



Challenging Criminalization Globally

Report on pre-conference meeting on gender & sexuality (de)criminalization on the eve of the International AIDS Conference

17 July 2016



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Section 1: Executive Summary

Criminalization adversely affects the individual, leads to degenerated health and rights for our communities and also leads to a shrinking of the space for civil society.

The criminalization of people based on their behavior, identity or status is a worldwide trend. Globally, **people face forms of criminalization that directly impede their rights and demean their dignity** resulting in societal and self-stigma and creating more dangerous environments for these individuals. These people might be living with HIV, sexually and gender diverse people, sex workers and pregnant women, young adolescents seeking an abortion, refugees, people passing through prisons or other places of detention, a married women who is raped, and many other people.

General consensus amongst progressive activists is that criminalization increases stigma and discrimination, pushes behaviors and health seeking under-ground and ultimately results in higher transmission of HIV and other STDs, as well as higher rates of violence against vulnerable people, more and worse violations of rights, and the flat-out denial of rights. This in turn also leads ultimately to less police reporting and justice, and as a result we can say that **criminalisation is making societies and communities less healthy and less just.**

Criminalization extends beyond these target populations to encompass the service providers, human rights defenders, and others serving these highly marginalized and vulnerable populations. As a direct result of this, **criminalization then in turn narrows the spaces for civil society** to work and even exist. As such, an effective response must also deal with the widespread impact of this trend on civil society, health care systems, and institutions at large.

There is no global, regional or even local consensus on the best way to challenge criminalization. The specific means of criminalization varies in each country and even within particular institutions. Some countries may criminalize behaviors by passing legislation. Others may not have explicit laws, but will direct law enforcement or criminal justice resources to police certain behaviors or communities. Yet, the global nature of the trend necessitates a shared analysis of the role that activists, government actors, and funding partners can take to mitigate the use of criminalizing tactics to deny the realization of human rights and equal access to healthcare.

Current research and advocacy from around the globe on criminalisation indicates that a reactionary climate has rolled in world-wide that is **largely directed by authoritarian-minded governments and backed by popular support.** In the wake of backlash to the promise of the Arab Spring and other people-centered movements, the expansion and enforcement of criminalisation has generally been exacerbated by the **overreach of corporate, governmental and religious fundamentalist expansionism.** Underlying this desire to increasingly criminalise are a multitude of sometimes real but more often falsely perceived drivers. The idea that we live in more unsafe times

than ever before and **the desire by many to securitise most aspects of public and private life to reduce possible harm is a pivotal issue** driving criminalisation and enforcement of criminalisation.

Within the ambit of sexual and reproductive health and rights, criminalisation is a powerful force. Impacting lesbian, gay, bisexual and trans diverse, intersex and gender non-conforming people (LGBTIGNC), sex workers, and women and young girls disproportionately. Disproportionately, but not only. **Any criminalisation of a behaviour must be understood to then be potentially applicable to anyone, and not just specific individuals.**

There are **big differences between the LGBTI, sex worker, and women's sexual and reproductive rights** sectors of civil society, the three main areas of gender & sexuality decriminalization. This is not to say these do not overlap and intersect, but in many spaces this is how civil society and government is working. Advocacy around women is naturally the broadest and counters a bewildering array of criminalization, prejudice and abuse including 2nd-class legal status (marriage, inheritance, work, mobility, association, etc.), reproduction (feminine infanticide, child brides, abortion, contraceptives, antenatal care, etc.), and sexuality (lesphobic rape (often incorrectly called "corrective" rape), "honour" killings, female genital mutilation, polygamy, etc.). Advocacy around sex workers is far less broad and far less mainstream, but also a global issue and one that affects millions of women and their families. Meanwhile, advocacy around LGBTI rights is extremely variegated within its own needs, and ranges from being very visible if marginal in a few countries, to being entirely underground in many more.

It is clear that in the era of declining funding for civil society these three sectors and others must cease to work in silos and instead **consider their mutual interests in fighting against criminalisation and for human rights on a broader front.** In aid of this, **an intersectional approach lies at the core of ideal civil society approaches** to the gender & sexuality, bodily autonomy, erotic rights¹ and (de)criminalization bodies of work, precisely because it affects disparate and otherwise somewhat dislocated groups, including lgbtignc people, people living with HIV and AIDS (PLWHA), sexworkers, pregnant women, child brides, people with disabilities, people moving through prisons and other places of detention, and other individuals and communities.

All of these groups find themselves at one time or another, in every country of the world – and increasingly so – legally constrained and / or discriminated against because of gender inequality, lack of accountability, human rights abuses, moral policing, bodily autonomy, religious conservatism, cultural specifics, xenophobia, stigma and discrimination, race, ethnicity and xenophobia, class and caste, income and poverty, lgbtignc phobias, migration and statelessness, refugees' status, choice of work, identity and agency amongst others. **These intersections usually**

¹ The right to mutually consensual sex that fulfils one's erotic desires.

occur at points of extreme vulnerability, marginalization, and exclusion, which in fact makes it all the more obvious where our efforts should concentrate, if we aim to work on a bottom-up approach, rather than a trickle-down approach. **By this we mean we should work to ensure the most marginalised gain full rights and access** and then we can imagine that those with lesser marginalisation would theoretically also gain access, rather than ensuring some semi or relatively-privileged groups gaining access will result in the most marginalised also gaining access.

On the other hand, the focus provided by intersectionality competes with the specific complexities of immensely varied judicial jurisdictions, policing practises, and societal prejudices. And yet, the foundations of any decriminalization campaign must lie deep within universal human rights and human dignity precepts. So any approach must be both **universalist and readily appreciable within the global human rights context, and yet tailored to engage best with local conditions and specific discriminations**. And the best way to ensure that both elements interplay to the greatest benefit of civil society is to have **grassroots advocacy organisations set the pace locally, but articulate their struggles internationally** through multilateral organizations and interdisciplinary dialogues.

The Durban dialogue and contemporary civil society research makes it clear that there is a pressing need to convene a follow-up meeting – which AAI proposes be held in The Netherlands in 2017 – **to establish just such an interdisciplinary dialogue**. The purpose of the dialogue will be to draw together all aspects necessary for a **new combined understanding of decriminalization**, and **possibly developing a framework or roadmap for working together**² in order to work in conjunction with and alongside each other and other excellent work already being done by a variety of partners.

The experts required for the meeting should cover a wide variety of issues and all be top of their field and yet at the same time multi-faceted and innovative thinkers: (including but not limited to) Grassroots/community movement building, LGBTIGNC rights; Women and girls' rights; Sex workers' rights; Feminism and gender; Inequality; Culture and indigenous knowledge and related legal systems; Sexuality and reproduction; Racism; Law and policy advocacy; Medicine and epidemiology; Securitisation; Freedoms and spaces for civil society; Poverty; Policing and military; Globalisation; Governance and accountability; Religion; Research and evidence generation; Public campaigning and communications; Business and corporate social responsibility; Information and Communication Technology; Academia.

² This must be determined by the participants, not enforced from outside.

Section 2: IAC Challenging Criminalisation Globally Meeting

On 17th July 2016, AIDS Accountability International and Ford Foundation convened an international and interdisciplinary dialogue just prior to the International AIDS Conference in Durban, South Africa. Titled **Challenging Criminalization Globally**, the dialogue aimed at convening 30 activists from the LGBTI, HIV, sex-worker, and reproductive rights communities ranging from civil society and funding partners to government experts and policy advocates, to present and debate 12 insights over a five-hour period. The ambit of this work is the sexual and reproductive health and rights area, and importantly the myriad of underlying causes of barriers to accessing quality, affordable, accessible and appropriate sexual and reproductive health and rights (SRHR). These causes include but are not limited to gender inequality, lack of accountability, human rights abuses, moral policing, bodily autonomy, religious conservatism, cultural specifics, xenophobia, stigma and discrimination, race, ethnicity and xenophobia class and caste, income and poverty, lgbtignc phobias, migration and statelessness, refugees' status, choice of work, identity and agency amongst others.

The Objectives of this Report

Capture the dialogue **Challenging Criminalization Globally**, the objectives of which were to:

- a) Discuss trends in criminalisation and decriminalisation the gender & sexuality criminalization of people based on behaviour, identity or status (criminalization of PLWA, LGBTI people, sex-workers, pregnant women, etc.). Identify and examine the common threads / trends that have always existed and that are emerging.
- b) Understand the regional distinctions in how gender & sexuality criminalization manifests itself and highlight and share successful and unsuccessful advocacy lessons regionally and globally. For participants to learn from other partners what strategies are being used to prevent criminalization and what is being done to decriminalize behaviours and people.
- c) Foster partnerships between the different partners / regions in order to enhance effective and sustained impact based on a clear and informed understanding of what the challenges are, what strategies are not working, and what are.
- d) Rethink how civil society deals with gender & sexuality criminalization and decriminalization, and interrogate new lenses, new strategies and new opportunities.



The programme of the dialogue was structured in such a way that the following 3 areas were discussed and interrogated during the course of the day:

- a) **Shrinking spaces for civil society:** assessing the impact of criminalization on spaces for civil society to engage and advocate.
- b) **The punitive zeitgeist:** interrogating the current trend towards “moral policing” and punitive justice, and the prejudicial nature of penal codes and policing / judicial practices.
- c) **Rethinking the civil society response:** reconceptualizing the challenges posed by criminalisation and devising new ways of improving equitable access for all to SRHR.

Provide recommendations for a way forward.

Based on the dialogue, the report and a brief analysis, AAI proposes some key recommendations for a way forward for the work on Challenging Criminalisation Globally.

Section 3: Meeting Report

Theme 1: Shrinking Civil Society Spaces

This section aims to assess the impact of criminalization on civil society spaces for engagement and advocacy on gender and access to sexual and reproductive health and rights.

Dialogue

Hillary Pennington (Ford Foundation) opened the meeting and spoke about how for every advance for progressive civil society, there was a reactionary “push-back”. Pennington said it was important for funding partner organizations to understand that their grantee partners needed to be secure, adaptive and resilient organizations. To this end, the trends in criminalization must be understood and partnerships must be fostered between civil society transnationally – including new thinking on how to work with sectors such as big business.

Phillipa Tucker (AIDS Accountability International) welcomed the participants and provided a brief background based on the concept note (see Introduction above). Emphasis was placed on the fact that criminalisation affects the individual, then collective and civil society. Tucker stated that the dialogue was hoped to be the beginning of more opportunities to discuss and re-think criminalisation globally, and that although it would not be a silver bullet, those do not exist, but it was hoped that the day would be a brick in the wall against injustice.

Mandeep Tiwana (CIVICUS, International) provided the dialogue with a lens, and spoke on “**Tackling exclusion and shrinking spaces for civil society.**” Tiwana asked “What is the depth of a just society?” Even though civil society and government made many promises to maintain or create a just, equal and inclusive society and there is supposed to be equal access to goods and resources, especially for disadvantaged communities, most societies are failing in terms of what they promised in their constitutions versus what people are experiencing on the ground. Civil society is increasingly squeezed in a narrowing gap between the democratic and right-wing regimes. Too many people are excluded on the basis of identities, especially HIV status. Tiwana pointed out that sixty-two people own as much wealth as civil society together, and that 700-million people live on less than US2\$/day. In particular, women broadly face a lack of equality of rights to men, being excluded, for example, from work, property and inheritance.

Tiwana said civil society had risen to meet such challenges, but had itself come under attack, in some democracies, but mostly in authoritarian states. Regressive forces were actively engaged in shrinking civil society space. Non-state actors, often extremely powerful and acting in collusion with the state – such as unscrupulous business persons and market fundamentalists – had

consolidated the neoliberal discourse, and reduced the relevance of our hard work on social cohesion.

“Civil society is not a passive bystander to all of this; we are challenging it”. Civil society had stepped up to the plate when international and state institutions had failed to respond. Tiwana noted that in 109 countries, core civil society freedoms were being challenged. The rhetoric of the terrorism discourse had been used to restrict civil society’s ability to express and organise – and key populations face additional challenges as civil society and elites collide. But civil society refuses to accept being threatened: in Guatemala, civil society mobilised against the corrupt president and he was forced to resign because of fraud charges; in the USA, the #BlackLivesMatter campaign was challenging racist police brutality; while in South Africa, the #FeesMustFall mobilization put a temporary halt to university fee increases.

Additional Research

Amnesty International (AI) made it clear in its 2015/2016 *The State of the World’s Human Rights* annual report³ that “Human rights defenders continued to be targeted for their work. Standing up for human rights was often a dangerous and even lethal choice, as many governments oversaw an erosion of civic space and the criminalization of dissent.”

The AI report stated that although 2015 had been the African Union’s “Year of Women’s Empowerment and Development towards Africa’s Agenda 2063,” “women and girls frequently suffered abuse, discrimination and marginalization in many countries – often because of cultural traditions and norms, and the institutionalization of gender-based discrimination through unjust laws. In conflicts and countries hosting large numbers of displaced people and refugees, women and girls were subjected to rape and other forms of sexual violence... Abuses – including persecution and criminalization – of people who are or are perceived to be lesbian, gay, bisexual, transgender and intersex (LGBTI) were ongoing in many countries, including Cameroon, Nigeria, Senegal and South Africa.” AI said national campaigns against child marriage were launched in countries such as Burkina Faso, Madagascar, and Zimbabwe, but the practice was reported to be on the rise in Libya. Regarding Sub-Saharan Africa, AI reported: “Outside the context of elections, many governments stifled dissent and muzzled rights to freedom of expression. Peaceful assemblies were often disrupted with excessive force. Many civil society organizations and human rights defenders faced an increasingly hostile environment, including through use of laws aimed at restricting civic space. Such patterns of increasing restrictions took place in a wide spectrum of countries, including Angola, Burundi, Cameroon, Chad, the Republic of Congo, Côte d’Ivoire, Equatorial Guinea, Gambia, Kenya, Lesotho, Mauritania, Niger, Rwanda, Senegal, Sierra Leone, Somalia, Swaziland, Togo, Uganda, Zambia and Zimbabwe.”

³ <https://www.amnesty.org/en/documents/pol10/2552/2016/en/>

“Women across the Asia-Pacific region were frequently subjected to violence, abuse and injustice, including gender-based discrimination and violations and abuses of sexual and reproductive rights. In Nepal, gender-based discrimination resulted in a range of negative impacts on women from marginalized groups. These included limiting the ability of women and girls to control their sexuality and make choices related to reproduction, such as to challenge early marriage or to ensure adequate antenatal and maternal health care. Stigma and discrimination by police officials and authorities in India continued to deter women from reporting sexual violence, and most states still lacked standard operating procedures for the police to address violence against women.” Regarding Asia-Pacific, AI reported: “A rise in human rights activism that had emerged in the Asia-Pacific region in recent years continued. Protests and other actions, however, were frequently overshadowed by authorities’ efforts to curtail freedoms of expression, association and peaceful assembly, including through force and violence...” Notable violators were the North Korean, Chinese, Vietnamese and Myanmar one-party states and the Thai military dictatorship, but the problem was widespread.

Meanwhile in Latin America, in the same report, AI noted that attempts to decriminalize abortion in emulation of Uruguay made little headway across the region⁴. In the Americas, “Even when access to abortion services was legal in certain cases in other countries, protracted judicial procedures made access to safe abortion virtually impossible, particularly for those unable to pay for private abortion services. Restricted access to contraception and information on sexual and reproductive issues remained a concern, especially for the most marginalized women and girls... LGBTI people faced ongoing discrimination and violence across the region, despite progress in some countries on legislation prohibiting discrimination on the grounds of sexual orientation and gender identity.” Latin American advocates for access to abortion, access to contraception, equality for LGBTIQGNC people have all faced shrinking space, whether it be an inability to access sufficient funding to do their work, or the criminalisation of the issues which they are advocating for.

The Middle East and North Africa (MENA) was overshadowed by the migrancy crisis generated by the wider shocks of the armed conflicts in Syria, Iraq, Yemen and Libya, to which AI said the European Union had “singularly failed to come up with a coherent, humane and rights-respecting response...” and which had by the end of 2015 created more than 5-million refugees and asylum-seekers and more than 13.5-million internally displaced persons. “Women and girls continued to face discrimination under the law and in practice in all countries in the Middle East and North Africa region; in many, they also faced high levels of sexual and other violence. Personal status laws commonly accorded women fewer rights than men in relation to divorce, custody of children and inheritance, while several countries’ nationality laws barred women married to foreign spouses,

⁴ And in other nominally Catholic jurisdictions such as Ireland, Poland and the Philippines (though it was decriminalized in Mozambique).

unlike men with foreign spouses, from passing on their nationality to their children.” “Honour” killings of rape victims by their family members remained problematic across much of the nominally Islamic world such as Palestine, Jordan and Pakistan (in Pakistan, “At least 4,308 cases of violence against women and girls were reported for the first six months of 2015. The figure included 709 cases of murder; 596 of rape and gang rape; 36 of sexual assault; 186 of so-called ‘honour’ crimes; and 1,020 of kidnapping. Despite the enactment of the Acid Control and Acid Crime Prevention Act in 2011, at least 40 acid attack cases were recorded between January and June.”) AI noted that governments across MENA remained intolerant of criticism and dissent and curtailed rights to freedom of expression, association and peaceful assembly.

Regarding “the continuing prevalence of stereotypical and discriminatory attitudes towards women and their human rights [across MENA, the] most public and extreme manifestation of such prejudice and misogyny were the crimes, including rape, forced marriage, sexual slavery and summary killing, committed against women and girls by IS forces, particularly in Iraq. But throughout the region, the prevalence of gender-based violence and lack of redress for survivors was anything but exceptional. By the end of 2015, the heady hopes of political and human rights reform that the mass popular uprisings of the Arab Spring had aroused across the region four years earlier had been all but totally dashed. Instead of political and social reform, economic advance and greater protection of human rights, the region was gripped by armed conflict, tightening state repression, abuse of rights, and the threat of attack by armed groups. Yet, amid the gloom and despair, thousands of valiant individuals – human rights defenders, medical workers and volunteers, lawyers, journalists, community activists and others – showed through their actions that the hopes expressed in 2011 remain alive, deep-seated and anything but an empty dream.”

Freedom House, the 75-year-old democracy and civil liberties monitoring organization, in its 2016 Freedom in the World Annual Report, titled *Anxious Dictators, Wavering Democracies: Global Freedom Under Pressure*⁵ showed that the democratic promise evoked by the Color Revolutions of the 2000s and the Arab Spring of the 2010s – both driven by civil society – had since been significantly eroded by state and sub-state reactionary forces: “The world was battered by crises that fuelled xenophobic sentiment in democratic countries, undermined the economies of states dependent on the sale of natural resources, and led authoritarian regimes to crack down harder on dissent. These developments contributed to the 10th consecutive year of decline in global freedom.

- “● The number of countries showing a decline in freedom for the year — 72 — was the largest since the 10-year slide began. Just 43 countries made gains.
- Over the past 10 years, 105 countries have seen a net decline, and only 61 have experienced a net improvement.

⁵ https://freedomhouse.org/sites/default/files/FH_FITW_Report_2016.pdf

- Ratings for the Middle East and North Africa region were the worst in the world in 2015, followed closely by Eurasia.
- Over the last decade, the most significant global reversals have been in freedom of expression and the rule of law.”

“The very limited steps that were hailed as victories in 2015 – that women in Saudi Arabia, who must still obtain a male guardian’s permission to conduct many basic daily activities, were finally able to participate in tightly controlled elections for largely powerless municipal councils, or that a ridiculously outdated law criminalizing adultery was struck down in South Korea – demonstrated just how low the bar has gotten in evaluating progress toward gender equality. Meanwhile, in many parts of the world, women’s economic aspirations and the broader economies of their countries continue to suffer from unequal rights to property and inheritance as well as discriminatory practices that prevent women from working outside the home.”

It is thus within this broader economic downturn that criminalization of marginal and vulnerable populations is escalating. Freedom House stressed there had been a lack of progress for women more broadly: “More than 20 years after members of the United Nations met in Beijing to establish principles for advancing gender equality, women remain at a distinct disadvantage around the world in terms of political rights and civil liberties. Despite modest increases in women’s political representation and the election of a number of female heads of government, examples of genuine progress are few and far between.”

Freedom House stressed that “Although some authoritarian rulers sought to blame their problems on meddling by democratic powers, it became clear during 2015 that larger economic forces were at work. China’s slowing growth, punctuated by a stock-market plunge and abrupt devaluations of the currency, helped to reduce the prices of many commodities, slashing the export revenues of dictatorships around the world and threatening the economic underpinnings of their legitimacy. The price of oil in particular, which was also pushed down by Saudi Arabia’s refusal to curb production and a longer-term increase in output by the United States, threatened the economic well-being of repressive petro-states from Angola to Azerbaijan. Wary of spending cuts, declining living standards, and the social unrest they could cause, most of these regimes cracked down on rights activists and other critics.”

A detailed **European Foundation Centre (EFC, Europe)** report published in 2016, *The Shrinking Space for Civil Society: Philanthropic Perspectives from Across The Globe*⁶ opens by stating that “The shrinking space for civil society and reported violations of fundamental and democratic rights are a

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http://efc.issuelab.org/resource/the_shrinking_space_for_civil_society_philanthropic_perspectives_from_across_the_globe

global phenomenon. Foundations have reported problematic laws in Algeria, China, Colombia, Egypt, Ethiopia, India, Russia, Syria and Zimbabwe, just to name a few. And EU countries are hardly immune... Government motivations for restricting civic space differ: national security arguments and a focus on counterterrorism policies; economic interests; fear of a strong civil society; and ‘aid effectiveness’ arguments by recipient governments of development aid... National sovereignty arguments are also used specifically to control or block foreign funding. Fuelling the problem in some countries is the sense among citizens of disappointment with inept governments which cannot deliver the promise of democracy and solve economic problems.”

In the report, **Sean McKaughan** of the **Fundación Avina**, which operates in 21 Latin American countries, gave a continental overview of how democratic regimes had actually undermined social space. Two trends had arisen in the past three decades since the mid-1980s during which time the “majority of Latin American countries saw democracy emerge following military dictatorships that [had] restricted human rights across the board.”: “authoritarian progressivism”; and “state monopoly”. Explaining “authoritarian progressivism,” he stated that “In the 1990s and early 2000s, centre-right administrations tolerated but largely ignored civic organisations and maintained checks on the access of social movements to public spaces. In the last decade, several left of centre and or populist governments emerged from civil society to take power democratically with a progressive agenda. Unfortunately, the expected golden era for civil society in these countries has not materialised, as some of these governments implemented progressive public policies by adopting authoritarian practices and eliminating democratic checks and balances.” An example here would be Brazil under Lula da Silva.

Explaining “state monopoly,” McKaughan stated that “Governments that claim to lead the social agenda often ignore or even compete with social organisations. Far from valuing them, public officials often perceive independent civil society organisations as competitors or adversaries at odds with government aspirations to control power and take credit for social progress. As the state establishes a monopoly on the promotion of progressive social policies, it begins to undermine the legitimacy of respected citizen organisations. The result is a shrinking capacity of civil society to operate as an independent public forum where alternative ideas and perspectives are considered.” An example here would be Venezuela under Hugo Chávez.

Later in the report, **Emily Martinez and Iva Dobichina** of the **Open Society Foundations (OSF, Europe)** cited as an example of hostile new legislation the “foreign agents” law in Russia which saw “a wave of invasive inspections against NGOs” that set absurd standards of staff health, office air quality etc. Although such laws “are framed as legitimate efforts by governments to combat money laundering; encourage transparency and accountability; ensure that tax breaks are given only to organizations that are ‘genuinely charitable’; and counter terrorist financing... when one takes a closer look at the laws being proposed and passed across the globe, a gap emerges between the motivations given and the measures taken.” Here they cited the aftermath of the Al-Shabaab terror attacks in Kenya in 2014, during which the government shut down 15 NGOs and put 540

organizations on a list of deregistered NGOs, and in 2015 even claimed that two human rights organizations that worked with the UN Security Council Counter-terrorism Committee had “ties with Al-Shabaab.”

Martinez and Dobichina noted that although “it was true that some of the groups most at risk are those working on human rights and community-based activists tackling thorny and deeply-rooted issues of inequality – from community and environmental activists challenging business-investment and land-tenure policies, to membership-based LGBTI and education organizations seeking greater equality within systems – increasingly, however, the spaces in which development service providers, humanitarian groups, and unions operate are shrinking.”

They stated that “Several countries have introduced burdensome reporting requirements for NGOs and high penalties for non-compliance, including requiring additional staff responsible for anti-money laundering and counterterrorism financing compliance; detailed activity reporting and assessment of work; and compulsory and annual auditing... Such legislation results in increased surveillance, restricted financial flows, lack of due-process requirements, and suppression of dissent and expression. Experts have attributed the trend to a number of complex factors. Many governments are concerned by the wave of civil unrest that began in Tunisia in 2010 and has since touched on countries as varied as Brazil, Russia, Thailand, Venezuela, Spain, Hungary, the US and Mexico. States also increasingly identify civil society actors as ‘political opponents,’ even though they are non-partisan...”

Further in the report, **Joachim Rogall and Atje Drexler** of the **Robert Bosch Stiftung (RBS, Germany)** made the salient point that criminalization of civil society spaces often went far beyond legislation, bureaucratic harassment and red tape entanglements: “It is not only the legal and political frameworks that have been narrowing the room for manoeuvre, but also carefully designed public campaigns aiming to discredit civil society organisations and to stir up distrust in their leaders...” For example, in Russia, “New legislation like the so-called ‘foreign agent’ law; high profile trials against civil society actors; and an overall atmosphere in which the questioning of government policies or cooperation with a foreign organisation may be publicly denounced as ‘unpatriotic’ or ‘treasonous,’ all challenge the functioning and vitality of Russian civil society.”

A free media is also often the litmus test and an enabler of broader civic rights, and an ally of civil society in efforts to attain human rights and social justice for all. It is therefore of deep concern that **Reporters Without Borders (RSF)** General Secretary Christophe Deloire warned in RSF’s 2016 “World Press Freedom Index” annual report⁷ that “It is unfortunately clear that many of the world’s leaders are developing a form of paranoia about legitimate journalism. The climate of fear results in a growing aversion to debate and pluralism, a clampdown on the media by ever more

⁷ <https://rsf.org/en/news/2016-world-press-freedom-index-leaders-paranoid-about-journalists>



authoritarian and oppressive governments, and reporting in the privately-owned media that is increasingly shaped by personal interests.” The report stated that “Ever since the 2013 Index, RSF has been calculating indicators of the overall level of media freedom violations in each of the world’s regions and worldwide. The higher the figure, the worse the situation... The decline since 2013 is 13.6%. The many reasons for this decline in freedom of information include the increasingly authoritarian tendencies of governments in countries such as Turkey and Egypt, tighter government control of state-owned media, even in some European countries such as Poland, and security situations that have become more and more fraught, in Libya and Burundi, for example, or that are completely disastrous, as in Yemen. The survival of independent news coverage is becoming increasingly precarious in both the state and privately-owned media because of the threat from ideologies, especially religious ideologies, that are hostile to media freedom, and from large-scale propaganda machines. Throughout the world, ‘oligarchs’ are buying up media outlets and are exercising pressure that compounds the pressure already coming from governments.”

Theme 2: The Punitive Zeitgeist

This section looks at the Durban dialogue's interrogation of the current trend towards "moral policing" and punitive justice, and the prejudicial nature of penal codes and policing / judicial practices.

Dialogue A: Sex work

Panel Facilitator **Kenyon Farrow (Treatment Action Group (TAG), USA)** introduced the session on sex work noting that the criminalization of sex-work was not merely restricted to policies and legal statutes, but that criminalization was endorsed by non-state actors too. Farrow said that the findings of a study of the TAG's partners on the benefit of access to anti-retroviral treatment in the context of couples showed almost no HIV transmission. Despite this, as the communities most impacted by HIV/AIDS, LGBTIGNC, sex workers and IDUs are criminalized, or unofficially discriminated against by non-state actors. This criminalisation is what allows for HIV transmission rates to rise. As more data is released on biomedical treatment and prevention, we can't forget these communities that often have the least access to health-care. Farrow emphasised the need to focus on the people most affected or we would have even further to go than we thought.

Gareth Durrant (Asia Catalyst, China) presented on the frequent use by police in China of the presence of condoms as evidence of sex work. Asia Catalyst did grassroots advocacy and documentation and used its documentation of human rights abuses to advocate for local change; it also did sustainable management training for civil society. Sex-work is illegal in China and there is considerable abuse by police of sex workers when detaining and arresting sex workers. Research done by Asia Catalyst in three major cities in China found that police used entrapment, extortion, solicitation of monetary bribes, and verbal and physical aggression against those they accused of engaging in sex work. Unfortunately, the research did not disaggregate data for the LGBTI communities in the three cities, but over half of the sex workers interrogated by police are transgender females. 40% of sex workers interviewed had at some point been arrested and given fines. Police would lie in wait outside hotels or other venues and conduct searches for condoms in the room – whether used or unused. The presence of condoms automatically was taken to presume the inhabitants of the room had engaged in sex work – and the police could sentence the arrested persons directly to 15 days administrative detention or a US\$700 fine, without recourse to judicial appeal. This practice undermines the work of the Centres for Disease Control and Prevention (CDC), which since 2002 has worked with the Chinese government to help curb the spread of HIV/AIDS by distributing condoms, but CDC condoms are often removed by police, so the success of the programme is skewed.

Onkokame Mosweu (African Sex Workers' Alliance (ASWA), Botswana) said that civil society had to go beyond asking whether sex work criminalization was automatically a bad thing. Mosweu noted that 94% of Zimbabwean sex-workers had been abused and did not report this because they

had no one to whom to report the violation as to do so would criminalize themselves as sex-workers. In South Africa, the figure stood at 78%, and the Hands Off project was working to mitigate violence and abuse against sex workers. 94% of sex workers had had their rights violated according to Hands Off research. Law enforcement were the custodians of the law but ultimately did not know the law or did not care. Mosweu cited a case in Cape Town where sex workers were forced to swallow used condoms. Human rights knowledge was not widespread, and global commitments were ignored – including by health-care workers who do not know or care what happens at the United Nations level. We need to rethink how we talk about those who may never have the privilege to be in a dialogue such as this one. We need to rethink how such knowledge was transmitted – including to police and nurses.

David Patterson (IDLO, The Netherlands) spoke to broader issues about the police and noting that when we consider police we cannot separate out sex work, injecting drug users and sexual diversity. Patterson suggested that looking at the work by looking at it from a police perspective was a new and necessary part of IDLO work. Patterson asked why the police are so important, what is currently being done, what needs to be done and what the urgent and immediate steps need to be? Police are the gatekeepers, they decide who gets charged, who goes to prison and they do sexual violence. Police are so important in hostile criminal environments – then it's even more important to work with police for e.g. if Patterson was able to get the police station to help a client before the police arrested them, then they don't get arrested. For example, Patterson noted that although sexual diversity was enshrined in the Bill of Rights in the South African Constitution, police remained important in defending sex-worker rights in that they were the gate-keepers in the criminal justice system – deciding on who gets charged and who goes to jail – as well as a source of sexual violence and extortion. Patterson made the point that even in jurisdictions that had criminal laws hostile to sex work, it was even more important to work with the police. Patterson cited several examples: in Egypt, the Al-Shahab organization engaged with the police via a capacity-building programme including HIV literacy programmes; in Lebanon, the Skoun organization advocated the reform of drug-lords and drug-users, taking a rehabilitation rather than imprisonment approach, and did workshops for the police on drug abuse; while in Tunisia, the UN Office on Drugs and Crime's practical guide for injected drug use was promoted among injecting drug-users.

The difficulty was that the police were very hierarchical so the question remains of whether to engage at the top level or at grassroots level? Police were not interested in the public, they were interested in crime control. We need funding (a big challenge), and we need to support and advocate with national AIDS programs and help them to reach out (though normally the managers have a medical background and are uncomfortable with the police). Immediate steps should include documenting work with police, evaluating its impact and disseminating this.

Meena Saraswathi Seshu (SANGRAM, India) spoke to the fact that in India, on one hand, the Ministry of Health issued condoms (though they could not be sold commercially), but on the other hand, the same condoms were used by the police and judiciary to criminalize sex work, being used as evidence in court. Seshu said SANGRAM strongly believed in the collective agency of sex-workers, so when a policeman threatened to rape a sex-worker, it was taken up vociferously to explain to policymakers that sex-workers had a voice and would use it. The problem, however, extends up to the Supreme Court which decided under Section 377 that people who love others of the same sex must be criminalized. One policeman stated that sex-workers had no right to be mothers, so the prejudicial attitude has an impact on their lives beyond the actual sex work. However, this prejudice is not just state-lead, but non-state actors and ordinary members of society are involved in fostering just such a climate as well. Fighting for sex worker rights was thus a fight against both the state and society. Sex worker pride marches helped establish visibility and stake a claim to human rights. There is a network of sex worker organizations across India that operates in their own vernacular languages.

Kiran Deshmukh (VAMP, India) stressed that anything that advocates, donors and law-makers planned to do regarding the sex-worker community had to have the engagement of the community at the very beginning. Deshmukh said that VAMP's very first principle was that it was a community with a collective voice, not individual voices and that this had helped to address disputes within the community so that it could face conflicts originating from outside. A collective response to state violence had proven to be a very effective mechanism of self-defence as the collective could demand accountability – and this also applied to getting treatment for HIV-positive collective members in government hospitals etc, and to law-making that affected the community.

Farrow's Summary:

- We need to go beyond condoms and thinking about prevention methods and what to do in the context of criminalization;
- Getting police to engage, support and understand sex work is vitally important to public health;
- We need to understand the role of fundamentalist and Western evangelical churches and how this is tied to the framework of sex trafficking;
- We need to be more critical of what is happening under the guise of counter-trafficking work;
- We need to move beyond mere criminalization and state-lead violence as our framework;
- We need to ensure the sex-worker community remains at the centre of analysis – and really think from the bottom up.

Dialogue B: Sexual diversity

The scene was set by Facilitator **Tashwill Esterhuizen (Southern African Litigation Centre (SALC, South Africa)**, who said that trends over past years had demonstrated that there was a significant

lobby for enhanced criminalization of Sexual Orientation and Gender Identity and Expression (SOGIE). The criminalization of same-sex practices pushed people away from their needs and societal development, and promoted stereotypes. Esterhuizen said LGBTI people found it very difficult to operate and to form an LGBTI organization in a criminalized environment. The rights contained in national constitutions applied to all persons and all human beings – and this should include LGBTI people. LGBTI communities were as vulnerable to HIV as any other segment of society. Many African countries continue to criminalize homosexual intimacy under colonial-era sodomy laws – but don't actually criminalize homosexuality itself. So, in Botswana the criminalization of same-sex sex does not extend to the criminalization of individuals who are attracted to people of the same sex: while same-sex sex is a crime, it is not a crime to be gay in Botswana. LGBTI people have fundamental rights and just being gay does not make you a criminal: you have fundamental rights so this creates a space where they can be recognized. Yet in Botswana LGBTI rights are not specifically protected under the constitution, so the sodomy laws are used to say that you can't recognize an LGBTI organization because it will be promoting criminality, i.e. same-sex sex.

Reverend Jide Mccauley (House of Rainbow, Nigeria) said that laws were supported and used against LGBTI people by faith leaders and politicians – but these leaders had been put in place by the people, so they had to be engaged with in order to stop their lies, arrogance and discrimination. Mccauley said the language used in the debate on decriminalization was very important and LGBTI people themselves had to be educated. Religious homophobia was being challenged on the grounds that it was unjust to use the Bible to criminalize LGBTI people; LGBTI people and others needed to be educated in interpreting the Bible; the sacred text should not be used to condemn anyone. Mccauley stressed the importance of understanding Africa's own history and that same-sex relations were widespread in Africa long before the colonialists arrived. Mccauley said there was a need to foreground homosexual voices so that they were not only spoken about, but spoke in their own right. There was a need to educate people on re-examining same-sex in the Bible. There was a need for religious leaders to provide pastoral care to the LGBTI community and their families. And there was a need for an African queer theological journal.

Alejandro Brito (Letra S, Mexico) spoke about how prejudice could lead to criminalization of innocent gay men. Many of the vulnerabilities of gay men arises because of societal response and hate towards their sexual orientation. In particular, Brito cited the notion of "crimes of passion" which was the stigmatizing of the relationship within cases of LGBTI homicide, the claim being that there was more "passion" in gay relationships and thus a greater need to kill; there was a police need to show the killer as "psycho" because LGBTI people were not seen as adequate, sane, individuals. About six LGBTI people were murdered each year, and Letra S was the only Mexican organization set up to track homicidal violence against homosexuals.

Delane Kalembo (African men for Sexual Health and Rights (AMSHer), South Africa) said AMSHeR was looking at intersectionality – at policies that decriminalized the LGBTI community, but also at

laws that had an impact on married women, and laws that discriminate against young people because of different ages of consent between girls and boys. Kalembo said that advocating for law and policy reform was a more comprehensive approach in that it allowed AMSHeR to support other movements in a cross-movement alliance. Context-specific strategies should be led by the affected communities themselves, while continent-wide decriminalization was not specific enough because the legal context changed from country to country. Nevertheless, there was a demand for regional approaches that were inclusive, and in which true capacity was built for community organizations, and in which governments were held accountable for the rights of communities.

Zhen Li (CIDA, China) told of his experiences living as a gay man in Beijing for over 30 years. Zhen Li said the police would ask groups of people in public to show their nails, and if you bent your hands in a certain way, you were arrested. Likewise, the police asked people to show the bottom of their shoes; the way in which you bent over supposedly “displayed” your sexual orientation. To have sex as a gay man in China, you had to go by a public toilet. In detention centers, detainees must show the warders how they have sex. No-one in the LGBTI community pays attention to safe sex; the objective is to fulfil one’s sexual needs quickly. How civil society manages to work in this narrow space is by very loudly speaking about HIV and doing LGBT work quietly on the side. Zhen Li emphasised that there were no laws protecting LGBT in China but rather censorship laws which ban LGBT. LGBT, human rights and advocacy civil society organisations cannot register in China (only service organisations) thus creating a barrier to them being able to operate (and providing a means to shrink their space in which to operate). Zhen Li finished with a question on how this narrowing affects individual human rights activists on a personal level: “How do we, as activists for human rights, deal with these insecurities? Activists from all over the world can identify with these struggles.”

Esterhuizen’s Summary:

- There is a need to focus on litigation to enforce progressive LGBTI gender & sexuality policies;
- There is a need to destabilize heteronormativity, especially at the grassroots level; and
- Currently, true allies do not lead the sexual identity movement, so we need to let them lead from the front.

Dialogue C: Women’s Sexual & Reproductive Rights

The session was facilitated by **Sibongile Ndashe (Initiative for Strategic Litigation in Africa (ISLA), South Africa)** who noted that the compulsory HIV testing of rapists was a well-meaning law that may have opposite consequences: the state is no longer protector, but a violator of human rights; this kind of criminalisation of HIV transmission sets the wrong tone for engagement on women’s sexual rights. Ndashe used that controversial example to ask what it really meant in practice to challenge criminalization in the fields and places that we work.

Arnetta Rogers (Positive Women’s Network (PWN), USA) spoke on how HIV criminalization and laws had an impact on women in the US, speaking of “reproductive oppression”. HIV transmission was not required for criminalization in that two-thirds of the laws criminalized HIV exposure that posed a low or no risk of transmission, such as spitting. There was a targeting of sex-workers or assumed sex-workers, and police especially focused on trans* and gender non-conforming populations. There were many collateral consequences of this, such as being registered as a “sex offender,” loss of child custody, “aggravated prostitution” charges, and an increased likelihood of violence and abuse. Sex workers and women of color were most disproportionately affected by criminalization statutes. PWN’s response was to make policy recommendations on the following: upholding human rights for all; eliminating HIV exposure laws; engaging women’s communities; ensuring human rights were upheld when prosecutions occurred; and alleviating the barriers to HIV disclosure.

Ricky Nathanson (Sexual Rights Centre, Zimbabwe) spoke of the domino effect that criminalization had on transgender women. Nathanson stressed that although trans* community was often encompassed within the larger lesbian and gay framework; it must be seen as having its own identity and own specific issues. In Southern Africa, sex and sexuality was dominated by morality, religion and culture, not by HIV and health. Thus, trans-diverse people were often accused of “destroying the moral fiber of society” though there was no law in Southern Africa that made it illegal to be transgender. In Botswana the penal code outlawed consensual sex between men and women of the same sex; while in Namibia and Swaziland, the sodomy law was used against gay men and transwomen. So, the penal code on sodomy was often used against trans* people, and there was also the continued application of restrictive laws and social structures – and some trans* people are denied access to antiretroviral treatment in jail. There were too many myths: the issue of restrooms is about nervousness about which is the “right one” to use for example. Nathanson noted that there was a lack of information on transgender lives: issues of transgender women were swept under the carpet.

Megan McLemore (HRW, USA) spoke on law enforcement and HIV risk for transgender women in the US, saying that 56% of transgender women of color were HIV positive, vs 17% of white transgender women. They experienced high rates of every factor that increased the risk of HIV infection: incarceration (1 in 5 transgender women and 1 in 2 of African American women experienced incarceration); poverty; homelessness; and violence (13 trans* women had been killed so far in 2016). Data was unfortunately scarce on HIV transmission in jail, but 1 in two trans* people of color contracted HIV.

Ndashe’s Summary

- The lack of proper data is problematic for advocacy organizations;
- We need to interrogate the role of the law as there has been a legislative pushback with the passing of so many bad laws;



- We need to re-examine what engaging the state looks like to come up with better laws; and
- We need to be documenting transgender factors of vulnerability, especially regarding prisons.

Theme 3: Re-thinking civil society responses to (de)criminalisation

This section recapitulates the **Challenging Criminalisation Globally** dialogue's attempt to reconceptualize the challenges posed by criminalization in the realm of SRHR, and devise new ways of fighting back.

Phillipa Tucker, (AIDS Accountability International (AAI)) facilitated this session, and as co-organiser of the event with Ford Foundation, emphasised the importance of all the other sessions feeding into this final analysis. Tucker, in preparing the dialogue, had found that it was helpful to consider panels by groups of people (women, sexually diverse people, sex workers), but that it is obvious that these groupings are also artificial and that we used them only for a practical thematic reason for the dialogue. This was emphasised when Tucker had one-on-one discussions with each presenter (and some others who could not make it) and this "lucky" and informal research opportunity of interviewing 40 criminalisation activists from around the globe only emphasised the need for the movement to rally around each other, and around a unifying issue such as bodily autonomy.

Stijn De Klerck (BGHEI, China) noted that LGBTI was a very sensitive topic in China, such that advocacy organizations could not properly register as NGOs. There was no open communication about what was allowed and what was not, while what was openly communicable was controlled by the government. This created a "grey zone" in which one could not openly discuss human rights, or democracy and had to maintain a silence on LGBTI rights. As activists, we dealt with these insecurities, inequality and corruption by making people go through legal procedures to deal with grievances as there was a new acceptance of legal cases, which then gained attention from the mainstream media.

Liu "Michael" Yan (CCAHS, China) said that one positive development is that homosexuality had been decriminalized in 2001 and was no longer considered a "disease". But now the government was scrutinizing LGBTI organizations rather than the individual as it wants to be the one that delineates LGBTI visibility. In China, a "Three Nos" policy prevailed: 1. No Disapproval, but 2. No Support, and 3. No Promotion. Censorship laws were in place that banned LGBTI activities so LGBTI organizations could not formally register – unless they positioned themselves as HIV/AIDS organisations; if you registered as a service, this was tolerated but advocacy was impossible. Government had special "G spots" which help to keep you in the grey zone of tolerance where you could be louder about HIV and silent about LGBTI. It was important to work with influential and respected partners, avoiding "confrontational" language about human rights, democracy (rather, we talk about non-discrimination and equality). Homosexuality was decriminalized so the individual identity is OK, but government was worried about any organising around the issue. We made sure to organise events that did not clash with important Chinese dates. Also, the scale and size of our events is very important – if you have a festival, the government notices, so a small film screening is better. On International Women's Day, five feminists were arrested for handing out flyers against

sexual harassment. These women were held in prison for more than a month. Anything seen as picking quarrels and provoking trouble invites a response from law enforcement: human rights lawyers have also been arrested, so this is not easy to navigate. But the Chinese are opening legal channels with citizens, whereas before, cases brought by activists were thrown out; now there is an affirmation of the rule of law, so court cases help inject an awareness of the issues into broader society.

Sonia Corrêa (ABIA, Brazil) began with the statement that Correa is convinced that our aspirations for erotic justice and gender equality require us to invest in the transformation of the dominant legal thinking. Correa noted that criminal law in the West was a body of laws that had been established by expansionist powers, so criminalization had been promoted by the colonial powers and there was a direct connection between penal codes and colonial law. But the traces of a Roman legal legacy were obvious, and preceded the colonial era: the European tradition of the state's power to punish came from deeply ingrained canonical laws, so this was transmitted from god to the settlers to local powers like the chiefs. A plethora of enemies were created (witches, sodomites, etc.), wrapped up in notions of guilt and penitence, and the voice of the victim disappeared. These were established on biased racist psychological assumptions, and engrained into the practice of criminal law. The centrality and longevity of this colonial criminal law was demonstrated by criminalization in Brazil where the Iberian penal code of the 16th Century predated the constitution. Under these, sex work and abortion were criminalized. Punitive power is expended when society and structures become more hierarchical and power is wielded by the insecure few over the many.

Then came capitalism in which a (Brazilian) police state was created with its central premise in "law and order." In addition, over the past 30 - 40 years, the ideology of the state's punitive power had expanded, with increased security measures, and the creation of police states. On the other hand, there had been an increase of social and urban violence, such as gangsterism, gender-based violence, and drug wars. There was currently a paradox where under democracy, there were more people in prison than under the previous autocracy, so we need to look at creating a society without prisons. Incarceration is highly selective: black, poor and marginalised people are targeted. Correa asked whether criminalization, as it currently stands within the justice system, effectively upheld the protection of fundamental human rights? Can we continue using criminal law to regress restrictions on LGBTI communities? This means us who are doing gender, erotic justice are challenged about our own conceptions of criminal law. We dare to engage critical thinking proposals ideas and processes, ensure the existence of minimal criminal justice systems in our society. We need to review our own perceptions of criminal law.

Sibongile Ndashe (ISLA, South Africa) asked who was being criminalized under current conditions, and what the pay-off was for the authorities of expanding the scope of who was criminalized? Ndashe said litigation around the African continent had been winning cases on the universality of

human rights, arguing that your identity does not remove your human rights – yet what was still criminalized was conduct. Ndashe said while the language of advocacy had not changed, there had been a continual broadening of what was criminalized. The criminalization of conduct automatically criminalized identity. The overextension of criminal laws meant LGBTI victims of abuse were unable to seek redress from the police because they believed that by virtue of simply being, they were criminals. The trajectory of advocacy had also failed to acknowledge the intersectionality between the various forms of oppression. In South Africa, gay marriage had equal status with heterosexual marriage, and yet the highest murder rate was among black lesbians.

If we say criminalization is the problem, what are we saying to people who are not criminalized but who are acted against prejudicially? We need to be specific, whether the violations are against a person's sexual orientation or against their sex work. Criminalization of women's rights covered access to adoption rights, pensions, equal marriage etc, so there was a neat trajectory, but this failed to pay attention to the intersections of class and gender. The focus on decriminalization alone enhanced vulnerability; our goal should be the elimination of violations against sex workers, sexual orientation and gender identity. But decriminalization is not a silver bullet because there are a number of countries that do not criminalize but there is still a prevalence of human rights discrimination based on sexual orientation. We need to understand what are the push and pull factors. Should we go the route of decriminalizing through parliaments instead of local government? Are we barricading ourselves in by just focusing on criminalization? How do we really engage the courts? How do we change cultural stigma?

Tucker's Summary and closure of the day

- We need to establish projects of expanding awareness of the effects of criminalisation and the difference between punishment, rehabilitation, and restoration; For example, there is a need for more transparency of what it's like in the jails and prisons systems, including the education of judges who come from an elite class and have seldom seen the inside of a prison;
- We need to campaign to disband the punitive system we live in, while encouraging just parallel systems that can be established by communities, such as sex workers. We could undermine the punitive system with community systems that serve the marginalised groups, without police involvement (in the interim or permanently depending on the context);
- We need to expand this dialogue intersectionally as not all the stakeholders are in the room; and get
- We need to get more funding partners to dedicate more money towards self-determination; bodily autonomy, and erotic justice as entry points or lens on work.
- Civil society needs to strategize more and learn from each other, and be adequately funded to be pro-active and not just always putting out fires in responsive, or reactive positions;



- We should be engaging with big business and its corporate social investment arms, as they have money.
- Grassroots work is the most important work we can be doing, to change the asks of the public of their leaders.

Margaret Hemple of Ford Foundation closed the day with a comment on the fact that there is greater strength in having dialogues across sectors; and that this is work that we should all take on working together globally.

Section 4: Analysis and Way forward

In considering re-thinking how civil society works on the area of criminalisation in the arena of SRHR, new partners is an important aspect. Allies form a vital part of any movement's success. Similarly, **Rogall and Drexler (RBS, Germany)** stated in the EFC's *Shrinking Space* report that it was "crucial to define 'civil society' in a broad sense which encompasses both the traditional institutions of civil society (e.g. NGOs) and the full range of the manifestations of active citizenship and promotion of social change (e.g. social entrepreneurship, impact investment, volunteering, and participative urban development). For us, this means exploring new ways of cooperation, getting engaged with new partners... and fostering connections between stakeholders from different sectors. With the direct involvement of cross-sectoral stakeholders from government, civil society, academia, and business, 'new' synergies and opportunities for participation for civil society evolve."

The (de)criminalization issue is very broad, and can cover a plethora of areas of work. AAI and Ford Foundation have identified that in this work our ambit of sexual and reproductive health and rights and the underlying causes such as gender inequality, lack of accountability, human rights abuses, moral policing, bodily autonomy, religious conservatism, cultural specifics, xenophobia, stigma and discrimination, race, ethnicity and xenophobia class and caste, income and poverty, lgbtignc phobias, migration and statelessness, refugees' status, choice of work, identity and agency amongst others.

Within this framework of SRHR, social justice, inequalities and accountability, several issues were made clear both from the Durban dialogue, and from other civil society writings on the issue:

Working Beyond Legal (De)criminalization

While the actual legislative criminalisation of aspects of gender, sexuality, identity and behaviour – with its resulting harassment, street searches, home invasions, physical and sexual assault, and imprisonment – is clearly at the heart of the matter, as evidenced by a growing trend towards governments globally adopting such sanctions, law-based abuse of policing and judicial instruments is invariably located within a broader social context that endorses extra-legal, tacitly tolerated discriminatory practices. With a specific focus on gender, this reactionary societal ethic is usually **generalised throughout a heteronormative and patriarchal population**, and often results in ordinary people engaging in the (not always) voluntary "**moral policing**" of marginalized populations designated as subaltern / outcast / unclean, such as the LGBTI community, sex-workers, or unmarried women.

This generalised prejudice needs to be urgently addressed as it provides the enabling environment within which reactionary law-making and policing is possible, especially under more conservative

regimes. It almost does not need to be mentioned that a combination of official criminalization and societal prejudice is usually a divide-and-rule tool used to buttress the likes of ethnic majoritarianism, corporate exploitation / expropriation, and political / religious / economic fundamentalism in the service of elites. But the main point is that the state – whether authoritarian or officially democratic – is not the sole source of gender & sexuality prejudice, and that informal repression creates self-limiting responses from many targeted communities and produces a chilling effect on those advocating for their rights.

We applaud leaders who represents their constituencies asks for housing, education and health care, because this is what the community demands. But when leaders represent their constituencies asks for death sentences for same-sex sex, or adultery, we as progressive civil society balk. The reality is that the law is a useful tool for change, but is also limited, and should not be the sole extent of our engagement with (de)criminalisation work. Many countries experience tolerance and inclusion despite their laws being archaic, and others like South Africa, experience gross human rights atrocities despite progressive laws. Ultimately, for sustainable development to move along the scale, the work being done at grassroots, changing the asks of the public, must be considered fundamental to our success.

This thus means that legislative reform initiatives by civil society will not suffice in themselves, in the absence of progressive social education and mobilisation on rights and equality, to change the prevailing climate.

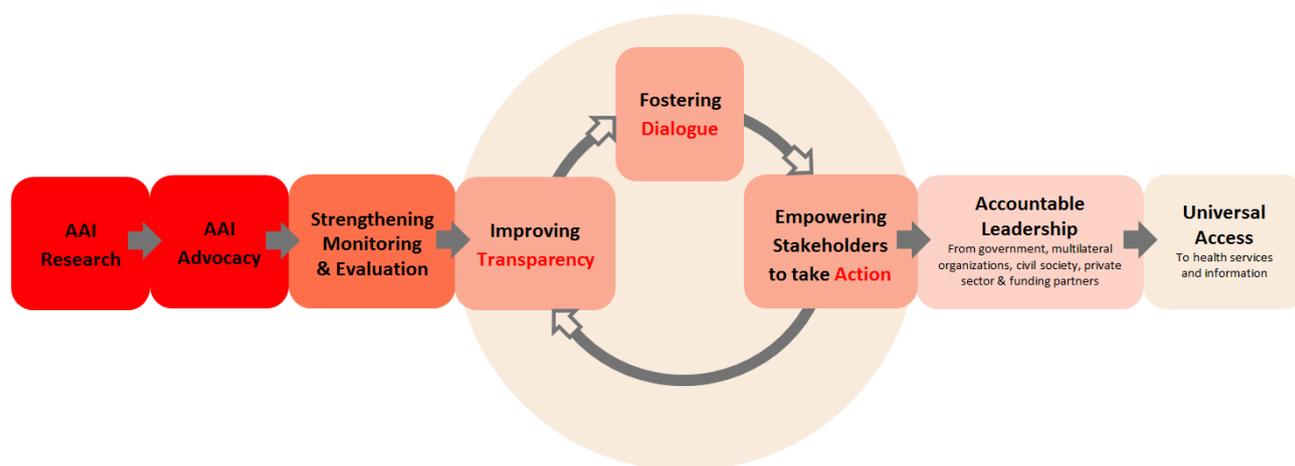
If the creating accountability around criminalisation in the ambit of SRHR and social justice is not entirely about law reform, then AAI submits that using the findings and inputs of the Durban dialogue and placing them within our AAI Accountability Framework, that we find sufficient evidence for feeling hope:

AAI's Accountability Framework

AAI use our 3 step Accountability Framework as a lens on all of our work. The framework suggests a way to ensure that the principle of accountability is translated from rhetoric into action.

Increasing accountability

AAI believes that strong and accountable leadership is necessary to ensure effective responses to health needs. We do this by increasing transparency, promoting dialogue and supporting action to improve the response.



1. Transparency

Data, full, relevant, correct, accurate and unbiased data that is methodologically sound, periodically collected and collectively reported, discussed and reported as well as transparent about its failings and limitations is a vital starting point for any discussion on developing a response to health problems.



2. Dialogue

Dialogue should mean all relevant stakeholders can meaningfully and freely participate, without fear, in the discussions and debates on the delivery and performance of health by public servants, especially in relation to the commitments that they as governments and leaders have made.



3. Action

Action is necessary for public servants to improve their delivery of health, share their successes and learn from their failures making for quality, improved, sustainable and human rights based health access for all a reality. All leaders, not just governments, need to act to ensure transparency and dialogue are part of the health development process.

AAI therefore suggests the following findings from the Durban dialogue

1. *Transparency: Better Intelligence*

Much of the stigma, discrimination, barriers to access, and crimes, amongst other things, that presenters spoke about at Challenging Criminalization Globally, goes undocumented. There is a dearth of data on the various groups, both quantitative and qualitative that demonstrates their experiences, behaviours and needs. Moreover few of these people are covered by epidemiological studies and statistics do not include their realities in UN reporting on HIV and AIDS for example, never mind the “softer” issues such as gender equality which are notoriously less reported and harder to measure. Transparency and information on how civil society is working, learning, and how our narrative and discourse has failed us or served us needs to be captured, interrogated and shared with all stakeholders.

- Improved and more comprehensive gathering of statistics on the abuses of criminalization, especially regarding police brutality and jailing / imprisonment;
- A sober reassessment of the role of the state, whether it was atrophying in some countries, or becoming more invasive in others – especially of the state as both nominal protector and actual perpetrator;
- Greater intelligence on the real internal state of jails and prisons especially for LGBTI people – including mounting awareness campaigns for legislators and the judiciary;
- We need to look at accountability and transparency in the form of evidence to counter narratives that are against civil society;
- We need to document how our narrative and discourse has advanced and / or regressed.

2. *Dialogue: Building new alliances*

In many democracies (and even some autocracies), big business is either required to or adopts for marketing or philanthropic purposes corporate social investment (CSI) programmes. **Adam Pickering of the Charities Aid Foundation (CAF, Britain)**, which provides financial services and advice to civil society, stated in the EFC’s *Shrinking Space* report: “As governments strive to create stable environments that are attractive to business, they make assumptions about the interests of companies which are used to inform policymaking. This results in some progressive policies, but also in a broad range of regressive measures, including subduing media and civil society criticism, reducing environmental regulation and land laws, and relaxing labour laws or breaking unionism. Ironically, many companies are of the view that these policies are not necessarily good for business in the long term. **It is up to those of us that work with businesses to make the case for solidarity between the private sector and civil society** that is motivated by enlightened self-interest.

“Economic instability, an erosion of trust in public and private institutions, gaps in governance, climate change, youth unemployment, rampant inequality and the rise of sectarianism, populism, nationalism and statism all form part of the ‘new global context’ which was discussed at this year’s World Economic Forum.⁸ The fact that business leaders increasingly recognise that these issues threaten to undermine their interests presents an opportunity for civil society to find powerful advocates in the corporate community. Civil society’s capacity to ameliorate the effects of, and advocate for reforms that address the drivers of the above problems should make it a fundamental part of the enabling environment for business. We need to work with private companies to ensure that they understand that **even when civil society stands in the way of their short-term interests, they are vital to their long-term sustainability. We might find that business is more amenable to this idea than many assume.**”

He also suggested that politicians themselves had to be won over: “There is no doubting that governments are faced with an unprecedented volume of competing demands in the current global context. Delivering economic growth while maintaining the rule of law, in an environment where state sovereignty is being undercut by globalisation of business and information flows, is extremely challenging. In many nations, formal, organised civil society may seem to governments like an import that has travelled on a wave of foreign capital. Equally, the spread of ideas about freedom of association, assembly and the right to campaign could be viewed as a western invention that has spread through internet communication and the global media...

“The pragmatic response by many governments has been to isolate the parts of civil society that they see as necessary, or at least benign – for instance service providing organisations in health, children, education and the arts – while seeking to marginalise critical voices through regressive legislation and muscular regulation. To challenge this narrative, we need to work harder as funders to show the positive effects that civil society can have. We need to take a more prominent role in explaining how philanthropists and foundations, and the organisations that they fund, can do more than augment state provision of services. **We need to show that far from undermining stability and growth, civil society is a vital part of delivering it.** A well-funded charitable sector is able to represent the marginalised and voice dissent that may not always be comfortable to hear, but should be tolerated as a critical friend. Such an avenue for dialogue allows politicians to monitor public sentiment and acts as a pressure gauge for society.”

The dialogue noted that many of the projects had unusual allies, whether it be the police, government, policy makers, business or academics, or funding partners. **These non-CSO allies formed pivotal roles in many of the project’s success.**

⁸ http://www3.weforum.org/docs/WEF_AM15_Report.pdf. It is notable that the WEF Report does not once mention criminalization.

AAI believes that civil society that plays a watchdog role is vital but constantly shrinking, and that service delivery civil society in some places is well placed to access funds and can speak to grassroots needs and challenges. Strong alliances between these various types of CSOs that include shared data and evidence, shared skills, shared funding, shared projects should all be encouraged. **The ideal is to get the full spectrum of civil society (from technical experts, to those that can mobilise thousands to march in the streets) to collaborate for stronger, more efficient campaigns around criminalisation work.**

- A better understanding of all civil society of how criminalisation in one area leads to criminalisation across other unwanted areas;
- Open discussion around new partners, new ways and new strategies and tactics being used or developed that could be used in new spaces;
- Debate on the strengths and weakness of unitive versus restorative justice and whether new models could be developed that could be applied (for example community justice courts);
- A direct engagement with the prison reform and / or abolition movements, noting that in the Netherlands, a steep decline in criminality – predicted to be 0.9%/year over the next five years – meant that five prisons would shut down;⁹
- A tireless engagement with law reformers, especially targeting colonial-era sodomy, abortion and other reactionary laws – delegitimizing them on the basis of their antiquity and alien, colonial origin – in order to unravel the punitive ethic prevailing within justice systems;
- A definite push for expanded public awareness of the human rights of people criminalized or prejudiced on the basis of their gender, sexuality, or identity that would create broader societal demands for fairness towards the vulnerable and marginalized;
- A deeper engagement with civil society more broadly – civil society organizations (CSOs) beyond the NGO and organized advocacy sectors, especially with communities of faith and their leadership who often drive prejudice through ignorance; and
- There is an urgent need to make the case for the value of civil society – why social cohesion is important in terms of building just societies;
- A more robust engagement with legislators in order to prevent / repeal reactionary laws;
- The shrinking of civil society spaces is affecting everyone, so we have to work together and step out of our disciplinary / advocacy silos, talk to each other and tackle strategic issues;
- We can foster conversations across thematic fields and geographies around the space for activism [emphasis ours]. We can begin opening communication channels among funders,

⁹ <http://www.telegraph.co.uk/news/worldnews/europe/netherlands/12201375/Netherlands-doesnt-have-enough-criminals-to-fill-its-prisons-as-crime-to-drop.html>. The decline was driven by demographics such as an ageing population, and an enforcement shift towards rehabilitation instead of incarceration, and away from prosecuting victimless crimes.

human rights groups, humanitarian organisations, development agencies, and other civil society groups to discuss how to reverse [the] “tectonic shift” in how governments view and deal with civil society. Martinez and Dobichina (OSF, Europe) in EFCs Shrinking Space report.

- And, we can proactively engage in discussions with aid-providing and aid-receiving governments and international institutions on the challenges of grantees in their countries.
- Finally, there is an increasing need to explore how policies within the financial and trade sectors are being used to limit space and how advocacy efforts can reform these policies to protect and expand the space for activism. Martinez and Dobichina (OSF, Europe)

3. Action around Intersectionality, Universality, and Agency

The salient point that must be made is that (de)criminalization in the ambit of sexual and reproductive health and rights, intersects with gender inequality, lack of accountability, human rights abuses, moral policing, bodily autonomy, religious conservatism, cultural specifics, xenophobia, stigma and discrimination, race, ethnicity and xenophobia class and caste, income and poverty, lgbtignc phobias, migration and statelessness, refugees’ status, choice of work, identity and agency amongst others.

Firstly, campaigns against gender & sexuality criminalization and prejudice must be firmly grounded in a **universal human rights and equality and human dignity discourse**. This not only locates the issue within a global rights advocacy milieu, but within the constitutional foundations of most countries, and the objectives of many multilateral governance organizations, giving it the necessary legal legitimacy. The conversation however, must not only remain bogged down in legal discourse but understand that the concept of human dignity is a very unifying call and can supersede many discriminations.

In itself this suggests and enables an international, universalist response to the challenges. An example of a successful appeal to universalism comes from AI’s 2015/2016 report regarding Jamaica where “The government was finalizing a National Strategic Plan of Action to Eliminate Gender-based Violence in Jamaica. A Joint Select Committee of Parliament was under way to review the Sexual Offences Act 2009. Civil society organizations made recommendations during the review, which included widening the definition of rape, decriminalizing sex work, and using gender-neutral language throughout the Act.” However, AI warned that the Plan faced implementation in a hostile environment where “High levels of gender-based violence and domestic violence continued with high numbers of women killed by their spouse or partner. Lesbian, bisexual and transgender women were at risk of sexual violence due to their real or perceived sexual orientation and gender expression... There remained no legal protection against discrimination based on real or perceived sexual orientation or gender identity. Consensual sex between men remained criminalized. Between January and July, the Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG) received 47 reports of human rights violations against LGBTI people.”

Thus, the immense differences between different countries' legal jurisdictions, and regional / localized cultures, as well as the different needs of the various groups of people, (whether grouped by nationality, language, sexual orientation, work, identity or intersections of these) **it makes it imperative that universal gender & sexuality rights campaigns are also tailored to specific local circumstances and the needs of the various groups of people trying to access full rights.** There are real differences in immediate and longer-term needs among the varied communities represented under the aegis of gender & sexuality decriminalization (trans* and intersex people face very specific challenges, particularly relating to access to basic documentation including that related to citizenship, driving, travel, health-care, state services, banking, housing, child-rearing, and schooling).¹⁰

Lastly, it was made abundantly clear by the Durban dialogue **that any campaigns, interventions, initiatives or policies must be informed directly by the affected communities themselves** – women, LGBTI people, sex workers – whose collective agency must be foregrounded, and without whose grassroots expertise we would be lost. **The point was repeatedly made that such communities knew best what sorts of interventions were required, desirable, and possible.** It should be a core ethic of any decriminalization campaign that those directly affected – pregnant women, trans* people, sex workers, etc – directly lead the charge, both in terms of framing and conceptualising the initiatives, as well as in terms of the actual advocacy and engagement, with human rights organizations playing secondary advisory, financial, capacity-building, research, and multilateral institutional advocacy roles. Many funding partner organizations are now talking about building the resilience of their grantees, both financially and in terms of compliance with difficult laws, and in terms of improving their autonomy and sustainability as a means to ensure civil society's ability to stay the course.

- Greater enforcement of progressive LGBTI, gender & sexuality legislation in jurisdictions where these had been passed;
- The establishment / strengthening of dense societal networks, of parallel systems of equality and respect for universal (and specific) rights, that challenge criminalization and “destabilize heteronormativity, especially at the grassroots level”.
- **Funding partners need to provide pragmatic support, as Martinez and Dobichina (OSF, Europe) recommended in the EFC's *Shrinking Space* report: As funders, we should help grantees comply with new regulations. Even before regulations are put in place, funders should help strengthen grantees' financial and governance systems to support them in meeting their regulatory obligations and mitigate any disruption caused by overreaching**

¹⁰ See the Aids Accountability International / GenderDynamix report, *Southern Africa Trans Diverse Situational Analysis*, forthcoming in 2016; it is the first empirical survey of the trans* communities in five Southern African countries, Namibia, Botswana, Zambia, Zimbabwe, and Swaziland.

government requirements. Failing to incorporate overall organisational health into our grantmaking practices leaves grantees vulnerable to accusations of mismanagement of funds or lack of transparency.

- We also have an opportunity to focus more attention on building our grantees' capacity for public outreach to expand and consolidate their bases of support. We need to encourage groups to develop new approaches to leveraging local funds and mobilising other resources that contribute to a stronger, broader resource base for activism. We also need to support their efforts to think creatively about how to engage with the communities in which they work and to raise the profile of their work among those constituents. **Martinez and Dobichina (OSF, Europe)**

Proposed 2017 Meeting Details

In the light of this dialogue, research and these recommendations, especially the call to “foster conversations across thematic fields and geographies around the space for activism” – AAI now urges that a follow-up meeting be convened by AAI in partnership with Ford Foundation in The Netherlands in 2017 to bring together top experts, including several who attended the Challenging Criminalization Globally dialogue, to debate and rethink issues around a co-ordinated, interdisciplinary, intersectional global response to the criminalization issue.

The expertise required for the meeting should cover

1. Grassroots/community movement building,
2. LGBTIGNC rights
3. Women and girls' rights
4. Racism
5. Sex workers' rights
6. Feminism and gender
7. Culture and indigenous knowledge and related legal systems
8. Sexuality and reproduction
9. Law and policy advocacy
10. Inequality
11. Medicine and epidemiology
12. Securitisation
13. Freedoms and spaces for civil society
14. Policing and military
15. Religion
16. Finance and Economics
17. Globalisation
18. Governance and accountability
19. Research and evidence generation

20. Poverty
21. Public campaigning and communications
22. Business and corporate social responsibility
23. Information and Communication Technology
24. Academia

The following 30 experts have been identified from desktop research to be worldwide experts, and represent a wide range of expertise including in the HIV, PLWA, LGBTI, and reproductive rights sectors, with a focus on gender and access to health-care.

Name	Gen.	Original Country	Expertise / Position / Contact
1. Annett Fleischer	F	Germany	Transnational mobility, kinship, marriage, and rights among migrants, mainly between Africa and Europe / Member of the Department of Socio-Cultural Diversity at the Max Planck Institute / fleischer@mmg.mpg.de
2. Sonia Corrêa	F	Brazil	Sociology of sexuality and HIV/AIDS / Research Associate at the Associação Brasileira Interdisciplinar de AIDS (ABIA), Rio de Janeiro, and co-coordinator of Sexuality Policy Watch (SPW) / sonia@abiuids.org.br
3. Sibongile Ndashe	F	South Africa	Litigation on women's gender and identity rights / Executive Director of the Initiative for Strategic Litigation in Africa (ISLA) / info@the-isl.org
4. Niina Vuolajarvi	F	Finland	Sex-worker rights and migration / Management Committee member of the EU-funded research network Comparing European Prostitution Policies (ProsPol) / nvuolajarvi@sociology.rutgers.edu
5. Tawanda Mutasah	M	Zimbabwe	Law, human rights and democracy / Senior Director of Law & Policy at Amnesty International, and spokesperson on its campaign to decriminalize sex-work globally / @DrMutasah
6. Wei Xiaogang	M	China	LGBTI activism, film and culture / Executive Director of the Beijing Gender Health Education Institute (BGHEI), an organising member of the Beijing Queer Film Festival, and a board member of the Beijing LGBT Centre / xiaogangtutu@gmail.com
7. Mandeep Tiwana	M	India	Legislation on freedom of expression, association and assembly / Head of Policy & Research at the World Alliance for Citizen Participation (CIVICUS) / tiwana@civicus.org

8. Olga Lucia Pérez	F	Colombia	Human rights, HIV, access to justice, gender, and vulnerable groups / Senior Programme Co-ordinator for Latin America and the Caribbean at the International Development Law Organization (IDLO) / operez@idlo.int
9. Meena Saraswathi Seshu	F	India	HIV/Aids, sex-worker, LGBTI and MSM rights, reproductive health, gender violence / Secretary-General of Sampada Gramin Mahila Sanstha (SANGRAM), founder of Veshya Anyay Mukti Parishad (VAMP), and expert at UNAIDS Reference Group on HIV and Human Rights / info@sangram.org
10. Ricky Nathanson	T	Zimbabwe	Human and trans* rights / Board Member of the Sexual Rights Centre (SRC), a member of the Southern African Regional Trans Forum, the Trans Women's Feminist Institute, and All Africa Trans* & Intersex Committee / @RickyNathanson
11. Megan McLemore	F	United States	HIV and drug treatments, healthcare in prisons and detention centres / Senior Researcher in the Health & Human Rights Division at Human Rights Watch / @MeganMcLemore3
12. Daouda Diof	M	Senegal	HIV/Aids and marginalized groups / Director of Environnement et Développement du Tiers Monde (ENDE Tiers Monde), and expert at UNAIDS Reference Group on HIV and Human Rights / se@endatiersmonde.org
13. Bisi Alimi	M	Nigeria	Human and LGBTI rights, sexual health, race, culture and sexuality / Executive Director of the Bisi Alimi Foundation, World Bank consultant, columnist, and co-founder of Rainbow Intersection / contact@bisialimi.com
14. Onkokame Ratanang Mosweu	M	Botswana	Human rights including women's, LGBTI, PLWA, and sex-worker rights / Hands Off Programme Officer at the African Sex Workers' Alliance (ASWA) / @ratanangmosweu
15. Delane Kalembo	M	South Africa	Human rights and sexuality / Project Officer at African Men for Sexual and Human Rights (AMSHer) / delane@amsher.org
16. Susana Rostagnol	F	Uruguay	Gender, body and sexuality, sexual and reproductive health, sex-work / Department of Social Anthropology, Universidad de la República Uruguay / susana.rostagnol@gmail.com
17. Padam Simkhada	M	Nepal	Maternal health, migration, sex trafficking, reproductive and sexual health including HIV / Professor of International Public Health and Associate Dean of Global Engagement at the Faculty of Education, Health and Community, Liverpool John Moors University / P.P.Simkhada@ljmu.ac.uk

18. Beatriz Ramírez Huaroto	F	Peru	Reproductive rights, human and family rights / Advisor to the Ministry of Women and Vulnerable Populations (MIMP), Peru, and consultant to the Comisión Interamericana de Mujeres (CIM) of the Organization of American States / bramirez@mimp.gob.pe
19. Karina Felitti	F	Argentina	Gender studies, women's history and sexualities, sexual and reproductive rights in Latin America / Interdisciplinary Institute of Studies of Gender at the Universidad de Buenos Aires (UBA) / kfelitti@fibertel.com.ar
20. Alejandra López Gómez	F	Uruguay	Decriminalization of abortion, sexual and reproductive rights, adolescent sexuality / Associate Professor at the Institute of Health Psychology of the Universidad de la República Uruguay / alopez@psico.edu.uy
21. Cecilia Maria Sardenberg	F	Brazil	Feminist and gender studies, women's rights / Faculty of Philosophy and Human Sciences at the Universidade Federal da Bahia (UFBA), Brazil, and co-founder of UFBA's Nucleus of Interdisciplinary Studies on Women (NEIM) / cecisard@ufba.br
22. Michelle Carnes	F	United States	Impact on public health of sexual and cultural – especially indigenous community – taboos / Public Health Analyst at the Substance Abuse and Mental Health Services Administration (SAMHSA) / michelle.carnes@samhsa.hhs.gov
23. Sara McClelland	F	United States	Sexuality policy, education and research, adolescent sexual development / Assistant Professor in the Departments of Women's Studies and Psychology at the University of Michigan / saramcc@umich.edu
24. Siri Gloppen	F	Norway	Human, social, health, sexual and reproductive rights, and the role of the courts in the Global South / Professor of Comparative Politics at the University of Bergen, and director of the Centre of Law and Social Transformation / siri.gloppen@cmi.no
25. Senthoran Raj	M	Australia	Queer theory, public policy, popular culture, human rights / Doctoral Fellow at Sydney Law School, University of Sydney, and board member of Writing From Below, an interdisciplinary gender and sexual diversity journal / senthoran.raj@sydney.edu.au
26. Alexandre Baril	M	Canada	Intersectional gender, feminist, queer, trans* and disability studies regarding the body, health and social movements / Postdoctoral Fellow at the Department of Political Science at Dalhousie University / alexandrebaril@yahoo.ca
27. Himadri Roy	M	India	LGBTI and human rights, feminism and culture in literature and film / Associate Professor at the School

			of Gender and Development Studies at the Indira Gandhi National Open University / himadriroy@ignou.ac.in
28. Ekaterine Aghdgomelashvili	F	Georgia	Lesbian, bisexual and trans* women's empowerment, and self-destructive behaviour in LBT women / Executive Director of the Women's Initiative Supporting Group (WISG), and a member of the UN Women's Civil Society Advisory Group / wisg@women.ge
29. Yusuf Sidani	M	Lebanon	Feminine labour in Islamic societies, gender and work, women in leadership, gender diversity / Professor of Leadership at the Sulayman S. Olayan School of Business at the American University of Beirut / ys01@aub.edu.lb
30. Igarashi Hiroki	M	Japan	Transnational selfhood, motherhood and wifhood, family, social stratification, migration, culture and globalization / College of Social Sciences at the University of Hawai'i / hirokii@hawaii.edu
			HIV JUSTICE WORLDWIDE
			An Economist

Section 5: Appendices

Durban Programme

The agenda of the **Challenging Criminalization Globally** dialogue was as follows. Participants' continent of origin are color-coded green for Africa, yellow for Asia, blue for North America, and green for Latin America, and pink for Europe, grey for international

08h45-09h00	Introductory welcome	Hilary Pennington, Vice President, Education, Creativity, and Free Expression, Ford Foundation.
09h00-09h15		Tackling exclusion and shrinking spaces for civil society. Mandeep Tiwana, Civicus, International
09h15 - 10h25	THEME	Criminalization of sex work
	First Panel	70 minutes.
5	Panel Facilitator	Kenyon FARROW, Treatment Action Group, USA.
10	Speaker 1	Police using condoms as evidence of sex work in China, Gareth DURRANT, Asia Catalyst, China.
10	Speaker 2	Hands off! A Policy Perspective. Onkokame MOSWEU, African Sex Workers Alliance, Africa.
10	Speaker 3	The police as a critical enabler, why are they absent? Global perspective. David Patterson, International Development Law Organization, Latin America.
10	Speaker 4/5	Voices of sex workers and alternative justice systems: Meena Saraswathi Seshu (SANGRAM, India) and Kiran Deshmukh (VAMP, India)
20	Q&A	
5	Analysis, Closing Synopsis	
10h35 – 11h45	THEME	Criminalization of Sexual Diversity (Sexual Orientation and Gender Identity and Expression)
	Second Panel	70 minutes.
5	Panel Facilitator	Tashwill Esterhuizen, Southern African Litigation Centre.
10	Speaker 1	An incremental and intersectionalities-based approach to the decriminalization of sexual diversity in Africa: Delane Kalembo, African Men for Sexual Health and Rights, Africa.
10	Speaker 2	Sadness, Neglect and Hope: Beijing a Gay Man in Beijing in 1980's, 2000 and Now, ZHEN LI, CIDA, China.
10	Speaker 3	Intersectionalities on religious homophobia and HIV, religious impunity, and spiritual communities that change. Jide MCCAULEY, House of Rainbow, Nigeria.
10	Speaker 4	Using media and legal services for the defense of LGBT rights in Mexico, Alejandro BRITO, Letra S, Mexico.
20	Q&A.	
5	Analysis, Closing Synopsis.	
11h55 – 12h55	THEME	Women & Sexual & Reproductive Health & Rights
	Third Panel	60 minutes.
5	Panel Facilitator	Sibongile NDASHE, Executive Director, Initiative for Strategic Litigation in Africa (ISLA), Africa.
10	Speaker 1	Laws around HIV transmission and exposure, Arnetá

		Rodgers, Positive Women's Network.
	Speaker 2	Criminalization & Transgender Women - The Domino Effect, Ricky Nathanson, Zimbabwe Sexual Rights Centre.
10	Speaker 3	Law Enforcement and HIV Risk for Transgender Women: Megan MCLEMORE, Human Rights Watch, USA.
20	Q&A	
5	Analysis, Closing Synopsis	
13h00 – 14h00	THEME	New horizons: Rethink how civil society deals with criminalization and decriminalization, and interrogate new lenses, new strategies and new opportunities.
	Fourth Panel.	60 minutes.
5	Panel Facilitator: Setting the objective of the panel.	Phillipa TUCKER, AIDS Accountability International (AAI), Africa-Europe.
10	Speaker 1	Working in the Grey Zone: LGBTI Activism in China, WEI Xiangang and Stijn DE KLERCK, Beijing Gender Health Education Institute, China.
10	Speaker 2	A broad critique of criminal law: Sonia CORREA, Associada da ABIA; Associação Brasileira Interdisciplinar de AIDS; Política/Sexuality Policy Watch, Latin America.
10	Speaker 3	The strategic development of jurisprudence of gender and sexuality before the African Human Rights Systems, Sibongile NDASHE, Initiative for Strategic Litigation in Africa (ISLA), Africa.
20	Q&A	
5	Analysis, Closing Synopsis	

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Section 6: About AIDS Accountability International

Stronger leadership is required in order to ensure that universal health rights and services are provided that are accessible, affordable, acceptable and quality in nature. This also requires impact mitigation programmes to the people who need them, and rights and services that are catered to the needs of those who are most marginalized by society, policy or otherwise.

AIDS Accountability International (AAI) was established in 2005 with the mission to follow up on commitments to the AIDS epidemic that were made by governments. Our work has since expanded to sexual and reproductive health and rights, malaria, tuberculosis, and non-communicable diseases, and we work on holding all leaders accountable, such as business, civil society, funding partners and bi- and multi-lateral development organizations.

How do we improve the response to health needs?

We are an independent research and advocacy think tank holding leaders accountable for the commitments they have made to respond to health needs.

AAI uses research to develop various tools for stakeholders for them to use in their campaigns to advocate for better health. We conduct only needs-driven, evidence-based research and advocacy that measures performance against the commitments that have been made by governments. We also conduct our own advocacy, capacity building and monitoring and evaluation interventions to encourage those who are delivering on their commitments, identify and put pressure on those who are under-performing and stimulate constructive debate about what can be learned from different approaches and how best practices should be shared. AAI focuses on inclusion of the most marginalized in much of our work, with a focus on women, girls and lesbian, gay, bisexual, and transgender people. We have a global reach with an African focus.

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Feedback



Michael Schmidt and Phillipa Tucker are co-authors of this report. Schmidt having done the literature review and consolidating meeting notes, and Tucker focussing on strategy, analysis and editing and way forward.

Every attempt has been made to ensure the accuracy of this report but any errors or omissions are our own. The author and AAI welcome any feedback, comments, and / or corrections on the content.

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Get Involved/Contact details

What can you do to get involved?

1. Find out more about our work at <http://www.aidsaccountability.org> .
2. Subscribe to our newsletter on our website (see sidebar on the right of the page) and get updates on meetings, discussions, advocacy tools and trainings.
3. Follow us on Facebook.
4. Follow us on Twitter: [@AAI_Aidswatch](https://twitter.com/AAI_Aidswatch).
5. Join the discussion at the AIDS Accountability International Sexual and Reproductive Health and Rights LinkedIn Discussion Forum.

[ENDS]