

**“Women, HIV and Human Rights – the crisis of criminalisation” by Alice Welbourn PhD
Summary of presentation at the House of Commons for International Women’s Day, 2009. (see www.salamandertrust.net for the full text)**

In many countries, for millions of women and their families, access to the basic essentials are fundamentally compromised through extremes of poverty. This has an adverse affects on their basic physical and psychological well-being and basic capacity to cope with illness and death. In addition to that when a women tests positive, her sexual and reproductive health and rights to liberty also fall under threat by the global attitudes. Still now people in every country explain HIV away as something highly distasteful this is someone else’s fault, nothing to do with them. And the UK is no exception to this. Some countries, are now sterilizing young positive women, coercing them to sign consent forms when in labour, so that after delivery when they go for contraception, they learn that this is no longer needed. These acts of the medical authorities are a violation of reproductive and sexual rights for the women with HIV.

Scientific facts:

- 1) If young women in Southern Africa were given timely treatment, fewer than 2% of babies would be born with HIV. In the UK last year this figure fell to less than 0.1% - that’s less than 1 in 1,000 births, even with vaginal delivery.
- 2) Last year a Swiss Study found that if we are stable on treatment, have an undetectable viral load, and – if no other STIs are present, we have negligible chance of transmitting HIV to others, even without a condom.
- 3) Now only 3 million out of the 9 million HIV positive people who need ARVs now are getting treatment and many women continue to face many logistic as well as psychological problems in accessing drugs, which includes physical, sexual and psychological abuse from male partners.
- 4) Violence against women causes HIV and an HIV diagnosis causes violence against women.
- 5) Love, care, respect and support for anyone with HIV increases the chances of adherence to a life-long drug regime, which for some, have many side-effects.

The UN and others: The UN agencies, the US and others have promoted global guidance, and campaigns such as “Know your epidemic” and “Save the Unborn Child” to promote an “AIDS-free generation”. These guidelines were produced to promote voluntary and confidential testing of pregnant women, with pre and post-test counselling. But in reality these global guidelines are misinterpreted in many countries, resulting in compulsory mass testing of pregnant women. Unless tested, women are refused further ante-natal services. For those who test positive, test results are not kept confidential by health staff in their own community. So positive women become ostracized. Moreover, whatever treatment they receive often ceases after delivery, with no support or education about breastfeeding. The human rights of these positive women are thus violated to such extent that their governments should be held to account.

US backed AIDS criminalization law: As the US were becoming increasingly desperate to curb the spread of HIV, a US-backed initiative launched the Model AIDS Law in West Africa. Thus in Sierra Leone now, for example, if a woman transmits HIV to her child, she can be fined or jailed up to 7 years or both. Justification of this law is highly questionable anyway, but especially when there is no guarantee for a woman of access to condoms for prevention, nor access to negotiation skills to use a condom with her partner, nor access to microbicides if they want children or the guarantee of treatment access for both a positive woman and her child.

Fate of HIV testing vs criminalization law: The spread of criminalization legislation means that many years of hard work for HIV prevention in many countries are being blown apart overnight. Now people fear that testing positive may make them branded as disease vectors and as criminals. Men figure if they remain ignorant of their status they can claim ignorance in a court of law. Women realize that they can avoid partner violence against themselves and their children, as long as they don’t have their status known or disclosed. This fear will scare away people from taking HIV tests - which will be a major disaster for prevention, especially when most HIV transmission takes place amongst those who are unaware of their status. Criminalisation just drives everybody and everything underground and this is an inhumane way of treating practically anyone with a virus.

UK crisis: Some HIV-positive women in the UK are being told by their doctors now that they shouldn't start new relationships, in case they might be criminally convicted. Many health staff and others in the UK also believe that women should never have sex or children if they are HIV positive.

In South Africa: women are travelling up to 60 kms from their homes to seek ante-natal care away from their neighborhoods, for fear that they will be tested for HIV in their local clinics before receiving any care, that the HIV test will be positive, and that if this information was known in their communities they would experience violence. Travelling such distances for any health care is clearly unsustainable, thereby undermining MDGs for maternal and child health, not just for HIV.

Glimmers of hope:

- a) The original Model AIDS Law was US-backed. So the US political sea change is fundamental.
- b) The Swiss evidence which showed negligible transmission of HIV when someone has an undetectable viral load has just been used to overturn the imprisonment of an African man in Geneva, who had not even passed HIV on to anyone. This landmark court case is a huge victory for humanity and scientific fact over prejudice and racist scare-mongering and is being widely welcomed around the globe.
- c) Thirdly, some women's rights groups who have been promoting criminalization for HIV transmission with good intentions are realizing also that these criminalisation laws are not gender-specific and indeed are tipped firmly *against* women in so many countries, including the UK.
- d) UNAIDS and various key NGOs are now working actively to raise global awareness of the pitfalls of these laws, and promoting more humane, more protective legislature to replace these damaging laws.
- e) ICW calls on governments to engage comprehensively with HIV positive women who have critically been given the opportunity to be trained in understanding the pitfalls of these laws before considering any punitive legislation. Positive women are also interested in exploring the potential for restorative justice, as used here in family law and mediation courts, and not adversarial law at all, to address these painful issues.

Recommendations:

- Parliament, the Home Office, judges, police, the media, health workers, teachers, social workers and the public at large: we *all* need to educate ourselves about what HIV is and what it isn't.
- We all have an obligation to uphold the human rights of people with HIV, especially the rights of all women – whatever their HIV status - to a life of peace, free from physical, sexual and psychological violence and to a life of sexual and reproductive choices.
- We should work for ensuring good treatment access which means good prevention - since transmission risk with an undetectable viral load is negligible. Universal access to treatment is a key part of prevention.
- Universal education on sex and relationships for young people should continue to roll out to keep the younger generations HIV negative.
- We must involve men and women with HIV, who should be supported to be involved in all policy-making decisions and in rolling these policies out into practice.
- Instead of criminalizing transmission, we should have laws that could be introduced and used, actively and consistently, to outlaw all inaccurate press reports, all discrimination against women and men, with HIV, all police breaches of confidentiality, all ostracism of children with HIV in their families.
- Finally, together with positive, active and consistent investment in education campaigns about what HIV really is and what it isn't, we believe all these collective efforts would be far more effective in HIV prevention than the criminalisation law.