



**Global
Criminalisation
Scan**



Country Assessment 2011

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Acronyms

ARV	Antiretroviral
CCM	Country Coordinating Mechanism (for delivery of Global Fund interventions)
CSO	Civil Society Organisation
DfID	UK Department for International Development
GIPA	Greater Involvement of People Living with HIV and AIDS
GNP+	Global Network of People Living with HIV
GTF	Governance and Transparency Fund
IEC	Information, education and communication
ICW	International Community of Women Living with HIV/AIDS
LACA	Local Action Committee on AIDS
LGBT	Lesbian, gay, bisexual and transgender
LTA	Leadership Through Accountability
MSM	Men who have sex with men
NACA	National Agency for the Control of AIDS
NEP+	Network of Networks of HIV Positives in Ethiopia
SRHR	Sexual Reproductive Health Rights
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNGASS	United Nations General Assembly Special Session on HIV/AIDS

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Executive Summary

Methodology:

This study (the Criminalisation Scan) was conducted by the Network of Networks of People Living with HIV (NEP+) to map and document the existence of laws, practices and policies that impact on responses to HIV in Ethiopia for the purpose of informing advocacy. The Criminalisation Scan maps protective as well as punitive laws and policies in relation to the HIV response. Punitive laws have a negative impact on achieving universal access to HIV prevention, treatment, care and support (universal access). They include laws that criminalize unintentional HIV transmission. Positive laws have an enabling impact on policies and programmes aimed at achieving universal access. They include laws and policies that prohibit discrimination on the basis of real or perceived HIV infection. The information in this report is synthesized from information gathered from desk research and that provided by respondents who completed a questionnaire developed to elicit this information. Questionnaires were sent to judiciary based organisations and others working on these issues.

Findings:

The study found that Ethiopia has one legal instrument that has direct application in governing criminalisation for HIV non-disclosure, exposure and transmission. This law is the 2004 revision of the Criminal Code of Ethiopia¹. The relevant clause in the legislation does not refer to HIV specifically. The law treats the act of transmitting HIV in the same way as transmitting other ‘communicable human diseases’². The law criminalises the intentional or negligent transmission or spreading of communicable human disease. Actual transmission, rather than exposure is a crime.

From the information gathered, there are four recorded prosecution cases that relate to the transmission of HIV; three in Addis Ababa (the capital city) and one in Bahirdar (Amhara regional city). This, however, does not mean that there are no other cases or prosecutions in other parts of the country. Unfortunately, identifying court cases involving prosecution for HIV transmission was found to be a very challenging task as courts and prosecution offices do not have well organized filing systems. Additionally, there is no systematic categorization of criminal prosecutions and convictions for HIV transmission. The cases documented here were classified and found under ‘other sexual offences’ such as rape, abduction, etc.

In all the reported cases, the defendants were accused of other offences too (rape, incest, sex with a minor, sex with a prostitute). This raises the question whether HIV was an

¹ Criminal Code of Ethiopia, Proclamation No. 414/2004

² Article 514 of the Criminal Code



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aggravating factor in relation to the other offences or whether the HIV transmission was the second and separate offence that the defendants were accused of. As shown in the reporting below, the prosecuting officials can request that a defendant in a sexual crime be tested for HIV.

Sexual acts of a homosexual nature (between people of the same sex) are crimes under the Ethiopian criminal law³. Therefore men who have sex with men (MSM) are liable for a penalty up to three years of imprisonment. As well as the state laws; tribal laws and religious edicts strongly condemn homosexuality. As a result, MSM and other same sex couples do not identify in public. This study did not find any HIV services targeted at men who have sex with men, despite this population being a population at high risk of HIV infection.

The law prohibits producing, making, trafficking or using poisonous or narcotic and psychotropic substances without special authorization⁴. Needles and syringes are not mentioned in any of the legislation relating to illegal drug use. This is probably because this paraphernalia is not associated with illegal drugs traditionally used in Ethiopia. The study did not find any HIV prevention services for people who inject drugs.

The mere fact of selling sex is not a criminal act under the Ethiopian law. However, the law prohibits individuals from gaining from the proceeds of prostitution. The law also prohibits individuals from maintaining or keeping brothels.⁵

Whoever, for gain, makes a profession of or lives by procuring or on the prostitution or immorality of another, or maintains, as a landlord or keeper, a brothel, is punishable with simple imprisonment and fine.

Although Ethiopia does not have a special law prohibiting discrimination on the grounds of HIV status, Article 25 of the Constitution can be read to provide this protection:

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.*⁶

³ Criminal Code of Ethiopia 2004: Section II - SEXUAL DEVIATIONS. Article 629 - Homosexual and other Indecent Acts.

⁴ Criminal Code of Ethiopia 2004: Article 525 - Producing, Making, Trafficking in or Using Poisonous or Narcotic and Psychotropic Substances.

⁵ Criminal Code of Ethiopia 2004: Article 634 - Habitual Exploitation for Pecuniary Gain.

⁶ Constitution of the Federal Democratic Republic of Ethiopia: Article 25



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Whilst this protection exists, the study found no cases where this protection had been invoked in relation to HIV. This is at odds with the reported high levels of discrimination against people living with HIV.

There are no specific entry or residence regulations for people with HIV/AIDS⁷. Foreigners with a known HIV infection are not subject to specific residence regulations in Ethiopia.

Conclusions:

The study found that Ethiopia has many laws and policies enacted to protect people living with HIV and also promote an enabling environment for achieving universal access to HIV prevention, treatment care and support. However, the study found no reported cases where these protections had been invoked by people living with HIV. This is at odds with the recorded cases of discrimination and mistreatment based on HIV status that have been reported by NEP+. Therefore, despite there being many protective laws and policies, these are either not known to people living with HIV, who do not invoke their protection, or enforcing authorities have a poor record of enforcing them.

The study found three examples of punitive laws that could have a negative impact on responses to HIV:

- Intentional and negligent transmission of HIV is criminalized;
- Same sex, sexual relations are prohibited;
- Use of narcotics substances is illegal.

The law criminalises the transmission of communicable diseases; and the courts have defined HIV to fall under this category. Whilst data on these prosecutions was hard to come by, the study found four cases that had been successfully prosecuted. In three of the cases, the defendant was accused of another sexual offence. In all the cases there were no proofs that the victims were actually infected with HIV as a result of the acts of the accused, as there is no evidence of additional investigations to ascertain this fact. Consequently, we may conclude that HIV positive status of the defendants were used as aggravating factor either to have additional charge or increase the penalty.

Whilst men who have sex with men and people who use drugs are recognized as populations at high risk of HIV infection, the study found no examples of organisations providing HIV services to these populations. This despite the research finding that homosexuals in Ethiopia are highly stigmatised and live in fear of persecution from the state authorities as well as society.

⁷Information found at: <http://www.hivrestrictions.org/> accessed on 25/05/11



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Recommendations:

The main recommendations are made to NEP+ to initiate. They include,

- Further research is needed to understand the extent to which the laws identified in this study impact on the responses to HIV, including;
- Getting a better understanding of the populations concerned in respect of prohibitions of same sex sexual relations and drug use;
- Getting a better understanding of what investigations are carried out to prove that a person has transmitted the virus;
- Getting a better understanding of the extent to which the human rights of accused PLHIV have been respected or violated, the impacts of such violations, etc.
- Getting a better understanding of the levels of law enforcement, in particular to understand why, none of the protective laws have been invoked, in anti discrimination cases.

Advocacy:

- NEP+ engage with networks of key affected populations to understand what impact the law has on the access to HIV services.

Awareness raising:

- Of the protective laws among PLHIV and key populations at higher risk of infection;
- And assist PLHIV to invoke these laws when faced with discrimination;
- Amongst judges, prosecutors and police of the nature of HIV particularly its transmission to others and how to handle such kind of cases.

HIV Leadership through Accountability programme

The HIV Leadership through Accountability programme is a collaboration between the Global Network of people living with HIV (GNP+), the World AIDS Campaign (WAC), national networks of PLHIV and national Civil Society campaign platforms. The programme is funded by UKaid from DfID and combines specific HIV evidence-gathering tools, national AIDS campaigns and targeted advocacy for Universal Access. The programme will run for five years and involve 11 countries in total.

National networks of PLHIV are leading the effort to document the experiences of people living with HIV and have employed a number of internationally tested, validated tools, aimed at strengthening the evidence on five key areas:

- Stigma and discrimination (The People Living with HIV Stigma Index)
- The level of involvement of people living with HIV (The GIPA Report Card)
- Documenting and analysing current experiences in criminalisation of HIV transmission (The Global Criminalisation Scan)
- Documenting and analysing human rights violations against PLHIV (Human Rights Count!)
- Sexual and Reproductive Health and Rights of PLHIV (Advancing the Sexual and Reproductive Health and Rights of PLHIV: A Guidance Package) supporting PLHIV networks to engage in national processes for the development and/or adaptation of sexual and reproductive health services for key populations

Network of Networks of HIV Positives in Ethiopia (NEP+) is implementing the programme in Ethiopia. For more information about the programme please visit www.hivleadership.org.

Programme Introduction

“Criminalisation of HIV transmission” is a phrase that is used to refer to enacting of laws directed at punishing behaviour that may transmit HIV or expose others to and the application of general laws in a manner that targets those with HIV who may transmit or expose others to the virus. The Global Criminalisation Scan (The Scan) is a programme that was developed to respond to this growing trend. The Scan was initiated and is led by the Global Network of people living with HIV (GNP+) in partnership with others. It has been expanded to map and document the existence of laws, practices and policies that impact on responses to HIV. This includes positive as well as punitive laws.



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Punitive laws and policies may have the effect of preventing people from accessing necessary services (including prevention, treatment and care services for HIV). This effectively criminalises the lives of people living with HIV. Examples of punitive laws include laws that:

- Criminalise unintentional transmission/exposure to HIV;
- Criminalise commercial sex amongst consenting adults;
- Criminalise same sex, sexual relations;
- Impose compulsory or cohesive drug treatment for people who use drugs or prohibits the provision of harm reduction services for people who use drugs;
- Restrict or deny entry/stay/residence or require deportation of HIV positive non-nationals.

Objective of the Study:

As a part of this global initiative launched by GNP+, this tool was developed after a realization that prosecutions for ‘alleged’ HIV non-disclosure, exposure or transmission were on the increase and many countries were considering introducing new legislation relating to HIV non-disclosure, exposure or transmission. Recently, there has been a growing awareness of the impact that laws and policies can play on the effectiveness of responses to HIV, hence the expansion of the scope of the programme.

In this context, NEP+ embarked on carrying out this study which aims at providing a country specific perspective on the criminalisation of HIV. In line with the overall Global criminalisation scan goal, this study aims:

- To collect and keep up-to-date information on national or state level laws and practices that have an impact on responses to HIV;
- To document case studies of the rates to which these laws are enforced;
- To provide an easily accessible hub of resources and research on the subject;
- To inform global advocacy to revise laws and practices that have a punitive effect and promote those with a positive effect;
- To provide a platform for advocacy campaigns.

Methodology

Data used in this report were collected using the standard Global Criminalisation Scan questionnaire, supported by desk research. The questionnaire was sent to the following organizations;

- Federal First Instance Court
- Ministry of Justice



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- High Court of Mekele, Tigray
- Tigray Police Commission
- Amhara Region Police Commission
- Amhara Region Prosecution Office
- Amhara Region Supreme Court
- Bahirdar City First Instance Court, Amhara Region
- Sidama Zone High Court, Southern Ethiopian Region

The following five organizations responded to the questionnaires;

- Supreme Court of Tigray
- Police Commission of Tigray
- Federal First Instance Court
- Ministry of Justice
- Bahirdar City First Instance Court

In addition to the questionnaires, desk research on legal and other databases was conducted. Searches for court cases involving HIV non-disclosure, exposure or transmission, resulted in four cases being identified. These cases were identified with the help of key legal and law enforcing stakeholders including police officers, judges and prosecutors.

Other activities undertaken in the course of gathering this information include:

- researching legal and other databases;
- contacting groups representing key populations for in-depth information;
- analysis of laws, case studies and societal attitudes as evidenced by media reports and other key sources.

Limitations:

Finding information to inform this study was limited by the lack of nationally coordinated and maintained databases on court cases. Whilst some cases were identified, it cannot be said with certainty that these are the only cases that have been prosecuted.

Same sex sexual relations as well as use of narcotic drugs are illegal in Ethiopia. Because people who engage in these activities cannot identify without risking prosecution, the study did not come across any organisation that identified as providing services to these groups. This meant that the study had no access to in-depth information that comes from direct contact and engagement with a community.

Findings

The following were the findings of this study based on the data gathered through the questionnaires and the desk review.

Criminalisation of HIV exposure or transmission

As mentioned in the summary section above, Ethiopia does not have special legislation regulating transmission of or exposing others to HIV infection. Prosecuting such acts is possible only through a provision of the Criminal Code which criminalizes acts of deliberate or negligent spreading of communicable diseases. Whilst this law fails to fully define or provide the types of diseases which can be considered as communicable diseases, court decisions have confirmed that HIV infection falls within this category. Four prosecutions have been identified wherein PLHIV have been punished for transmitting HIV.

The difficulties associated with finding information on cases relating to HIV transmission have been outlined above; these cases are not distinguished from the broad category under which they fall. Additionally national databases of court cases are not maintained. Because of these limitations, it is difficult to say when the first prosecution was initiated. The table below shows a summary of each known case.

File No.	Court	Charges	Date of prosecution	Date of conviction	Sentence
173310	Federal First instance Court	Same sex sexual act on minor (defendants' own son) and attempt to transmit HIV *	27 July 2010	17 March 2011	12 years & 2 months
153416	Federal First instance Court	Attempt to transmit HIV to a sex worker by tearing the condom	3 August 2009	24 June 2009	11 years
183789	Federal First instance Court	Same sex sexual acts on two minors and attempt to transmit HIV*	17 Jan. 2011	28 Jan. 2011	25 years
22325	Bahirdar City First Instance Court	Rape and transmission of HIV	18 Feb 2011	24 Feb 2011	15

* See the discussion below on the legal status in relation to attempts to transmit HIV

Three of the defendants were initially charged with other sexual offences (same sex sexual acts and rape), however in the course of investigations the HIV status of the defendants were revealed and thus they faced additional charges for attempting to transmit HIV. In the case of file No. 153416, the charge appears to have been based entirely on an offence of transmitting HIV.

The occurrence of HIV transmission charges alongside charges for other sexual offences can be attributed to the practice that requires all sexual assault cases to be supported by medical evidence⁸. The medical tests required include tests for HIV infection. It is not clear whether other investigations are carried out to ascertain whether a defendant was aware of their HIV status prior to committing the alleged offence. In cases where the victim of the initial sex offence is also found to be HIV positive, it is not clear whether other investigations are carried out to ascertain whether indeed the alleged defendant is the source of this infection. Whilst the phrasing in the law, see below, implies that only actual transmission is punishable, these cases seem to be blurring the lines between actual transmission and exposure. Without definite additional tests and investigations to ascertain the route and source of the HIV infection, it appears that in the sexual assault cases above; where the defendant is then found to be HIV positive; the only reasonable charge that can be made against them in relation to HIV is that of exposing another to the virus.

The Law relating to Criminalisation of HIV transmission

Completed questionnaires made reference to Article 514 of the 2004 revised Criminal Code of Ethiopia which prescribes that:

1. Whoever intentionally spreads or transmits a communicable human disease, is punishable with rigorous imprisonment not exceeding ten years.
2. Where the criminal:
 - a. has spread or transmitted a disease which can cause grave injury or death, out of hatred or envy, with malice or with a base motive; or
 - b. without even the particular intent specified in sub-article (a) of this Article has spread or transmitted a disease which can cause grave injury or death; or
 - c. has transmitted an epidemic, the punishment shall be rigorous imprisonment not exceeding twenty years, or in grave cases, with rigorous imprisonment for life or death.
3. Where the crime is committed negligently, the punishment shall be simple imprisonment or fine.

⁸ Advocacy from women's rights activist groups, who strongly advocated for the imposition of higher penalties against those convicted of sexual assaults can be credited with this development.



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As can be gleaned from the abovementioned provision, communicable diseases are further defined as those that can cause grave injury or death. The penalties, range from ‘simple imprisonment’⁹ and life imprisonment depending on the intention attributed to the act and the gravity of the consequence. The Public Health Proclamation imposes a duty on persons suspected of infection with communicable diseases to submit to testing¹⁰ while everybody else is duty bound to report suspicions or knowledge of the occurrence of a communicable disease to the authorities. In addition, the provision of the 1961 Criminal Procedure Code pertaining to medical examination of accused sexual offenders has been interpreted as allowing compulsory HIV testing. The provision in question reads:¹¹

“where an investigating police officer considers it necessary, having regard to the offence with which the accused is charged, that a physical examination of the accused should be made, he may require a registered medical practitioner to make such examination and require him to record in writing the results of such examination. Examination under this Article shall include the taking of a blood test”.

The justification for such interpretation is based on the claim that the result of the HIV test is essential in determining the applicable Criminal Code provision. That is, the HIV status of the suspect determines whether additional charges relating to transmitting a communicable human disease need to be brought. (This assumes that the victim also tests positive for HIV and alleges that the defendant is the source of this infection)

Who has been prosecuted for HIV transmission?

From the cases identified by the respondents, all the prosecutions were against men; there is no case brought against a woman or transgender. In all the reported cases, the defendants were accused of other offences too (rape, incest, sex with a minor, sex with a prostitute). This raises the question whether HIV was an aggravating factor in relation to the other offences or whether the HIV non-disclosure, exposure or transmission was the second and separate offence that they were accused of. As shown above, the prosecuting officials can request that a defendant in a sexual crime be tested for HIV.

All the people prosecuted were Ethiopian. The study found no evidence to suggest that the law is disproportionately applied against a specific population.

⁹ Simple imprisonment according to the Ethiopian criminal Law ranges from ten days up to three years, however this can be extended to 5 years depending on the gravity of the case. (Article 106)

¹⁰ Articles 2/8 and 17/2, Proclamation No. 200/2000

¹¹ Article 34, Criminal Procedure Code

Media reporting in Criminalisation of HIV transmission cases

From the court cases mentioned above, case one got media coverage, that is how it came to the attention of one of the respondents. The case was referred to the local FM radio station by the Public Relations Department of the district Police Office. An interview conducted with the Police Officer serving as Public Relations Officer for the Police, shows that the police referred the case to the media as part of a prevention strategy; arguing that this made the public as well as PLHIV aware of the consequences of such actions.

Other laws and policies:

Laws relating to same sex sexual relations:

Under Ethiopian law, committing acts of a homosexual nature is a criminal act punishable with imprisonment. Article 629 of the Criminal Code provides that:

“Whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment”¹².

The scope and nature of activities that are prohibited is not defined. As well as the state laws; tribal laws and religious edicts strongly condemn homosexuality. In 2008, a coalition of religious leaders from different faiths adopted a resolution against homosexuality, asking the government to endorse a ban on homosexual activity in the constitution¹³.

From desk research, homosexuals in Ethiopia are highly stigmatised and live in fear of persecution from the state authorities as well as society.¹⁴ However, these experiences are at odds with the evidence from this study; which found no recorded prosecutions for homosexual crimes. This could be as a result of the lack of systematic recording of cases. The extent to which the law is enforced cannot be ascertained as this study did not find any recorded cases. There is a disconnect between the experiences of persecution reported by homosexuals in Ethiopia and the apparent lack of prosecuted cases. There are no organisations that provide HIV services to homosexuals.

¹² Simple imprisonment according to the Ethiopian criminal Law ranges from ten days up to three years depending on the gravity of the case

¹³ 2008 Human Rights Reports: Ethiopia – Section 5 Discrimination, Societal Abuses, and Trafficking in Persons”, United States Department of State website (accessed 25/07/2011)

¹⁴ <http://www.globalgayz.com/country/Ethiopia/view/ETH/homosexuality-in-ethiopia> - accessed on 25/07/11



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Laws relating to injecting drug use:

The law prohibits producing, making, trafficking or using poisonous or narcotic and psychotropic substances without special authorization¹⁵. Injecting drug use is therefore illegal. Article 525 of the Criminal Code of Ethiopia reads as follows:

Whoever:

a) plants, buys, receives, makes, possesses, sells or delivers one of the substances mentioned in sub-article (1) above, to be privately used by himself or another; or

b) uses or causes to be used one of these substances without medical prescription or in any other unlawful manner,

is punishable with rigorous imprisonment not exceeding seven years, and fine not exceeding fifty thousand Birr.

Needles and syringes are not mentioned in any of the legislation relating to illegal drug use. This is probably because this paraphernalia is not associated with illegal drugs traditionally used in Ethiopia. The study did not find any HIV prevention services for people who inject drugs.

Laws relating to Sex Work:

The mere fact of selling sex is not a criminal act under the Ethiopian law. However, the law prohibits individuals from gaining from the proceeds of prostitution. The law also prohibits individuals from maintaining or keeping brothels.¹⁶

Whoever, for gain, makes a profession of or lives by procuring or on the prostitution or immorality of another, or maintains, as a landlord or keeper, a brothel, is punishable with simple imprisonment and fine.

It appears that men and women can sell sex, however, this cannot be done in a brothel or other similar environment and also, others are prohibited from profiting from their gains.

¹⁵ Criminal Code of Ethiopia 2004: Article 525 - Producing, Making, Trafficking in or Using Poisonous or Narcotic and Psychotropic Substances.

¹⁶ Criminal Code of Ethiopia 2004: Article 634 - Habitual Exploitation for Pecuniary Gain.

Restrictions on people with HIV entering or staying in the country

There are no specific entry or residence regulations for people with HIV/AIDS¹⁷. Foreigners with a known HIV infection are not subject to specific residence regulations in Ethiopia. No HIV test result is required when entering the country. Anti Antiretroviral medication can be imported for personal use (quantity to cover duration of stay).

Protective Laws and Policies:

Ethiopia's national response to the HIV/AIDS pandemic is guided by the national policy on HIV/AIDS issued in August 1998. This policy was elaborated through a five year (2000-2004) national strategic framework which was replaced by a strategic plan for the succeeding four years (2005-2008) itself supplemented by the Multi-sectoral Plan of Action for Universal Access to HIV Prevention, Treatment, Care and Support in Ethiopia 2007–2010. Currently, the Ethiopian Strategic Plan for Intensifying Multi-Sectoral HIV Response (SPM II)¹⁸ covering the period 2010-2014 is being finalized. In addition, a number of other policy documents specific to HIV/AIDS issues have been developed in the form of strategies and guidelines. These include: the National Monitoring and Evaluation Framework for the Multi-Sectoral Response to HIV/AIDS in Ethiopia (HAPCO, December 2003);¹⁹ the National Guidelines for HIV Counselling in Ethiopia (2007);²⁰ the National Health Communication Strategy for 2005-2014 (October 2004);²¹ the Guideline for an effective Community Mobilization Strategy (HAPCO, May 2005); the Guidelines for Implementation of Antiretroviral Therapy (2005);²² the Guidelines for Prevention of Mother-to-Child Transmission of HIV (2007);²³ the National Anti-Retroviral Therapy (ART) Strategic Communication Framework (March 2005); and, the Guidelines for Use of Antiretroviral Drugs (2005).²⁴

¹⁷ Information found at: <http://www.hivrestrictions.org/> accessed on 25/07/11

¹⁸ Federal HAPCO, the Ethiopian Strategic Plan for Intensifying Multi-Sectoral HIV Response (SPM II), Final Draft, September 2009

¹⁹ Ministry of Health, National Monitoring and Evaluation Framework for Multi-Sectoral Response to HIV/AIDS in Ethiopia, National HIV/AIDS Prevention and Control Office (HAPCO), 2003

²⁰ Federal HIV/AIDS Prevention and Control Office and Federal Ministry of Health, Guidelines for HIV Counselling and Testing in Ethiopia, July 2007

²¹ National Health Communication Strategy: Ethiopia 2005-2014, Ministry of Health-Health Education Center, October 2004. Page 18.

²² Ministry of Health, Guidelines for Implementation of Antiretroviral Therapy in Ethiopia, Addis Ababa: Ministry of Health, 2005

²³ Federal HIV/AIDS Prevention and Control Office and Federal Ministry of Health, Guidelines for Prevention of Mother-to-Child Transmission of HIV in Ethiopia, July 2007

²⁴ Ministry of Health, Guidelines for Use of Antiretroviral Drugs in Ethiopia, Addis Ababa, 2005



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The National HIV/AIDS Policy

The National HIV/AIDS Policy (1998) recognizes that HIV/AIDS is not only a health problem but also a development problem in Ethiopia. The overall goal of the policy is to provide an enabling environment for the prevention and control of HIV/AIDS in the country. More specifically the policy aims to:

- establish effective HIV/AIDS prevention and mitigation strategies to curb the spread of the epidemic;
- promote a broad, multi-sectoral response to HIV/AIDS, including more effective coordination and resource mobilization by government, NGOs, the private sector, and communities;
- encourage government sectors, NGOs, the private sector, and communities to take measures to alleviate the social and economic impact of HIV/AIDS;
- support a proper institutional, home-based, and community-based health care and psychological environment for PWHA, orphans, and surviving dependents;
- safeguard the human rights of PWHA and avoid discrimination against them;
- empower women, youth, and other vulnerable groups to take action to protect themselves against HIV; and
- promote and encourage research activities targeted toward preventive, curative, and rehabilitative aspects of HIV/AIDS.

The Constitution

The FDRE Constitution enumerates fundamental rights and freedoms and recognizes the basic rights and freedoms outlined in the major international human rights instruments. It recognizes a broad range of basic rights and freedoms, which are relevant to HIV/AIDS concerns, including non-discrimination and equality before the law, access to social services including health and education, participation, employment, the right to marry and found a family, the right to privacy, honour and reputation, and the rights of women and children. More relevant to PLHIV, the Constitution proscribes any distinction based on race, nationality, colour, gender, language, religion, politics, social background, wealth, birth, or any other status. The phrase “other status” has been interpreted to prohibit discrimination on the basis of HIV status.

Employment Laws

The law governing employment is another area of Ethiopian law that explicitly responded to HIV/AIDS concerns. The currently applicable laws governing employment in the civil service and private employment, i.e., the Federal Civil Servants Proclamation and Labour



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Proclamation prohibit compulsory HIV testing for the purpose of employment. The first clause states that “there shall be no discrimination among job seekers or civil servants in filling up vacancies because of their ethnic origin, sex, religion, political outlook, disability, HIV/AIDS or any other ground”. While providing for production of medical certificate as a pre-condition for candidates who qualify for a job, the Civil Servants’ Proclamation unequivocally states that the medical certificate does not have to include HIV test result. It also prohibits HIV testing of civil service employees stating: “any civil servant shall have the obligation to take medical examination, with the exception for HIV/AIDS, when required by the government institution on sufficient ground related to the service”.²⁵ Similarly, the Labour Proclamation states that “it shall be unlawful for the worker to, except for HIV/AIDS test, refuse to submit himself for medical examination when required by law or by the employer for good cause”. This prohibition is intended to address potential discrimination of PLHIV in getting employment opportunities.

²⁵ Article 63/1, Federal Civil Servants Proclamation No.515/2007

Conclusion

The study found that Ethiopia has many laws and policies enacted to protect people living with HIV and also promote an enabling environment for achieving universal access to HIV prevention, treatment care and support:

- The National HIV/AIDS Policy (1998) recognizes that HIV/AIDS is not only a health problem but also a development problem in Ethiopia. The overall goal of the policy is to provide an enabling environment for the prevention and control of HIV/AIDS in the country;
- The Constitution prohibits any discrimination based on race, nationality, colour, gender, language, religion, politics, social background, wealth, birth, or any other status. The phrase “other status” has been interpreted to prohibit discrimination on the basis of HIV status; Federal Civil Servants Proclamation and Labour Proclamation prohibit compulsory HIV testing for the purpose of employment. The first states that “there shall be no discrimination among job seekers or civil servants in filling up vacancies because of their ethnic origin, sex, religion, political outlook , disability, HIV/AIDS or any other ground”.

However, the study found no reported cases where these protections had been invoked by people living with HIV. This is at odds with the recorded cases of discrimination and mistreatment based on HIV status that have been reported by NEP+. Therefore, despite there being many protective laws and policies, these are either not known to people living with HIV, who do not invoke their protection, or enforcing authorities have a poor record of enforcing them.

The study found three examples of punitive laws that could have a negative impact on responses to HIV:

- Intentional and negligent transmission of HIV is criminalized;
- Same sex, sexual relations are prohibited;
- Use of narcotics substances is illegal.

Under the Ethiopian criminal law, people who transmit HIV to others are criminally liable, and thus face prosecution and conviction. The provision in the law criminalises the transmission of communicable diseases; the courts have defined HIV to fall under this category. Whilst data on these prosecutions was hard to come by, the study found four cases that had been successfully prosecuted. In three of the cases, the defendant was



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accused of another sexual offence. In all the cases there were no proofs that the victims were actually infected with HIV as a result of the acts of the accused, as there is no evidence of additional investigations to ascertain this fact. Consequently, we may conclude that HIV positive status of the defendants were used as aggravating factor either to have additional charge or increase the penalty.

Whilst men who have sex with men and people who use drugs are recognized as populations at high risk of HIV infection, the study found no examples of organisations providing HIV services to these populations. This despite the research finding that homosexuals in Ethiopia are highly stigmatised and live in fear of persecution from the state authorities as well as society.

It appears that men and women can sell sex, however, this cannot be done in a brothel or other similar environment and also, others are prohibited from profiting from their gains.

Lack of service providers for these key populations meant that it was difficult to get information on the impact of these laws of the people affected.

Recommendations

The following recommendations are made for the identified stakeholders:

For NEP+, and other relevant stakeholders:

- **Further research** is needed to understand the extent to which the laws identified in this study impact on the responses to HIV, including;
 - Getting a better understanding of the populations concerned in respect of prohibitions of same sex sexual relations and drug use;
 - Getting a better understanding of what investigations are carried out to prove that a person has transmitted the virus;
 - Getting a better understanding of the extent to which the human rights of accused PLHIV have been respected or violated, the impacts of such violations, etc.
 - Getting a better understanding of the levels of law enforcement, in particular to understand why, none of the protective laws have been invoked, in anti discrimination cases.
- **Advocacy:** NEP+ engage with networks of key affected populations to understand what impact the law has on the access to HIV services.
- **Awareness raising:**
 - Of the protective laws among PLHIV and key populations at higher risk of infection;
 - And assist PLHIV to invoke these laws when faced with discrimination;
 - Amongst judges, prosecutors and police of the nature of HIV particularly its transmission to others and how to handle such kind of cases.

For Law enforcement authorities:

- Improve case recording and data maintenance systems, so that these cases can be easily traced, monitored and their impact assessed;
- Promote and enforce laws, in particular, those enacted to provide protection and enable access to HIV prevention, treatment, care and support services.

References

1. The revised 2004 Criminal Code of Ethiopia.
2. Court cases;
 - a. File No. 173310; Federal First Instance Court
 - b. 153416; federal First Instance Court
 - c. 183789; Federal First Instance Court
 - d. 22325; Bahirdar City Court

Appendix

Organisations that completed the criminalisation questionnaire

All the respondents who completed the questionnaires are from government judicial institutions which are in charge of prosecutions and adjudication.

Name of Organization	City
Tigray Police Commission	Mekele
Tigary Supreme Court	Mekele
Federal First Instance Court	Addis Ababa
Ministry of Justice	Addis Ababa
Bahirdar City First Instance Court	Bahirdar

Notes



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