

**Southern African AIDS Trust
Position Statement
On
Criminalisation**

SAT Mandate:

In line with its mandate of advocating effective responses to HIV and AIDS, SAT plays a catalytic role in mobilising communities to mainstream issues such as domestic violence, child sexual abuse, gender and human rights into HIV and AIDS. The following is a summary of position statement on Criminalisation of HIV Transmission to which SAT strongly feels that it is imperative to add its voice.

Criminalisation

The legal situation regarding HIV transmission is confusing and ever-changing. There have been instances of prosecutions for HIV exposure or transmission in some countries hence the ongoing debate on whether or not to criminalise HIV transmission. The two main reasons advanced for criminalising HIV transmission are to:

1. *Punish* harmful conduct by imposing criminal penalties, and
2. *Prevent HIV transmission* by deterring or changing risk behaviours.

Except in the rare cases of intentional HIV transmission, applying criminal law to HIV transmission does not serve these goals.

According to the UNAIDS Policy Brief (July 2008), in some countries criminal law is being applied to those who transmit or expose others to HIV infection. There are no data indicating that the broad application of criminal law to HIV transmission will achieve either criminal justice or prevent HIV transmission. Rather, there is concern that such application risks undermining public health and human rights. For example it may lead to increased stigmatisation of PLWHA and discrimination, or discourage people from accessing services for testing, counselling and treatment.

Because of these concerns, the recommendation by UNAIDS is to limit criminalisation to cases of *wilful transmission* i.e. where a person knows his or her HIV positive status, acts with the intention to transmit HIV, and does in fact transmit it. In such cases, it seems likely that they can usually be addressed under normal laws against assault, without requiring HIV-specific legislation that could be stigmatising.

Gender Dynamics: Bearing in mind that HIV and AIDS have, over time been feminised, especially in Southern Africa, it is worth noting that criminalising HIV transmission may once again exacerbate the gender imbalances as women are usually blamed for HIV infection in families. Due to women's minority status in most societies, criminalisation may further worsen the impact of the epidemic on

women and girls, as it will impose on them an additional burden and risk of violence or discrimination.

As part of civil society organisations, SAT therefore aims to:

- Sensitize its partners on the merits and demerits of criminalisation and related issues;
- Advocate for laws against sexual and other forms of violence; and support services for those who experience such violence, as well as HIV-related discrimination;
- In collaboration with other organisations, advocate for legal support and HIV-prevention services for people living with HIV and other vulnerable groups; and
- Where possible and relevant, engage with the media to ensure that coverage of such issues is proportionate and well-informed, explaining the difficulties of disclosing HIV status and reiterating the shared responsibility for sexual health.

SAT does not condone wilful transmission of HIV or any other life-endangering communicable disease and discourages reckless behaviour which may put other people at risk of infection. However, using criminal sanctions for conduct other than clearly wilful transmission may well infringe upon human rights and undermine important public policy objectives. There is no evidence that criminal laws specific to HIV transmission will make any significant impact on the spread of HIV or on halting the epidemic. Therefore, priority must be given to increasing access to comprehensive and evidence-informed prevention methods in the response to HIV & AIDS. The key approach should be to encourage safer sex practices in general and in particular in any act where a person does not know their partner's status.