimination laws) or can be an impediment (punitive laws) to the realization of rights – thus has the potential to mitigate and to aggravate the impact of the epidemic.

Laws that Discriminate

- Stigma and discrimination build on existing inequalities, fear, ignorance or prejudice related to groups disproportionately affected by HIV
- Many countries have laws that criminalise behaviour of populations already vulnerable to HIV (sex work, drug use and same sex relationships)
- Heightens challenge of meeting the needs of key populations
- Feeds stigma against these groups

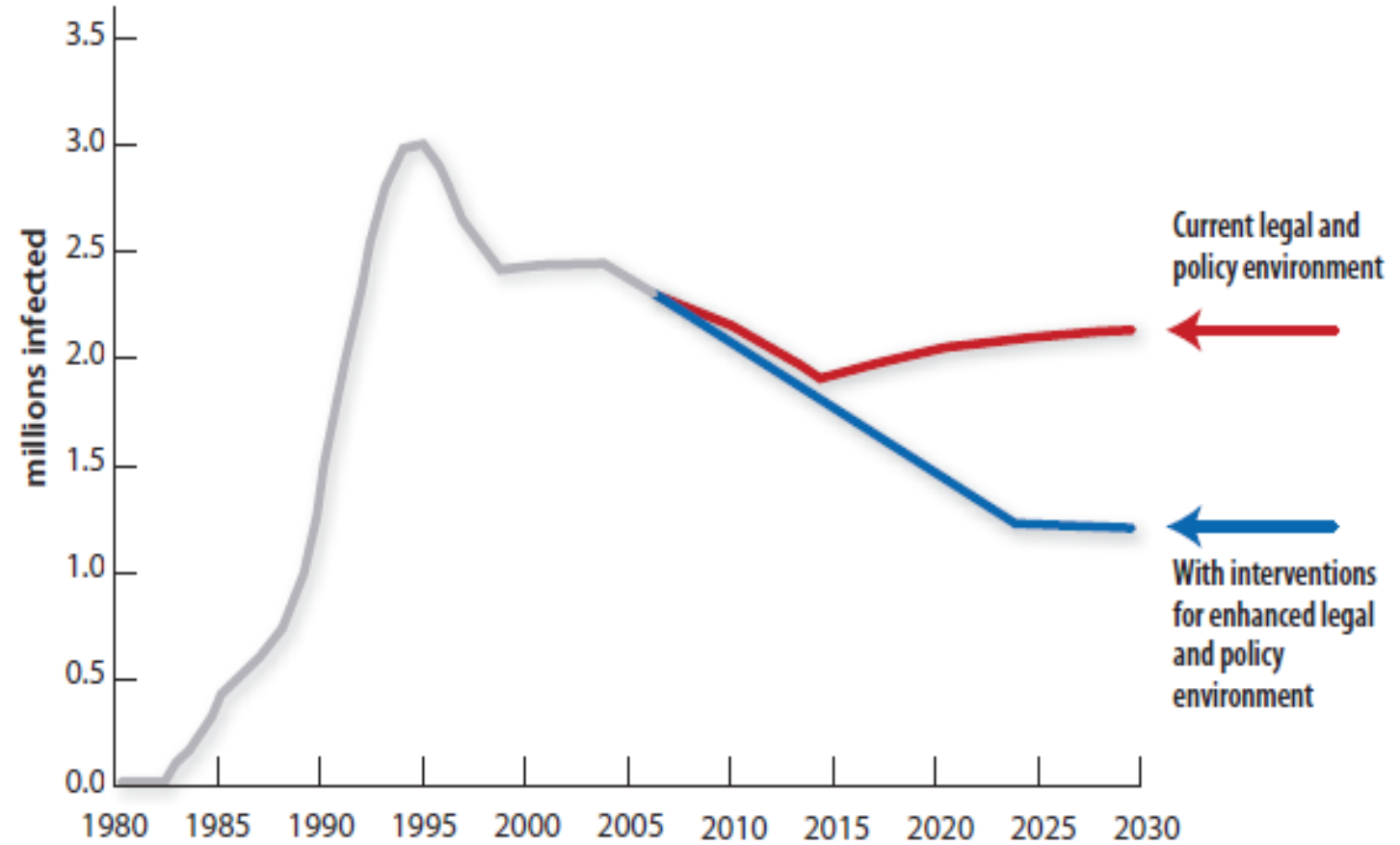


WHY THE LAW MATTERS

Annual number of new HIV infections among adults aged 15–49

- historical trend
- current trend
- structural change*

* change to legal and policy environment

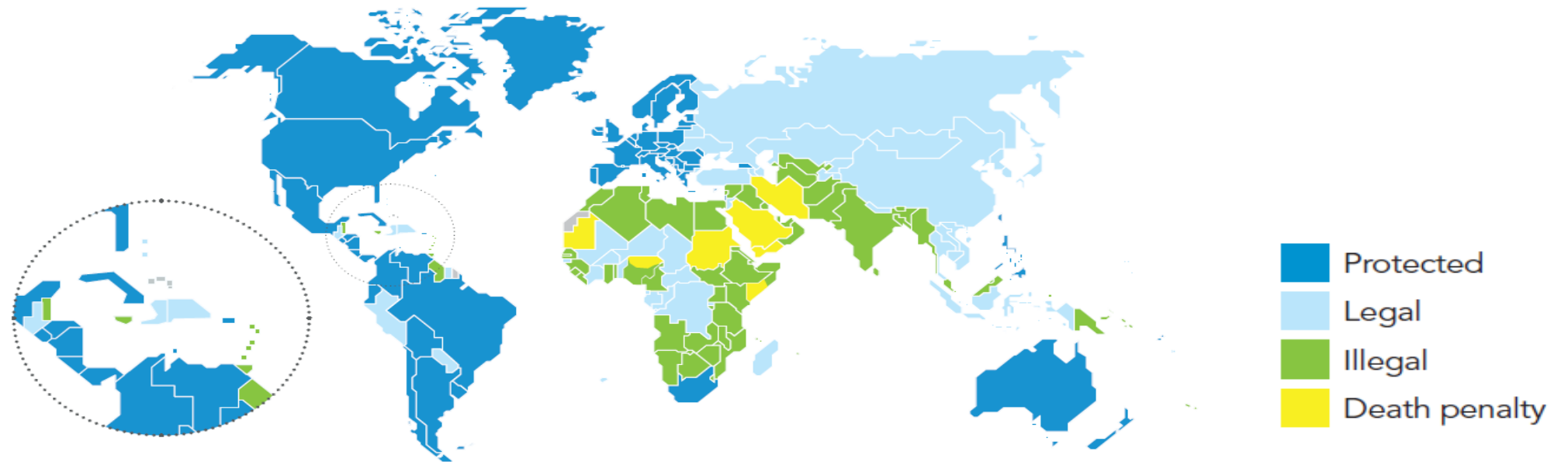


Source: Results for Development Institute, Costs & Choices: Financing the Long-Term Fight Against AIDS, An aids2031 Project, 2010.

An epidemic of bad laws

- Laws that criminalise same sex sex, sex work, drug use, HIV transmission exposure and non-disclosure
- Lack of access to justice for human rights violations

Consensual, adult same-sex sexual conduct is criminalized in 78 countries

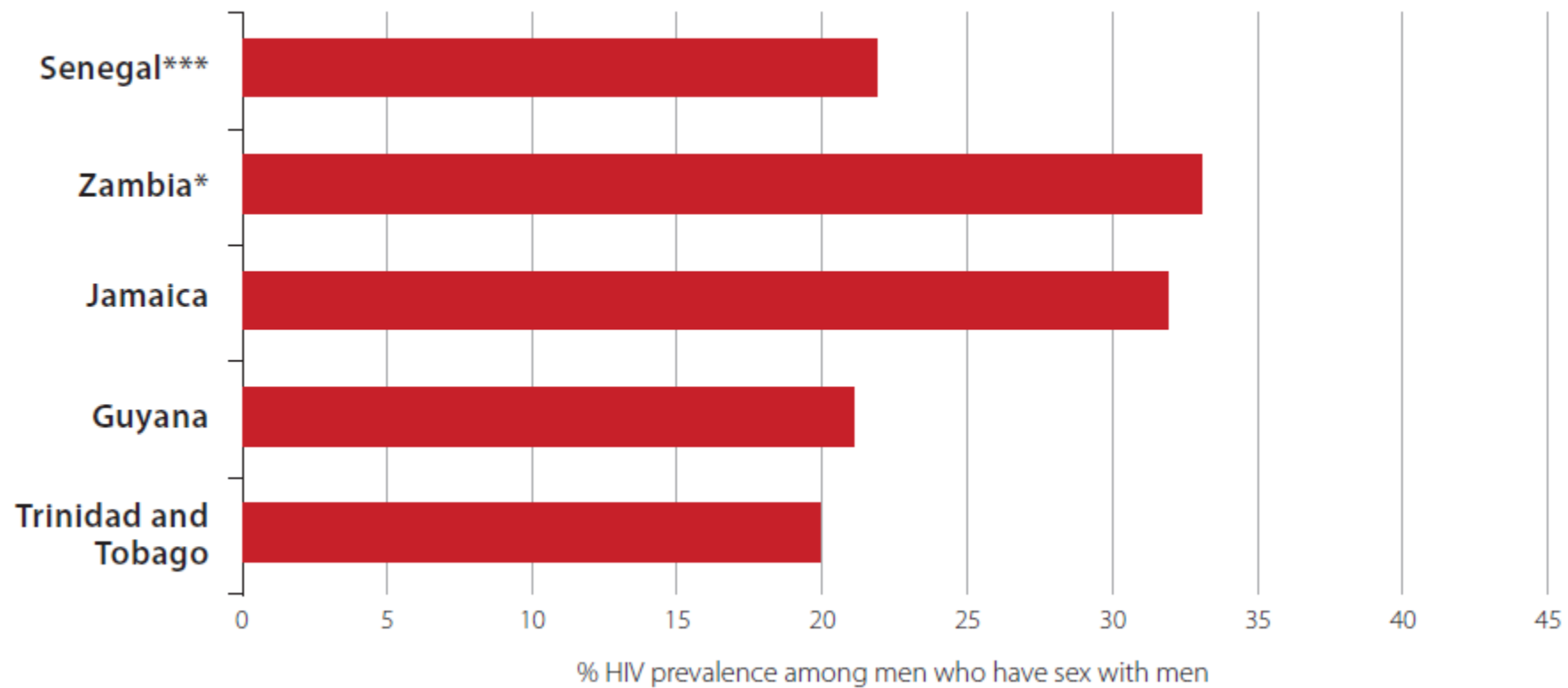


Source: International Lesbian and Gay Association (ILGA), UNAIDS Global Report 2012, and Baral S. et al. 2013.

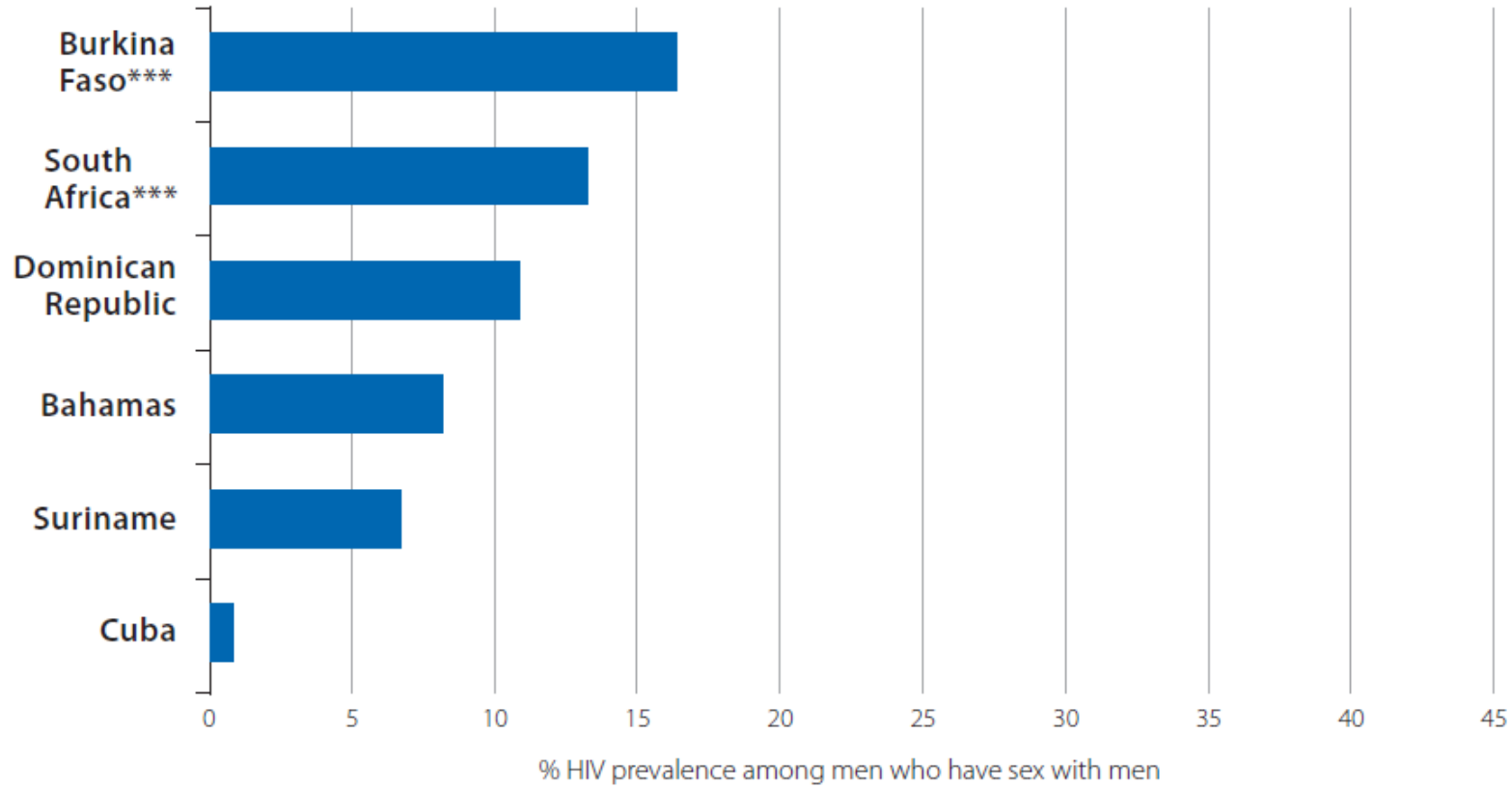
Impact on access to services

- “The health services are not LGBTI friendly. The staff make distasteful remarks about the way that we dress. That is why so few of us go there.”
- “Sodomy is illegal so I am reluctant to admit to health workers that I am engaging in anal sex or to seek assistance if injuries occur during anal sex. There are no health services that are MSM friendly.”

Sample of African & Caribbean countries that criminalise same-sex sexual activity



Sample of African & Caribbean countries that do not criminalise same-sex sexual activity



People who use drugs



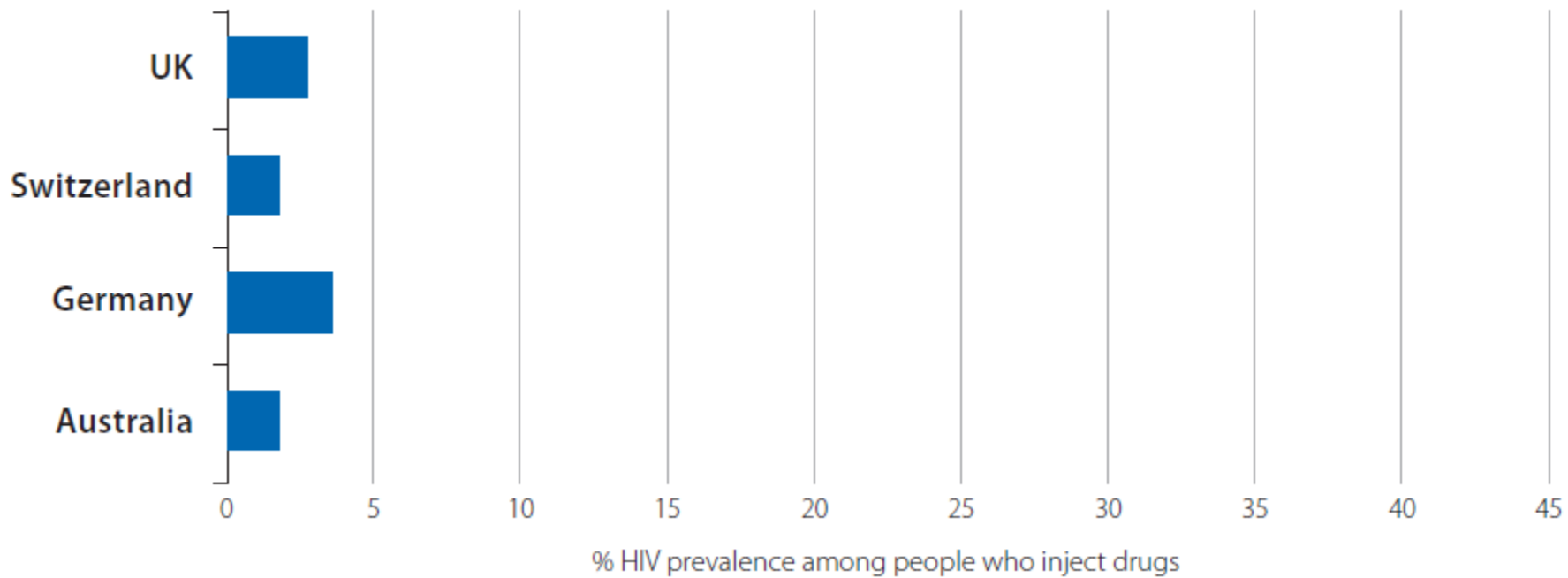
Source: UNAIDS/Eastern Europe

Impact on access to services

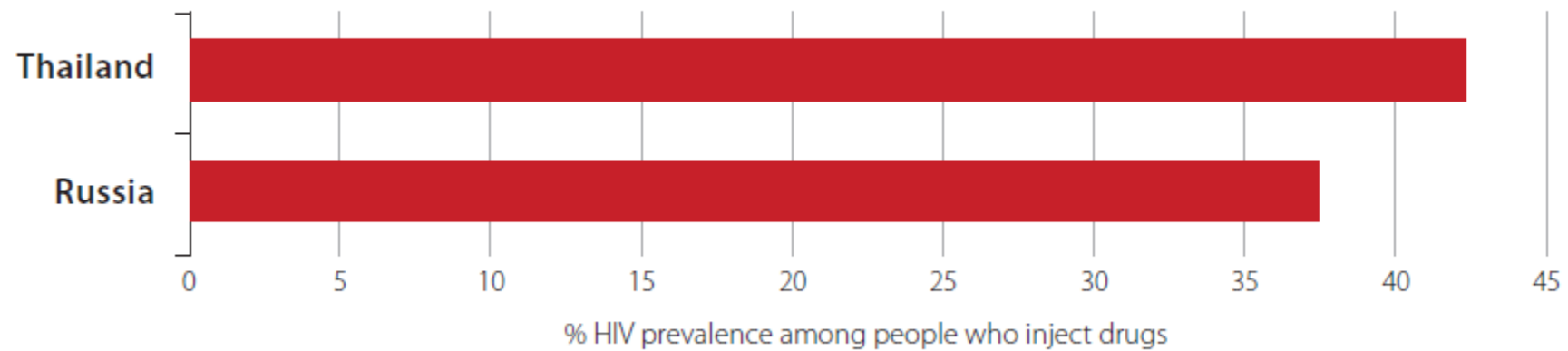
- Treating drug use as a criminal offence **fuels HIV transmission**
- Punitive drug law enforcement measures create **barriers to HIV testing and treatment**
- Research shows PWUD have lower rates of ART use and higher HIV/AIDS death rates. Punitive drug law enforcement policies and practices also have **broader implications for public health.**

- “They refuse to take our blood or administer injections if they suspect that we are people who use drugs”.
- “There is no confidentiality at the HIV clinic”.
- “The doctors do not treat us as people. Attitudes are better at private facilities but we cannot get ART there – only at state facilities’.
- “We have to pay for diagnostics for hepatitis C as it is not available in the country. Many of us cannot afford this and the doctors refuse to put us on treatment for hepatitis C unless we have the test.”
- “The health care worker called me “drug addict” rather than by my name and called me out in front of everyone to get my methadone.”
- “The police have a list of everyone who takes methadone and if there is a warrant out someone’s arrest they will wait for them to come to the police station for their methadone and then arrest them”.

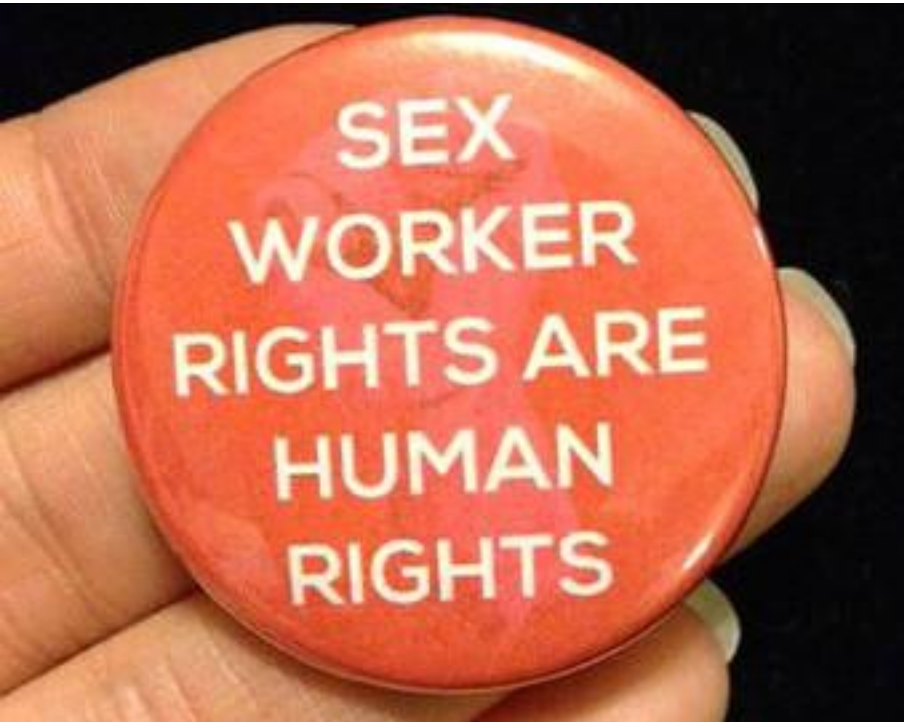
Comprehensive, consistently implemented harm reduction without punitive approaches



Consistent resistance to harm reduction and punitive approaches



Sex workers



Countries in which sex work is criminalised



Impact on access to services

- Criminalisation of sex work lies at the foundation of a climate of stigma, discrimination and violence surrounding sex work.
- Sex workers experience recurring police abuse and high levels of violence, including the confiscation of condoms, arbitrary detention and rape, which compromise their personal safety and right to equal protection of the law.
- Creates a climate of impunity that fosters further violence and discrimination against sex workers.
- Discourages sex workers from accessing services.

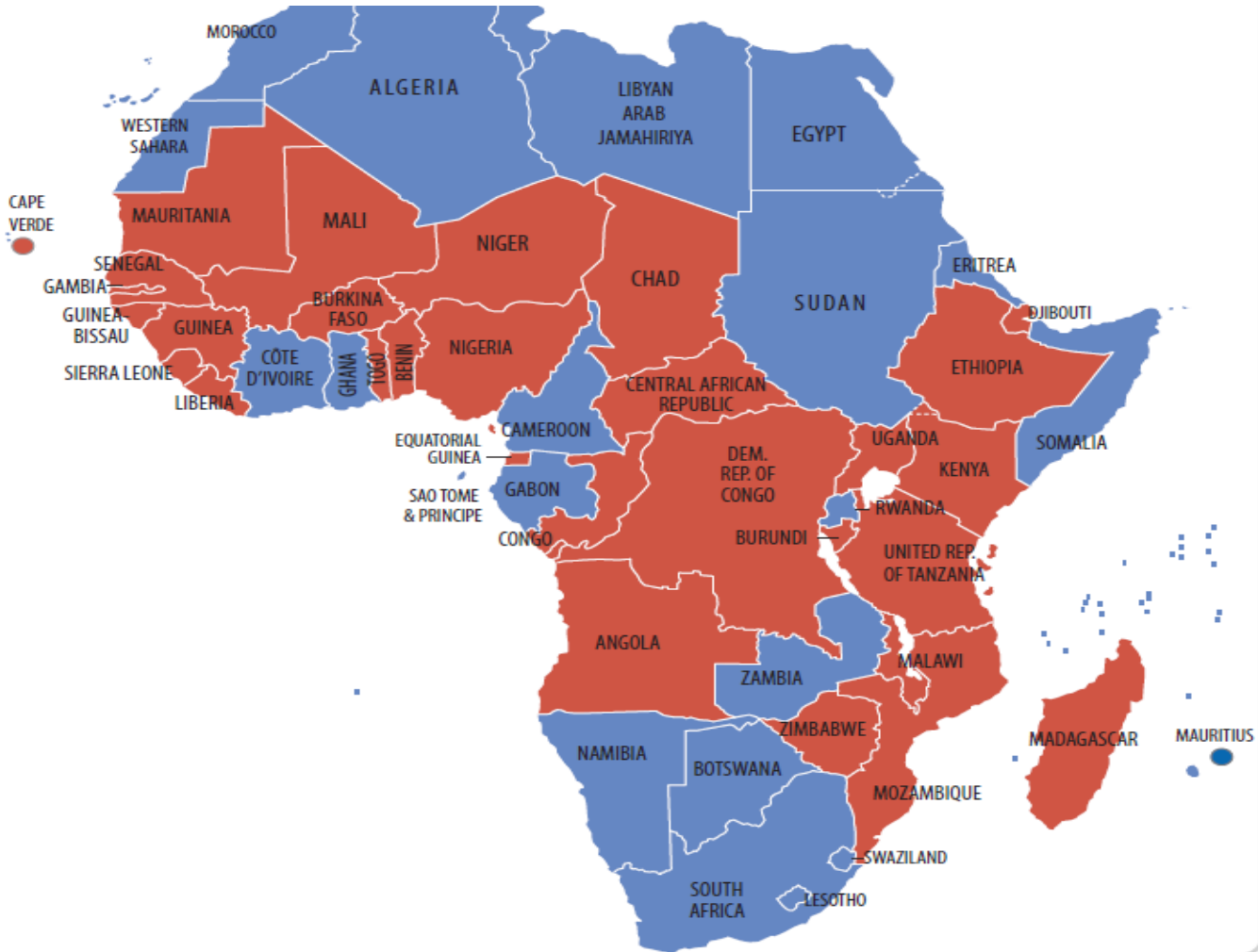
- “I was raped in 2014 and went to the police to report it. 7 months later they called me to say there was no evidence of rape despite the fact that I pointed out the evidence to them”
- “I was arrested by the anti-drug unit. They beat me up. I am asthmatic and they took me to the hospital. The hospital staff refused to give me treatment for asthma because of the way I was dressed and only gave me Panadol.’
- ‘My family told me it would be better for me to go and steal than to be a sex worker’.
- ‘I was arrested for soliciting and they made me strip naked and dance for them. They told me this was the procedure”.
- ‘The police made me engage in felatio with them and have sex with them without condoms in order to escape being charged.’
- ‘The police use possession of condoms as evidence of soliciting. They told me that a decent woman does not walk around with condoms’.
- ‘Sometimes when the police arrest us they arrange for the child protection unit to take away our children rather than leave them with our families.’
- ‘We are denied social housing because we are sex workers’
- “I have been arrested by police when I go to collect methadone – they said I was soliciting the night before - as a result I no longer go and collect methadone but rather buy black market methadone’.



Source: UNAIDS/D. Kim/Korea

laws criminalising HIV transmission and exposure

no such laws



Impact on access to services

- Does not reduce spread of HIV
- Can undermine prevention efforts
- Promotes fear and stigma
- Impact on women
- Selectively, unfairly and ineffectively applied
- There are already laws in place