

BODY

POLITICS

The criminalization
of sexuality
and reproduction

A CAMPAIGNING TOOLKIT

AMNESTY
INTERNATIONAL



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FOREWORD

There is a long history of states criminalizing sexuality and reproductive decisions relating to health. Unfortunately, despite increasing attention paid to the protection of human rights in the last few decades, the criminalization fever shows no signs of cooling. In some areas this trend appears to have gained renewed strength. Throughout much of the Americas, for example, women and health professionals can be punished for seeking, obtaining or providing abortion services. In certain states in Africa, opportunistic politicians have pumped life into antiquated statutes or passed new laws punishing same-sex activity with dire penalties. Notably, this rush to criminalize is not limited to developing or least developed states. The last few years has also seen a rise in women in the USA being jailed for otherwise legal activities conducted during pregnancy, and in many rich and poor states alike, individuals can still be prosecuted for transmission of HIV.

Criminalization of sexual and reproductive health-related activity, in particular, stands as a significant impediment to the realization of human rights, particularly the right to health. Although such criminalization is justified by some as a “public health” measure, in most cases it exacerbates the underlying public health concern by driving risk behaviour underground and preventing the provision of effective health services, contributing to preventable illness and death. Criminalization of consensual reproductive and sexual behaviours also violates autonomy, which is the foundation on which an individual’s ability to realize their right to health is built.

In addition to implicating human rights adversely, criminalization of sexuality and reproductive decisions engenders stigmatization, discrimination and even violence against people engaged in (or suspected of engaging in) the prohibited behaviour, which can further place the health of vulnerable people at risk. Indeed, the individuals who most often face punishment tend to be members of poor, marginalized and vulnerable groups, as opposed to wealthy individuals engaging in the same behaviour. Moreover, such criminalization affects not just those against whom the law is directed, but negatively impacts the rights of entire populations by giving states power to interfere with individuals’ private decision-making and forcing people to conform to strict sexual and gender norms. Using the force of state machinery to achieve illegitimate aims relating to the public morality can further lead to an environment generally permissive of arbitrary arrests and detention, harassment, stigmatization, discrimination and violence. Such use of power also weakens respect for the rule of law.

Unfortunately, all too often criminalization of sexual and reproductive decisions and behaviours can be a means to gain political support from voters, especially when the targets of such punitive regulation are politically disenfranchised or socially marginalized. It is therefore crucial to highlight the depth and extent of this problem and to empower activists worldwide to challenge laws directly or indirectly criminalizing sexual and reproductive decisions and behaviours.

The Amnesty International Primer and Toolkit – *Body Politics: Criminalization of sexuality and reproduction* – are a timely, meaningful and important contribution that can enable activists to both comprehend and challenge illegitimate criminalization of sexuality and reproductive decisions. It is vital to understand the extent to which criminalization has permeated states today and the damage which is done by such measures masquerading as legitimate public health or public morality initiatives. The primer which accompanies this toolkit details the major areas of concern and the harm which both direct and indirect criminalization inflict on an individual’s human rights and the health of society as a whole. It is not enough, however, to simply understand the problem of criminalization of sexuality and reproductive decisions; steps must also be taken to challenge it. This toolkit provides concrete campaigning techniques such as mapping stakeholder participation and power, identifying advocacy targets, and building capacity.

Considering the wave of criminalization of sexuality and reproductive actions and decisions which appears to be sweeping over states worldwide, it is my hope that Amnesty International’s Criminalization of Sexuality and Reproduction series will help stem the tide by providing advocates and activists with a full understanding of the damage produced by such criminalization, and the tools with which to fight it.

Anand Grover

Former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

INTRODUCTION



Nancy Herz, a sexual and reproductive rights activist from Norway, May 2016
© Amnesty international
(photographer: Sara Vida Coumans)

INTRODUCTION

“We all share sexuality, with its capacity for erotic pleasure, fantasy, exploration, creation, and procreation, as well as for danger and abuse... The idea of dignity and rights in the body is powerful and can unify coalitions across groups that for too long have worked in fragmented ghettos.”

Rosalind Petchesky, “Rights of the Body and Perversions of War: Sexual Rights and Wrongs Ten Years Past Beijing”, *International Social Science Journal* Vol. 57, 2005

Around the world governments are using criminal or other punitive laws and policies to limit or control who we can choose to have consensual sex with and why; how we access sexual and reproductive health information and services; and the decisions we make regarding pregnancy and whether and when to become pregnant. Same-sex sexual activity, abortion, adolescent sexuality, the sexual choices of people living with HIV, decisions and behaviour during pregnancy and sex outside marriage, are just some of the sexual and reproductive actions and decisions that are criminalized in violation of our human rights.

The criminalization of sexuality and reproduction has a profound impact on human rights worldwide. It denies millions of people the basic freedom to have control over their own bodies and decision making. It is frequently used by dominant forces in society to control, punish and oppress people because they do not conform to the social norms and to deny them the right to be treated equally without discrimination. Sometimes this is done by direct

regulation through laws and policies that specifically target our sexual and reproductive actions and decisions, such as complete bans on abortion, sex outside marriage or same-sex sexual activity. Other times it is done through indirect regulation using a range of general criminal, civil and religious laws and policies, such as public order or morality offences, to police and punish particular sexual and reproductive actions and decisions or gender identities.

Most people who face sanctions or imprisonment for sexual and reproductive “crimes” are in reality being punished for actions and decisions related to poverty, social exclusion, identity or status in society. Moreover, criminalizing sexuality and reproduction acts as a catalyst for a wide range of human rights violations that extend far beyond the arbitrary arrests, unfair trials, convictions and punishments that it directly sanctions. Criminalization puts those who are targeted at increased risk of stigmatization and marginalization and has a particularly destructive impact on global health, contributing to high rates of maternal mortality and morbidity, unplanned pregnancies and HIV transmission. It also fosters discrimination, harassment, extortion and violence within the criminal justice system and by the wider public. This in turn can lead to social and economic marginalization and exclusion from vital services.

Criminalization of sexuality and reproduction intersects with many of the issues that have long been the focus of Amnesty International’s work, such as the death penalty, corporal punishment and torture, unfair trials and the detention of individuals solely based on their efforts to exercise their rights or because of who they are. It also causes human rights violations that Amnesty International has focused on in recent decades, such as denial of sexual and reproductive rights, bodily autonomy, and economic, social and cultural rights.

Challenging the criminalization of sexuality and reproduction is a pressing human rights concern. The Amnesty International movement now has an opportunity to help increase awareness and recognition of these issues and show solidarity with the activism and work already being undertaken by community and health advocates around the world. This toolkit explores ways that human rights activists can take action and foster partnerships with other advocates across the spectrum of sexual and reproductive rights issues to help put an end to these human rights abuses and violations. It provides an introduction to campaigning, key principles for strong, ethical campaigning, step-by-step guidance for building a campaign tailored to one’s specific context, and relevant case studies. The intended audience is local- and national-level activists within Amnesty International’s global movement.

Amnesty International’s *Body Politics: Criminalization of sexuality and reproduction* series, comprised of a Primer (Index: POL 40/7763/2018), a Campaigning Toolkit (Index: POL 40/7764/2018) and a Training Manual (Index: POL 40/7771/2018), aims to equip the organization’s global movement, as well as its partners and activists worldwide, to challenge unjust criminalization of sexual and reproductive actions and decisions and gender expression.

WHAT DO WE MEAN BY CAMPAIGNING?

A demonstration in Warsaw,
Poland, against the proposed
abortion ban in the country.
3 October 2016.
© Piotr Stasiak

WHAT DO WE MEAN BY CAMPAIGNING?

A campaign is a highly-focused project with a clear objective that takes place over a well-defined timeframe. It is strategically planned and coordinated to achieve clear-cut, realistic goals and objectives. Campaigning can be undertaken in various ways. For example, it can be used to push for change in government laws or policies, as a tool to influence public attitudes or media discourse, or as a means to educate and engage the public or key decision makers. Campaigning can involve a variety of actions from public activities and events like demonstrations, marches, mass letter writing initiatives and human rights education, to more behind-the-scenes work like direct lobbying of governments and other decision makers, research, partnership work and coalition building.

The most obvious campaigning goal for activists working to end the criminalization of sexuality and reproduction is often legal reform; specifically the repeal of laws that either prohibit certain sexual or reproductive actions or decisions, or are used in a discriminatory way to police and punish people for their identities or status in society. However, this aim can prove particularly challenging and be fraught with difficulties, or may not be possible or strategic in a given context.

Laws and policies that criminalize sexuality and reproduction are intricately linked with public opinion and dominant social norms in each country and community. In many places around the world, attitudes and norms may be so entrenched and support for criminalization of sexuality and reproduction so strong that decriminalization is not a realistic prospect in the short term. In some circumstances campaigning for decriminalization can carry too much risk of creating a backlash, both for individual activists and for communities most affected. Repeal of laws may not be possible at all in some cases, for example in situations where general laws – intended for legitimate aims – are used in a discriminatory way to police sexuality, reproduction and identity.

This toolkit, therefore, looks at a range of campaigning approaches and goals that can support both direct campaigning on decriminalization and more nuanced initiatives that aim to limit, in an incremental and realistic way, the immediate harm caused by the criminalization of sexuality and reproduction.



Image above:

Mary (below) and her partner in their home in Nairobi, Kenya, April 2015. Mary has been living with HIV for the last 11 years, and supports herself by making mats.

© Pete Muller

GUIDING PRINCIPLES FOR STRONG, ETHICAL CAMPAIGNING

Two key principles should guide every stage of human rights campaigning and advocacy: engage and empower those directly affected (rights holders) by the specific laws and policies we advocate to change and “do no harm”.

Empower and enable rights holders through participation

In addition to influencing policies and decision-making processes on criminalization worldwide, the act of campaigning itself can empower people to claim their sexual and reproductive rights and secure transformative change in the lives of those who are most at risk. To achieve this, however, we must ensure that our work is informed by the perspectives, priorities and active participation of rights holders at every stage.

Participatory approaches

Campaigning without the participation of right holders can sometimes be successful in securing policy or legal development. However, it is only the participation of those most directly affected that can ensure that the changes are meaningful and sustainable. For example, NGO negotiations with a government or submissions to court on the decriminalization of same-sex sexuality may be successful in securing changes to the law. However, if rights holders in that country are not empowered to claim their rights, hold the courts, opposition or subsequent governments to account and to push for social or cultural change, there is every chance that any legal gains could be easily overturned or may provoke a political or media backlash. In other words, while campaigning without rights holder participation may result in legal or policy changes, participatory advocacy that includes rights holders from the beginning in the development of campaign strategies and their implementation, is the most effective way to ensure that law and policy changes directly relate to rights holders’ lives and challenge power relations in society and the social, cultural or political forces that create marginalization and oppression.

At every stage of participatory campaigning and advocacy, from identifying and researching issues, mapping points of influence, to developing strategy, actively campaigning and evaluating progress, those most directly affected should be engaged and empowered by their involvement.

“The idea of participation as empowerment is that the practical experience of being involved in considering options, making decisions, and taking collective action to fight injustice is itself transformative. It leads to greater consciousness of what makes and keeps people poor, and greater confidence in their ability to make a difference.”

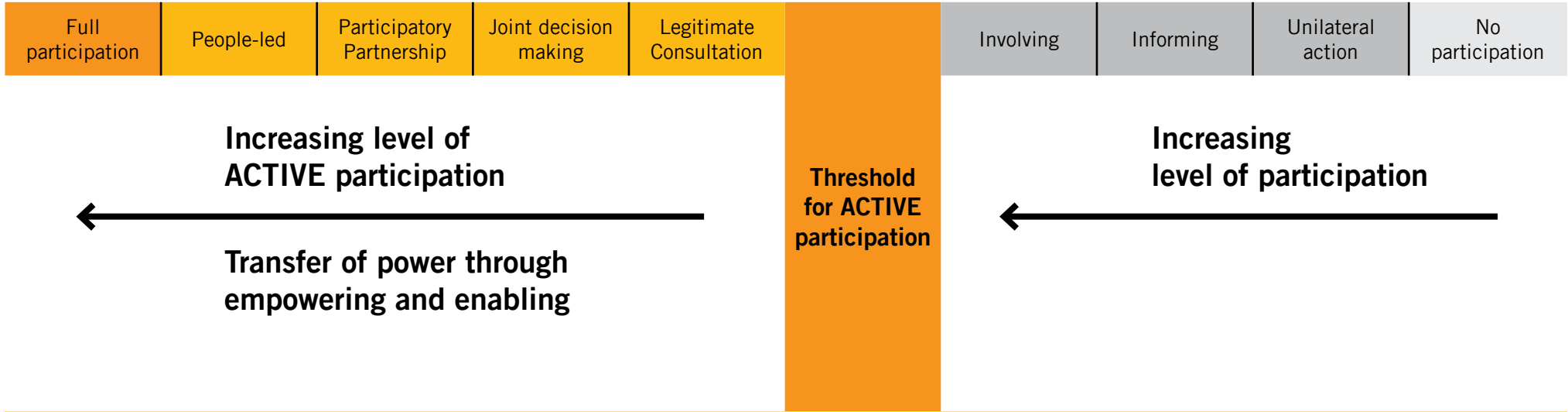
Sarah C. White, *Depoliticising development: The uses and abuses of participation*, 1996.

Active Participation

The diagram below sets out Amnesty International’s working model of active participation. This gives an overview of the different levels and purposes of participation. It describes the point where nominal participation ends and active participation that empowers and enables rights holders begins. It also outlines the different stages that lead towards full participation of rights holders.

Active participation can be an empowering and enabling process through which rights holders participate in and influence the processes and decisions which affect their lives in order to gain recognition and attainment of their human rights.

Where possible we must aim to work towards the most active participation possible in our campaigning. Nevertheless, while active participation is ideal, it is not always possible or appropriate. Depending on your campaigning circumstances, it may be that you cannot secure full or even active participation, for example if rights holders’ safety or lives could be put at risk by involvement. To this end, the value of non-participatory approaches should not be underestimated. (For more information, see Amnesty International, Enabling the Active Participation of Rights Holders, Partners and Activists in Campaigning & Activism, (Index: ACT 10/2003/2015)



Amnesty International core values and principles of ethics

TERMINOLOGY

Term	Explanation
Rights holders	All people (individuals and groups) whose human rights have been or are at risk of being violated, upon whom a decision or process may impact.
Empowerment	A process through which individuals develop the necessary skills, knowledge, experience and confidence to know their rights and to influence decisions and processes that affect their rights.
Enabling	Identifying and removing the barriers that prevent (disable) meaningful participation in order to help create the space for individuals active participation, such as power imbalances, gender inequality, practical barriers and financial barriers (e.g. transport, child care)
Unilateral decision making	Not informing, involving or consulting individuals before making a decision or designing a process.
Informing	Informing individuals of a decision or process. Information flows in only one direction.
Involving	Involving individuals in the implementation of a decision or process in which they did not take part e.g. requesting them to take action.
Legitimate consultation	Prior to making a decision or designing a process individuals are offered options and then enabled to assert their views in order that their views inform and influence the direction of the work.
Joint decision making	Processes are designed and decisions made together with individuals and steps are taken to overcome the influence of power imbalance between Amnesty International and them.
Participatory Partnership	A cooperative relationship with individuals where there is an agreement to share responsibility and leadership for the designing and achieving of a goal.
People-led	Through progressive empowerment, individuals, human rights defenders and partners are in a position to self-mobilize, initiate, change and lead on the change process.

Do no harm

Before considering the various advocacy approaches available to decriminalize sexuality and reproduction or to minimize the human rights impact, activists have an obligation to not jeopardize the life, physical and psychological safety, freedom and well-being of victims/survivors, rights holders, witnesses, allies, colleagues and all those who they engage with throughout their work. Basically, activists have the overarching obligation to “do no harm”.

To minimize risk of harm, activists should conduct a risk assessment when devising an advocacy strategy and ensure that cooperating persons are aware of the potential risks of harm and to exercise good judgment, caution and sensitivity in all their interactions. It is essential to balance the needs and aims of advocacy with the potential risk of harm, always prioritizing the safety of those involved. For example, if interviewing migrant domestic workers for purposes of documentation could subject them to deportation or incarceration and activists do not have the resources to ensure their protection, the risk of harm is too high.

Along these lines, a key component of the “do no harm” principle is ensuring the safety of campaigners and their advocacy partners. In particular, considerations of security information and training should be at the forefront of all advocacy planning. To ensure the safety of campaigners and the people you work with, you should consider three elements: physical security, digital security and self-care. All three of these elements are crucial for safety and all activists should take steps to ensure they are able to carry out their work without compromising them.

- Physical security - Activists should take this risk seriously and ensure that they regularly assess the risk to themselves, while at work but also at home. ¹
- Digital security - In terms of digital security, both state and non-state actors may try to gain unauthorized access to digital information which can negatively impact advocacy efforts and infringe on activists’ privacy and safety. ²
- Self-care - An element essential to effective and sustainable advocacy - which is often overlooked, but which is crucial for successful activism - is the mental welfare of activists themselves. It is valuable for individuals engaged in advocacy to take time to ensure that they attend to their own physical and emotional needs, and challenge the perception of the “selfless activist” who devotes all their time and energy to their work. ³

Risk of harm does not only arise when undertaking campaigning, but also when determining the framing and focus of advocacy. Along these lines, activists should consider how their chosen issue of focus relates to other sexual and reproductive rights issues. A harm analysis in this respect should include considering the linkages between issues and the sensitivities of parallel movements. For example, activists working toward decriminalization of sex outside marriage (“adultery”) should be cautious in framing advocacy that relies on tropes of “love” and that value only certain types of sex. This type of framing may directly or indirectly impact sex worker rights initiatives where “love” is not the reference point from which they seek to validate their sexual conduct, but rather notions of autonomy and labour, and when they are working against sexual hierarchies where commercial sex is deemed the least valued form of sexual conduct.



Images above:
“She is not a criminal” campaign by Amnesty International calling for the decriminalization of abortion in Ireland, September 2015.
© Amnesty International (Photo: Richard Burton)

BUILDING A CAMPAIGN



Peaceful protestors march during the Women's March On Washington, 21 January 2017. © Mike Coppola/Getty Images

BUILDING A CAMPAIGN

A wealth of innovative campaigning is being carried out around the world on the criminalization of sexuality and reproduction. Activists working on human rights, in particular sexual and reproductive rights, have undertaken pioneering work, increasing understanding of these issues and securing change. Amnesty International can show solidarity and support for this activism by developing our own strategic and principled campaigning to increase recognition of these issues as pressing human rights concerns and foster collaboration and capacity building.

The following sections of the toolkit provide a step-by-step guide to developing a campaign around criminalization of sexuality and reproduction. The checklist below provides an outline of the different stages of building an advocacy campaign.

Checklist for building successful campaigning

- Map the problem (situational analysis)
- Create a power map
- Identify and engage key stakeholders, allies and champions
- Identify campaigning objectives
- Identify advocacy targets and levers for influence
- Build a strategic approach
- Find the right key messages/arguments
- Planned activities
- Set a clear timeline
- Develop an evaluation framework

For additional guidance, see Amnesty International, Impact and Learning System (Index: POL 50/6251/2017).

Mapping the problem

Campaigning on the criminalization of sexuality and reproduction can be daunting. These are issues that can evoke strong reactions from powerful forces in society such as governments, religious institutions and communities themselves. Stereotypes, misconceptions and a lack of information mean that many people do not have a good understanding of these issues. The contexts and environments in which our rights are violated are diverse and multifaceted. Carrying out a mapping exercise can give us a “big picture” view of what is happening in our communities, improving our understanding of the issues, and their causes and effects.



Image top:
Students highlight sexual and reproductive rights at a street event in Copenhagen, Denmark, November 2016.
© Søren Malmose

Image below:
Students conduct interviews in Copenhagen, Denmark as part of Amnesty International's “My Body My Rights” campaign, November 2016.
© Søren Malmose

THE PROBLEM TREE

There are a number of situational analysis tools that we can use to map the problem in our communities. Some activists use a SWOT analysis (which measures Strengths, Weaknesses, Opportunities and Threats) or a PEST analysis (which measures Political, Economic, Social and Technical influences).⁴

We have chosen to use a problem tree because it is an example of a relatively simple tool that allows people to explore and identify the different layers of an issue in an illustrative way. It can help to give us a better understanding of the problem and how its causes and effects interconnect. It will also give us a platform to start identifying who holds power and who we should target in our campaigning.

Problem-tree analysis can be particularly valuable in terms of providing opportunities for in-depth discussion and debate. The purpose of the tree is to build a comprehensive and realistic picture of the problem and what is happening on the ground. It is, therefore, best carried out in a group where different perspectives and experiences can be shared and explored. Engaging rights holders in problem-tree analysis is a good way to establish participation at an early stage in advocacy development. It will also ensure that our understanding of the problem truly reflects the experiences of people most affected and helps build a shared sense of understanding and purpose between partners.

Stage 1

The first stage of problem-tree analysis is discussing and agreeing on the problem to be analysed. This will become the “trunk” of the tree. In the example below, we have used the broad problem of criminalization of sexuality and reproduction globally. However, it is possible to apply a narrower focus by concentrating on a single issue, such as the criminalization of pregnant women, or of an aspect of the problem, such as public support for criminalization.

Stage 2

The second stage of our analysis is discussing and identifying the causes of the problem. These will become the “roots” of our tree. In this section the arrows point towards the immediate causes. We may need multiple layers and as we move down we will move deeper and closer to the root causes. In some cases, the causes may be reciprocal. For example, in the tree below we have marked the causal link between politicians passing laws and public opinion as reciprocal because each cause can influence the other.

We have categorized our causes into those that are political, cultural, socio-economic, and procedural in the example below. This is not essential. However, it can help ensure that the broad range of causes is considered. These include:

- **Political:** Causes that are a direct result of political processes or decision making. These are commonly laws or parliamentary proposals that aim to introduce or increase criminal penalties for certain sexual behaviours or reproductive actions or decisions. However, they can also include more general causes such as political inaction against the discriminatory use of general laws, lack of awareness among political decision makers or barriers to political participation for those most affected.

- **Cultural:** Causes that stem from the prevailing or dominant culture within a society. These can refer to a wide range of issues including lack of awareness and education on the issues among the general population or the predominance of traditionalist, nationalistic or religious narratives that support criminalization or prejudice.
- **Socio-economic:** Causes that are the result of socio-economic pressures or inequality. For example, the poverty and social exclusion often experienced by women and other marginalized groups can increase their risk of criminalization in a range of ways. These include a lack of practical resources, such as access to legal representation, to effectively challenge discriminatory investigations or prosecutions.
- **Procedural:** Causes that are the result of the legal process or the procedures of other state actors. This can include discriminatory and/or uninformed practices by institutions such as the police, the judiciary or public prosecution services.

Stage 3

In the final stage of analysis we need to discuss and identify the effects of the problem. This section will become the “branches” of the tree. This will help us to think beyond the immediate impact of criminalization and explore the wider implications that lead to a broad range of human rights abuses and violations.

EFFECTS

Increased marginalization of women and groups who do not conform to gender norms and denial of human rights

Lives of women and groups who do not conform endangered through maternal mortality or morbidity, and HIV

Women are unable to access contraception and manage unplanned pregnancies

Denial of social and legal entitlements such as housing or custody rights

Harassment, extortion and violence by non-state actors

Individuals subjected to punishment ranging from fines and prison sentences to corporal punishment and the death penalty

Disproportionate burden of ill health felt by women and groups who do not conform

Harassment in and denial of vital services and information particularly sexual and reproductive health services

Stigmatization, societal judgment and scapegoating of women and groups who do not conform

Police harassment, extortion and violence

Limits placed on sexual and reproductive decision making

Unjust criminal investigation and prosecution and of individuals

PROBLEM TREE

CORE PROBLEM

Political

Cultural

Criminalization and punitive regulation of sexuality and reproduction

Socio economic

Procedural

Politicians pass or support laws that criminalize

Public opinion supports criminalization in some areas

Women and groups who do not conform are at risk of being scapegoated and criminalized

Criminal or religious courts set legal precedents that lead to criminalization

Police discriminate against women and groups who do not conform

Politicians have limited understanding of human rights, including sexual and reproductive rights

Public debate is dominated by those who support criminalization

Religious and cultural dogma has a major influence on public opinion

The public does not have access to full range of information and education on human rights and criminalization

Women and groups who do not conform lack power within social, political & religious structures

Women and groups who do not conform are denied knowledge and empowerment to claim their rights

Members of the judiciary and religious leaders have limited understanding of human rights, including sexual and reproductive rights, and criminalization

CAUSES

Media biased towards criminalization

Religious and cultural dogma opposes sexual and reproductive rights and supports criminalization in some instances

Gender discrimination and patriarchal control

Lack of knowledge, accountability and professionalism within police forces

Media employees have limited understanding of sexual and reproductive rights and criminalization

Religious and cultural leaders have limited understanding of sexual and reproductive rights and criminalization

MAPPING POWER

Before moving forward and formulating our campaigning aims and objectives, it is useful to think about mapping where power lies in the social and political environments that we have explored in our problem tree. It is important to identify:

- Who holds the power to bring about change?
- Which groups are most disempowered by the problem?
- Who are our most powerful opponents likely to be?
- Who are our most powerful supporters or allies likely to be?

USING A POWER MAP

Developing a power map will help us to identify where power lies and the relationships between the different actors involved.

In this example:

Point 1, at the top of the vertical axis, represents the groups or individuals who hold the most power in relation to the problem we want to address. They are most likely to be the actors who have the greatest potential to bring about change and so will probably be the main targets of our advocacy (identified in green).

Point 2, at the bottom of the vertical axis, represents the groups or individuals who are most disempowered by the problem. This may be the place where we would place ourselves and our co-campaigners. It may also be a useful point to consider other rights holders who we may want to engage with or organizations representing affected rights holders that we may want to work with as partners (identified in blue).

Point 3, on the left end of the horizontal axis, represents the groups or individuals who are likely to oppose our campaigning aims. It is extremely important to consider these actors as they have the power to act as a significant barrier to change. At the very least, we should anticipate and think through their opposition or any backlash they could instigate. However, it is also worth considering if there is any scope for engagement with these actors or more moderate forces within their ranks (identified in red).

Point 4, on the right end of the horizontal axis, represents the groups or individuals who are likely to support our campaigning aims. These may be potential campaigning partners or allies to whom we can reach out for strategic support when needed (identified in orange).

In the example below we have used the broad problem of criminalization and sexuality globally. However, it is possible to apply a narrower focus.



IDENTIFYING AND ENGAGING KEY STAKEHOLDERS, ALLIES AND CHAMPIONS

Carrying out a power-mapping exercise can give us a clearer picture of the key stakeholders we may want to engage and build partnerships or alliances with. Working out who to influence and engage with and at what point can help us to overcome barriers and build momentum in our campaign.

Working in partnership and building coalitions is often a highly effective way of advocating in difficult environments. Collective action can provide greater strength in numbers and increased capacity and resources. It can also help to deepen our evidence base and advocacy messaging, and extend our capacity to influence governments and public opinion. Such joint efforts can also offer protection and support to activists who are operating in dangerous environments.

Engaging Rights Holders

The actors circled in blue in the diagram above provide examples of the main rights holders and representative organizations that we should reach out to. Engaging with these groups is key to building a participatory campaign that empowers individuals, is grounded in their lived experiences and seeks to bring about the changes that they want to achieve. Working with local rights holders groups will give us a better understanding of the specific context in which we are operating and will help ensure that our campaign is locally relevant.

Engaging rights holders and representative organizations is also crucial in order to ensure that our campaign “does no harm”. It is also important to consider the impact that the framing and objectives of your campaign may have on rights holders and groups that are not necessarily the target of the campaign. (See “Do no harm” page ____, for more discussion of this topic) For example, national and reproductive rights activists in the map above may already be undertaking advocacy. By launching a campaign without engaging with these activists, we may inadvertently undermine their work by diverting attention away from their cause or by contradicting or diluting their message. By engaging with key stakeholders at an early stage and throughout the process, we can ensure that our efforts are aligned, giving all parties a greater chance of success.

Finding champions

The actors circled in orange in the power map represent the key stakeholders that hold power and influence, such as medical professionals or segments of the media. These individuals and groups can help to build the legitimacy of our campaign and provide

powerful endorsement. Engaging third parties who share (or are sympathetic to) our aims, have first-hand experience of dealing with the problem, or who have high levels of credibility or influence, will help us strengthen our arguments and deepen the impact of our advocacy.

It may not be possible or beneficial to engage these groups in formal partnerships or coalitions for a number of practical or political reasons. Therefore, it is vital that we identify individual champions within these groups with whom we can constructively engage. An example of a useful champion from the power map above would be a leading clinician who could provide us with information about, or speak publicly on, the impact that a particular law or policy has on their professional practice and the broader health implications for the population.

It is also valuable to secure champions from within the groups that form our main opposition and our advocacy targets (in red and green). These champions may be able to provide an alternative viewpoint and they are well positioned to be influential advocates. Their messages are likely to hold greater credibility and influence because they can speak to their own peers. Examples of possible champions from the map include spokespersons from religious groups who are able to question the prevailing religious dogma that opposes the decriminalization of abortion. Equally, individuals from within the police or judiciary who are willing to question the validity of criminalization of sexuality and reproduction from their professional perspectives could also add considerable weight to our advocacy.

Cross-issue advocacy – building coalitions

Securing the support of other organizations, networks and activists working outside the immediate sphere of a campaign can also be beneficial. Endorsement or backing from mainstream civil society organizations and groups such as trade unions, development or other human rights NGOs or public health agencies can help reinforce understanding of our advocacy aim as an issue of broad significance. Successful partnerships with civil society can also help to demystify campaigning on sexual and reproductive issues, which are often viewed as too challenging or contentious for mainstream organizations.

There is great potential for decriminalization advocacy across a range of sexual and reproductive rights issues. The success of international advocacy on HIV prevention and treatment in recent decades has shown that it is possible to jointly campaign across complex issues.⁵ Increased solidarity, mutual support and joint advocacy between the abortion rights, LGBTI rights and HIV/AIDS movements has strengthened the work that each of these groups had been doing independently, and promoted recognition of these issues as urgent human rights concerns.

IDENTIFYING AND OVERCOMING CHALLENGES

Working in partnerships and coalition building can also present a number of challenges and risks. The list below gives you an overview of some of the issues that need to be addressed before and while working in partnership.

Managing multiple agendas: This is perhaps the most common difficulty encountered when working in partnership. Partners inevitably bring their own priorities and agendas to joint work. Anticipating this reality and confronting it directly and transparently is crucial to any successful partnership.

Incompatible values or lack of respect between partners: Before entering into partnerships, it is important to ensure that the partners' organizational values are compatible with those of Amnesty International. This is vital to protect the integrity and reputation of the organization. It is also a crucial consideration for effective collaboration within any partnership or coalition. This is particularly true in the case of cross-issue advocacy where organizations unified around a particular issue may still have members that hold prejudices or negative attitudes towards others. Coalition leaders may find that they need to challenge these attitudes to facilitate a well-functioning partnership.

Time and resources: It can take significant time and resources to foster and maintain trust, joint ownership and a mutually beneficial collaboration. Undertaking joint action will require time-consuming negotiation over relative positions, framing advocacy and language, and may mean that we cannot act quickly.

Increased risk: In some instances, public support for, or a public partnership with, Amnesty International can put local activists at greater risk of persecution or retaliation from governments. In these cases, it is particularly important that we consider whether to bring public attention to this type of collaboration and ensure that safety plans are in place.

Overcoming challenges

Risk assessment: Any decision to enter a partnership should be made based on a careful assessment of whether the potential benefits outweigh any specific risks. Benefits and risks should be assessed both in terms of how likely they are to materialize and how great their impact may be.

Agreeing on a strategy: After we have agreed to collaborate, we should agree on our expectations, how we will communicate effectively, and how the partnership will be managed and maintained. It is also useful to ensure that clear accountability, decision making and dispute resolution processes are in place. In some circumstances, laying these agreements out in a “memorandum of understanding” can be useful.

Ending the partnership: Exit strategies should be discussed early on in the relationship and possibly even included in any partnership agreement. These allow both partners to manage expectations on why, how and when partnerships will come to a close.

To learn more, see Amnesty International, *Partnering for Change, A Guide to Working Effectively with Others in Campaigning* (Index: ACT 10/005/2012)

IDENTIFYING CAMPAIGNING OBJECTIVES

THE SOLUTION TREE

The next stage of our analysis is to identify our campaigning objectives. A tool that can help us to do this is a “solution” (or objective) tree. This will effectively transform the difficulties and problems we identified earlier in our problem tree into the positive changes (or solutions) that we believe will address the problem.

The analysis works in exactly the same three stages as the problem tree. However, instead of starting with the core problem, we start with the core solution. The roots become the necessary changes needed to support the solution and the branches become the effects of the solution. Our example below shows how we transformed the problem of criminalization of sexuality and reproduction. Building both our problem and solution trees should give us a strategic overview of the issues – specifically where causes or effects interlink and where potential solutions exist. The prospect of addressing each of the issues may seem daunting. However, it is probably unrealistic to expect that change can be achieved in each of the problem areas identified through short-term advocacy. Equally, the deepest root causes may be so entrenched that they cannot be overcome by a single campaign.

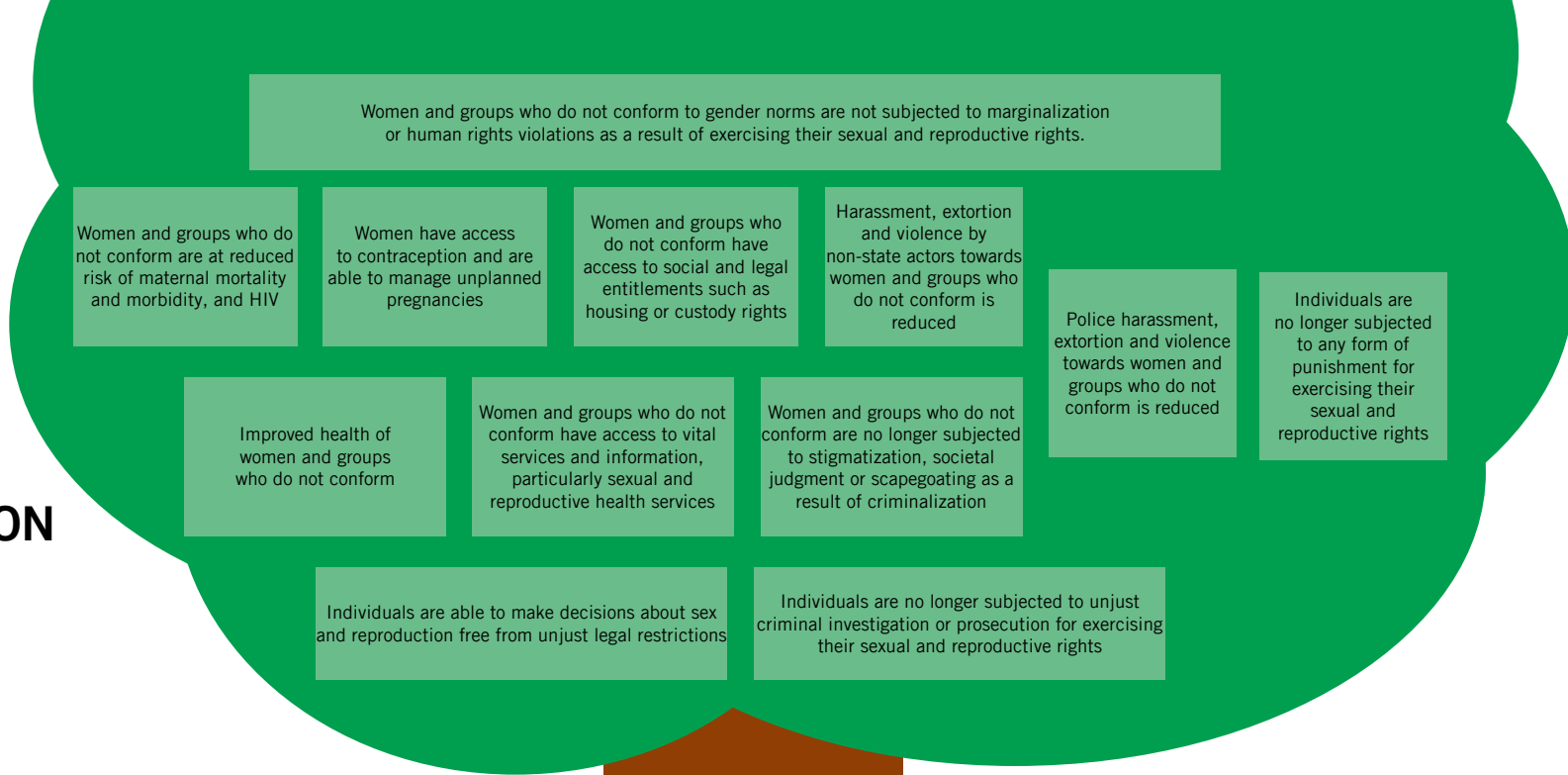
Image right:

Amnesty International activists supporting abortion rights take part in a demonstration in Santiago, Chile, 25 July 2017.

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EFFECTS



CORE SOLUTION

Political

Cultural

An end to criminalization and punitive regulation of sexuality and reproduction

Socio economic

Procedural

Politicians repeal or prevent the use of laws that criminalize

Public opinion supports decriminalization of sexuality and reproduction

Women and groups who do not conform are empowered within society and are not criminalized for exercising their sexual and reproductive rights

Criminal or religious courts set legal precedents that support decriminalization of sexuality and reproduction

Police respect and promote equality and human rights in all their practices

Politicians have increased understanding of human rights, including sexual and reproductive rights, and criminalization

Public debate is balanced. Supporters of decriminalization contribute clear and strong arguments to public debate.

Religious and cultural dogma does not monopolise public opinion

Public have access to full range of info and education on human rights, including sexual and reproductive rights, and criminalization

Women and groups who do not conform hold power within social, political and religious structures

Women and groups who don't conform have access to knowledge and are empowered to claim their rights

Members of the judiciary and religious leaders have increased understanding of human rights, including sexual and reproductive rights, and criminalization

NECESSARY CHANGE

Media demonstrates balance and understanding of the benefits of decriminalization.

Religious and cultural dogma supports sexual and reproductive rights, and decriminalization

Gender equality

Police officers have increased understanding of human rights, including sexual and reproductive rights, and are subject to strong accountability mechanisms

Media employees have increased understanding of human rights, including sexual and reproductive rights, and criminalization

Religious and cultural leaders have increased understanding of human rights, including sexual and reproductive rights, and criminalization

IDENTIFYING WHERE CHANGE IS POSSIBLE

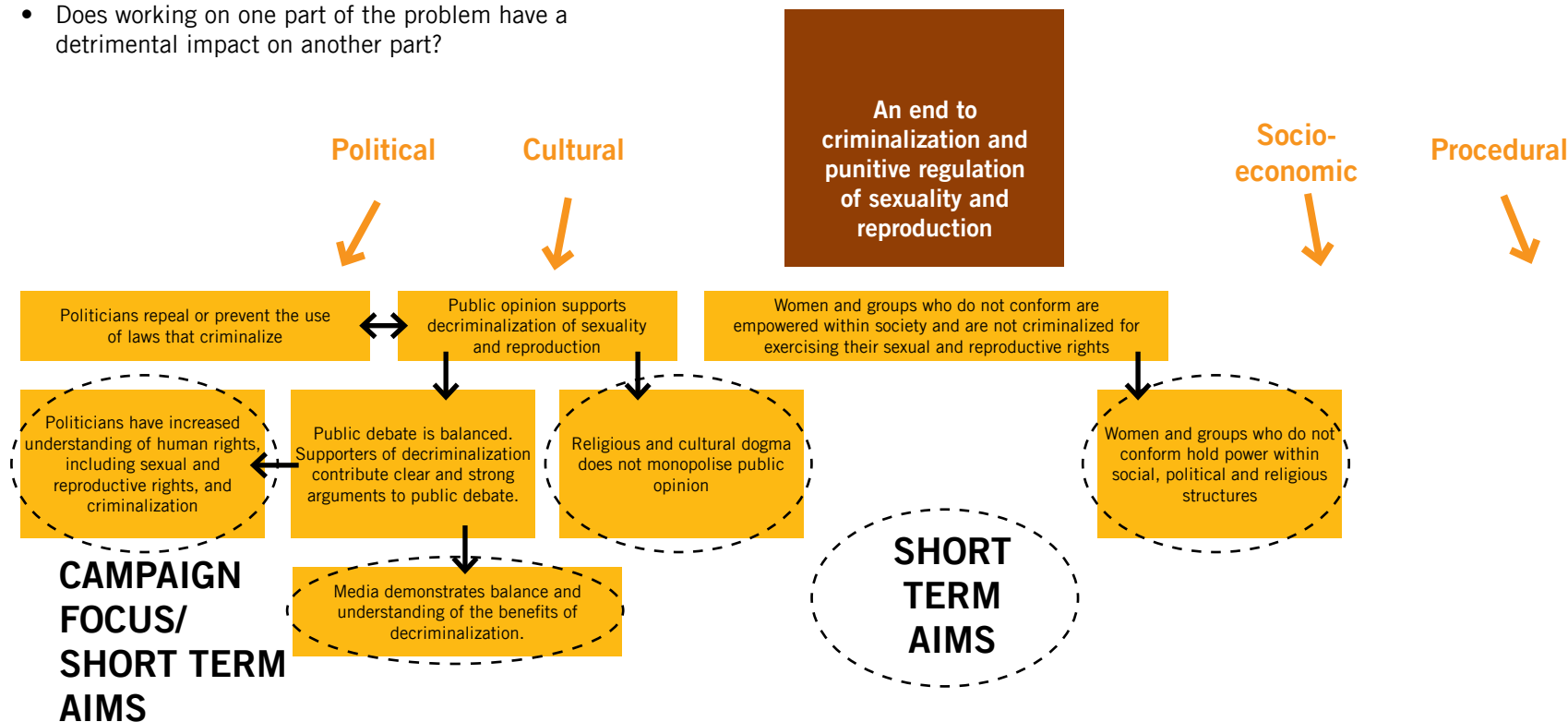
The next step in the process is to identify the aspects of the problem where we believe change can realistically be achieved. This will ensure that our campaigning resources and activities remain focused. When identifying the areas we want to work on it is important to consider:

- What are the most urgent needs of the rights holders most affected?
- Do the proposed solutions offer a more immediate benefit for those most affected?
- What solutions could be more influential than others in solving the problem?
- Does working on one part of the problem have a detrimental impact on another part?

HOW TO ISOLATE YOUR OBJECTIVES

After identifying where change is possible, we can use our solution tree to imagine the core solution as our core objective. Concentrating on the “roots” of our tree will allow us to identify what changes can realistically be achieved in the short term, to help reach that objective. (The “branches” at the top of the tree show you the longer-term impact of achieving your core objective.)

In this diagram we have selected a few of the necessary changes identified in our earlier solution tree for consideration as our short-term campaign objectives. In practice, the short-term aims selected in this example would mean that our campaign would principally focus on empowering rights holders, influencing the media and lobbying the government.



Once we have isolated our short-term aims, it is important to use the SMART (Specific/strategic, Measurable, Achievable, Realistic, Time-bound) criteria to assess their strengths. The table below demonstrates some of the questions that can help us assess our chosen aims.

SMART QUESTIONS	
Specific/strategic	<ul style="list-style-type: none"> • Are the short-term aims you have chosen well defined? Can they be understood? • Are there clear actions that could be taken to achieve them? • Are they significant enough to achieve the core objective? • Could choosing this aim cause difficulties in other areas?
Measurable	<ul style="list-style-type: none"> • How will we know when the aim has been achieved? • What evidence will be needed to confirm it? • How will we measure success?
Achievable	<ul style="list-style-type: none"> • Do we have the capacity and expertise to achieve the aim? • Will we have enough resources?
Realistic	<ul style="list-style-type: none"> • Can we realistically deal with potential risks?
Time-bound	<ul style="list-style-type: none"> • When should our advocacy come to an end? • Does this give us enough time to achieve our aim? • If we have chosen a number of issues to work on, in what order do they need to be addressed? • Do they need to happen by a certain point in our advocacy?

IDENTIFYING ADVOCACY TARGETS AND LEVERS FOR INFLUENCE

Our power map has shown us who holds power and influence in the environment in which we are operating. Our campaigning objectives have also clarified what we want to achieve. Together these may provide a clear picture of who our campaigning targets should be. However, it is worth thinking this through as those individuals or groups may not be immediately responsive to us or our work. In some instances, it may be counterproductive to engage directly with the main target too early in a campaign as it could lead to those in power dismissing or rejecting our issue without any consideration or debate, or provoke a backlash.

As such, our aim should be to build enough momentum behind our campaign to ensure that our main campaigning targets are motivated to engage with us. To do this, we have to consider the individuals or organizations that we want to reach; how they interact with our allies and opponents; and which individuals or organizations can help us influence our main campaigning targets. This will help us to identify where the opportunities for influence lie.

Drawing a table like the one below will help us to identify who our main (primary) advocacy targets are, who or what influences them, and who, therefore, may be our secondary advocacy targets.

Primary advocacy targets	Benefits/ drawbacks in approaching them directly	(1) Who / what are they accountable to, or regulated by?	(2) Who/ what are they influenced by?	Secondary advocacy targets
Government ministers	Benefit: takes you straight to the source of power. Drawbacks: they are largely supportive of criminalization of sexuality and reproduction and may not be prepared to listen to our campaign message.	Political leadership Voters	Voters / public opinion Media Political opposition	Voters/general public Political opposition
Public prosecutors	Benefit: You can address issues such as standards of evidence and discriminatory use of the law directly with key decision makers. Drawback: You will not be able to secure repeal of the law.	Their own prosecutorial guidelines National legislature National/ regional human rights frameworks Constitutional court International human rights law	Government Media	Media Sympathetic politicians within national legislatures
Media outlets	Benefit: provide a powerful lever for influence on public opinion and political and other actors. Drawback: have the potential to provoke a backlash against the campaign.	National laws/ regulatory frameworks National legislature	Public opinion	Sympathetic politicians within national legislatures

BUILDING YOUR STRATEGY (THEORY OF CHANGE)

We have now built up a detailed picture of the problem we want to tackle in our campaign. Our mapping should have provided us with an overview of the social and political context in which we are operating and helped us to identify the rights holders most affected by the issue, our potential partners, as well as those in power that we should direct our campaign towards. The next stage of our advocacy is to build our strategy. This will allow us to set out our long and short-term outcomes clearly and to outline the activities and tactics needed to achieve them.

Amnesty International defines outcomes as “an observable change in the attitude, behaviour or action(s) of a key actor or constituency” which work towards achieving the campaign’s objectives. We map outcomes by breaking them down into an expect-like-love progression. What you expect to see should be broadly within the control of the project. What you would like to see are outcomes that you positively anticipate as possible. What you would love to see are close to a “best-case” scenario. These outcomes need to be mapped within the broader strategic approach of the campaign.

Taking a Strategic Approach – Types of campaigning

Law reform

The most obvious approach to address the criminalization of sexuality and reproduction is to call for the repeal of discriminatory laws. However, for many reasons this may not be a feasible or strategic short-term aim. Reasons why law reform may not be feasible include:

Legal: The laws used are not specific to the criminalization of sexual or reproductive actions or decisions and have a broader legitimate purpose. For example, the authorities may be using assault laws to prosecute HIV transmission and exposure, or unfairly apply child abuse statutes against pregnant women. It would, therefore, be unreasonable to call for the repeal of these laws.

Cultural: In many countries where aspects of sexuality or reproduction are criminalized, public support for these laws may be so entrenched that it is unrealistic to hope to achieve decriminalization in the short term. In some cases, it may even be counterproductive or dangerous to focus publicly on repeal of these laws as a longer-term objective. Where public opinion is deeply opposed to decriminalization, calls for law reform may result in a public, media or political backlash that undermines advocacy objectives and can put individuals at risk of harm.

Political: The nature of the political process in some countries can make law reform extremely difficult to achieve. This may be due to a lack of democratic process or participation, for example, where women and/or marginalized people cannot or do not vote in high numbers. Political corruption or an absence of effective accountability mechanisms can also make advocating for decriminalization extremely difficult. In some instances, political leadership can be highly influenced by religious lobbies or may adhere strictly to the official state religion.

Incremental campaigning

Incremental approaches that offer more realistic short-term outcomes can be vital in securing meaningful change and, most significantly, in minimizing the immediate harm faced by individuals at risk. There are various approaches that can be adopted to campaign successfully against the criminalization of sexuality and reproduction.

For example:

- Cumulative litigation: Legal challenges that address aspects of the harm caused by criminalization, rather than criminalization itself, can secure immediate benefits for groups at risk. For example, legal cases against newspapers for invasions of privacy or defamatory claims against women who have had an illegal abortion, may provide short-term remedies for a particular rights violation. Undertaking smaller scale litigation can lead to recognition of the rights of those most affected over time. These efforts can also pave the way for larger scale litigation such as constitutional challenges against discriminatory laws.
- Guidelines and standards: We can also engage with key actors, such as the police, public prosecutors, medical professionals and the media, to reduce the human rights impact of criminal regulation of sexuality and reproduction. Working with professional bodies and associations, trade unions, government departments or justice authorities to develop guidelines that promote human rights principles and professional accountability can minimize the immediate threats that communities at risk of criminalization often face. For example, guidelines for prosecutors regarding charges of HIV transmission and exposure have been developed in some countries as a means to establish minimum standards of evidence. These work in effect to

reduce the scope for prosecution. It is important to ensure that any work to establish guidelines or standards does not compromise overall opposition to criminalizing sexuality and reproduction. Equally, it is essential that such work does not lead to any increased risk of individuals being criminalized or punished.

Capacity building

In some countries public attitudes are so entrenched or levels of knowledge and understanding so poor that it is not possible to have a balanced debate on decriminalization. In this context, advocates may have to prioritize capacity building work over advocacy. Examples of capacity building approaches include:

- Human rights education that raises public awareness and increases understanding of the issues.
- Training for civil society and state officials, particularly for strategically important groups such as rights holders, the media, the police, the judiciary, public prosecutors and medical professionals.
- Coalitions and partnerships that build a critical mass of support.

KEY MESSAGES – FINDING THE RIGHT ARGUMENTS

Key messages are vital to campaigning. They are the main arguments that we use to convince our advocacy targets of the case for change. There is no particular formula to determine which arguments to use and when. In many instances, we may need to discuss different messages with stakeholders and partners to see which have the most effect.

It is important, however, to be strategic in developing key messages. Different people will be moved or persuaded to act by different messages. Thinking about the pressures that those we are trying to convince face and about their priorities and perspectives can help identify which arguments may resonate with them. Campaigning targets, such as governments, the courts, police or general public, will invariably have their own priorities, responsibilities and even prejudices. One of the best ways to convince them to act, therefore, is to demonstrate that a campaigning objective falls within their existing priorities or responsibilities or that by undertaking action on the issue they will secure some kind of benefit or credit in support of their own priorities or responsibilities.

In countries where discussion of issues of sexuality or reproduction are highly censored or emotive, it may be useful to introduce your arguments around criminalization more gradually as part of a related issue that is broader in scope and may be more socially acceptable or established in public debate.

GATHERING YOUR FACTS

It is important to try to build a strong evidence base. Developing research that underlines the problems caused by the criminalization of sexuality and reproduction can be useful for generating awareness, media discussion and political action. However, even if detailed research is beyond the scope of our campaigning, it is vital to document the human rights violations caused by the criminalization of sexuality and reproduction in as detailed and accurate a manner as possible. Partnerships with rights holder organizations and other key stakeholders, such as professional medical associations or criminal justice reform organizations, can bolster our efforts to develop quantitative or qualitative research and collect personal testimonies. This can be extremely helpful in illustrating the human consequences of these human rights violations.

Around the world, activists working on the decriminalization of sexuality and reproduction have used a wide range of messages to bring about change. These generally fall into one of the following three categories.

HUMAN RIGHTS ARGUMENTS

The criminalization of sexuality and reproduction leads to a wide range of human rights abuses and violations and there are a variety of human rights-based arguments that can be used to build your case for change. The success of these arguments depends on the local context, their resonance with advocacy targets and the quality of supporting evidence.

As an initial matter, activists can challenge the application of criminal law to particular sexuality and reproduction issues. While states generally have discretion to determine what type of conduct is sufficiently harmful to others and the community at-large to merit criminal sanction, this policing power is not unlimited.⁵ Various longstanding human rights principles can be applied to challenge government use of criminal sanctions to prevent and punish certain conduct.

An overarching limit is the principle of *ultima ratio* - criminal law as a last resort.⁷ This is based on the understanding that criminal sanctions are one of the most severe forms of state intrusion on civil liberties and thus must be used with great caution and in limited circumstances. Additional principles of human rights law which can be relied on to critique governments' resort to criminal law include:

Legality: Crimes and punishments must be defined by law in a manner that is accessible to the population.⁸ People must be able to foresee what conduct is criminalized and the scope of possible penalties.⁹

Legitimate aim or purpose: Restrictions on human rights (including through criminal law) must be for a legitimate purpose or aim.¹⁰ The list of what may constitute a legitimate aim is not open-ended and is

restricted only to specific grounds such as: protection of national security, public order, public health or morals or the rights and freedoms of others. In order to be lawful any restrictions on human rights, in addition to serving a legitimate aim or purpose, would also need to meet the principle of necessity and proportionality. Invoking morality alone as a reason to criminalize particular conduct will never be enough.¹¹

Necessity: Restriction of an individual’s human rights can only be justified when other, less restrictive responses would be inadequate and unable to achieve the legitimate aim or purpose.¹²

Proportionality: State policies must be proportionate and suitable to pursue the legitimate aim.¹³ Deprivation of someone’s liberty which results from the application of criminal law may not always meet the requirement of proportionality, especially if other less harsh measures could be similarly effective.

Non-discrimination: Criminal laws and policies must be applied equally to all people and must not have a discriminatory impact on particular groups of people.¹⁴

While justifications for criminal law often focus on “preventing harm” in society, activists can also focus on the harm produced by (or that results from) application and enforcement of criminal law (“harm production” arguments). In particular, that states’ criminalization of a particular sexual and reproductive rights issue leads to harm which amounts to a human rights abuse or violation. Below are some key human rights claims activists can make to challenge states’ criminalization.

Right to life

Where laws and policies result in a direct threat to people’s lives, such as in the case of highly restrictive laws or complete bans on abortion, or where the death penalty is used as punishment for consensual sex outside marriage or same-sex sexual activity, focusing on the right to life can be a powerful argument. It often attracts significant mobilization around the world and can be highly effective in protecting individuals at immediate risk. However, this is dependent on local activists, often operating in highly oppressive environments, identifying those at risk and connecting with larger global networks.



Images above:

A women’s sexual and reproductive rights awareness event run by AI Togo, July 2017.
© Amnesty International

CASE STUDY

BEATRIZ - EL SALVADOR'S BAN ON ABORTION

Beatriz was 22 years old when complications from a non-viable pregnancy threatened her life. Living with several severe illnesses, including lupus and a kidney condition, Beatriz's doctors recommended terminating the pregnancy when she was 13 weeks' pregnant. However, her doctors were too fearful to perform the surgery due to El Salvador's complete ban on abortion, which criminalizes abortion even when a woman's life is at risk. It took over two months for the government to allow an early caesarean section to be performed in June 2013. The foetus survived for only a few hours after the procedure due to severe birth defects. During the two months Beatriz was forced to carry the non-viable pregnancy, she almost lost her life due to complications from her on-going illnesses. Beatriz's case highlights the grave situation in El Salvador that has both a chilling effect on medical professionals and their ability to provide life-saving treatment, and punishes women in a severely unjust and disproportionate way. In El Salvador health care professionals who perform abortions face six to 12 years' imprisonment, and women and those who assist them with obtaining abortions face two to eight years in prison. However, some women are charged with aggravated homicide and face up to 50 years in prison.¹⁵



Image above:
Beatriz, who almost died waiting for permission to terminate a pregnancy, El Salvador, September 2014.
© Amnesty International

Arguments around use of torture and other cruel, inhuman or degrading treatment or punishment (“other ill-treatment”) can also be effective in campaigning on cases where people accused of sexual or reproductive “crimes” have been subjected to ill-treatment, such as forced vaginal or anal examinations, or where people have been sentenced to corporal punishment, such as flogging. Such arguments are also increasingly being applied to the enforcement of highly restrictive adultery legislation.

There have also been a number of successful global advocacy campaigns that have framed rights violations related to criminalization as an issue of gender-based and/or sexual violence. These campaigns have specifically focused on how laws criminalizing women and people who do not conform to dominant sexual or gender norms, encourage violence against these groups and, in many cases, foster impunity for such violence by both state officials and non-state actors.

Right to freedom from torture and other ill-treatment

CASE STUDY

FORCED ANAL EXAMS TO PROVE CRIMINALIZED SAME-SEX CONDUCT

In eight countries where same-sex conduct is criminalized, forced anal exams have been performed on men to “prove” that they have engaged in same-sex conduct. This type of exam has no basis in scientific fact, but rather leads to both physical and emotional harm for the men subjected to the invasive practice. The use of forced anal exams has been documented in Cameroon, Egypt, Kenya, Lebanon, Tunisia, Turkmenistan, Uganda and Zambia. In Lebanon in 2012, after the arrest of 36 men accused of same-sex conduct who were subjected to forced anal exams, a campaign led by Legal Agenda called for the end to the practice. The head of the Lebanese Order of Physicians said in a statement that there was no scientific basis for the forced anal exams and that performing them violates the UN Convention Against Torture and infringes upon the dignity of those subjected to the exams. This led to the Minister of Justice calling on the public prosecutor to end the practice in Lebanon. While the public prosecutor distributed the Minister’s call, he did not issue this as an order. This means that forced anal exams still continue in Lebanon, with reports from 2014 and 2015 detailing the practice being used during investigations of suspected same-sex conduct.¹⁶

Right to equality and non-discrimination

Other advocates have focused on raising awareness of the damaging impact that illegitimate criminalization has on equality, in particular the discrimination in a wide range of areas including health, education and employment. This argument has the potential to be particularly effective where governments and other state officials, such as the police or educators, have local legal or procedural equality standards that they promote or are bound by. In this context, it may be possible to convince state authorities that taking action to mitigate the harm of criminalization falls within the scope of these standards.

Unfair trials are also common. Often, those accused have either inadequate or prejudiced defence counsel or no defence at all. Equally, the courts and judiciary often demonstrate insufficient knowledge of the issues involved, including the human rights obligations of states, or discriminatory attitudes and practices towards those accused. Advocates have used the human rights principle of equality before the law to secure improved access to justice for people accused of sexual or reproductive “crimes” in a number of countries.

Right to privacy

In some countries arguments around the right to privacy have been used successfully to mitigate some of the harm caused by the criminalization of sexuality and reproduction. These arguments can be particularly successful where advocates have focused on addressing the discriminatory representation of individuals accused of sexual or reproductive “crimes” in the media, highlighting related issues, such as exposure of personal information and defamatory statements, rather than calling directly for laws to be repealed. Criminalization of consensual sexual intimacy in private can also be challenged on right to privacy grounds.

The entrenched and inflammatory nature of the debate on same-sex sexual activity in many parts of the world means it may be easier to win smaller scale legal battles on issues of privacy than it is to argue for the repeal of laws. These smaller scale successes can bring about immediate tangible improvements in the experiences of people at risk and serve as an initial step towards the eventual aim of decriminalization.

CASE STUDY

UGANDA

The petitioners in the case of *Kasha & Others v. Rolling Stone & Another* (2011) backed by a coalition of Ugandan human rights organisations argued that a controversial article identifying 100 allegedly LGBTI men and women in the tabloid newspaper *Rolling Stone* amounted to a breach of the right to privacy. They argued successfully that while the criminal law in Uganda prohibits same-sex “conduct”, it does not criminalize “identity” and that LGBTI people are equally deserving of privacy rights and dignity, based on the universality of human rights. The High Court issued an injunction in January 2011 prohibiting *Rolling Stone* from any further publication of details of LGBTI individuals.¹⁷ On 24 February 2014, President Museveni signed the Anti-Homosexuality Bill into law. After the Court-issued injunction in 2011 and before the adoption of the Act in 2014, tabloids stopped publishing names and photos of LGBTI individuals. However, after the adoption of the Anti-Homosexuality Act, tabloids resumed publishing photos of LGBTI individuals. In 2014, *Red Pepper*, a tabloid, published an article, “Uganda’s 200 Top Homos Named,” along with photos of individuals. Through a petition, the constitutionality of the Act was challenged on the grounds that a quorum was not present when it was passed in Parliament. The petition asked for a permanent injunction against publishing information about those engaged in consensual same-sex activities. The Constitutional Court declared the Act null on 1 August 2014; however, the Constitutional Court did not address the request for a permanent injunction as the Act was solely declared null on procedural grounds.¹⁸

Right to health

A large part of campaigning for sexual and reproductive rights focuses on the right to health, specifically the impact of criminalization on the sexual, reproductive and mental health of individuals, and its broader impact on public health. The UN Special Rapporteur on the right to health and the Global Commission on HIV and the Law have extensively detailed the health impact of laws that criminalize consensual sex and aspects of reproduction and have made multiple recommendations, including for the repeal of laws.¹⁹

Arguments on the risks that criminalization poses to public health, specifically the increased risk of HIV transmission, can in some contexts be an effective tool for convincing the wider public that it is an issue that affects them even if they are not directly targeted by these laws.

CONSTITUTIONAL ARGUMENTS

Many decriminalization advocates have used arguments relating to the constitutionality of national laws that criminalize sexuality and reproduction. Strategic legal challenges have been undertaken in a number of countries, ranging from advocating for the integration of equality, non-discrimination or bodily autonomy clauses in the drafting of new constitutions, to legal challenges invoking provisions within existing constitutions to call for the decriminalization of sexuality and reproduction.

CASE STUDY

BOLIVIA – CONSTITUTIONAL CHALLENGE OF JUDICIAL AUTHORIZATION REQUIREMENTS FOR ABORTION

Abortion is a criminal offence in Bolivia, with the exception of cases where the woman's health is in danger or the pregnancy is the result of rape. Nevertheless, even in cases where the law allows for abortion, it imposes a number of obstacles to access abortion services. Among these is the requirement that prior judicial authorization be obtained, the practical effect of which is to render the exceptions meaningless. As a result, most of the abortions carried out in Bolivia are clandestine, exposing women to very real risks both in terms of the law and their health.

In February 2014, the Plurinational Constitutional Court ruled that the requirement that women who have been raped obtain authorization from a judge in order to have an abortion was unconstitutional. However, it ruled that, instead, women should be required to produce the formal complaint of rape. In January 2015, the Ministry of Health issued Ministerial Resolution No 0027 setting out the “Technical Procedures for the Implementation of the Constitutional Ruling on Health Services”. According to the information received by Amnesty International, health personnel in the main public hospitals in Bolivia were consulted during the drafting of the Procedures and discussions with them are continuing with a view to prompt implementation. While there are still human rights abuses and violations related to the ongoing criminalization of abortion in Bolivia (and the Plurinational Constitutional Court ruling called for reform of the law)²⁰, the constitutional challenge and resulting procedural guidelines represent an important step forward in promoting women's and girls' sexual and reproductive health and rights.

Future campaigning and advocacy may involve promoting training and education around the legality of abortion and rights to access abortion for those working in the health service, the police, prosecutors, defence lawyers and other officials responsible for implementing the ruling and procedures, as well as among the public at large and some senior state officials. Anecdotal information received by Amnesty

International suggests that despite the February Constitution Court ruling, many doctors are continuing to demand authorization from a judge and many prosecutors also believe that such authorization is necessary. A law to decriminalize abortion could definitively remove current barriers to abortion that are costing the lives of so many women and girls.

ARGUMENTS ABOUT EFFECTIVENESS AND “HARM PRODUCTION”

In a number of instances campaigners have argued against the criminalization of sexuality and reproduction on the basis of research and evidence demonstrating that these laws do not achieve their intended purpose. For example, laws that criminalize abortion are often introduced or justified on the basis that they discourage women from having abortions. However, evidence from around the globe demonstrates clearly that restrictive abortion legislation does not prevent abortion, but rather leads to increases in illegal abortion. In other words, restrictive abortion laws cause more harm than good. Along similar lines, campaigns can focus on the harm produced by the existence and enforcement of criminal laws (as referenced earlier), highlighting the tangible human rights impact of such criminalization, such as the “chilling effect” and stigma reinforced by criminal law and violations for simply exercising one's sexual and reproductive rights.

PLANNED ACTIVITIES

Planning your activities is an important step for determining your short-term and long-term goals and identifying what resources you will need. Your plan should include a list of specific tasks and who will be responsible for each as well as a timeline for task completion. These steps will make it easier to evaluate your progress later on. (See below for a sample ‘activity planning’ chart)

SETTING A CLEAR TIMELINE

It is important to set a realistic timeline for your campaign knowing that working with partners and building consensus can be slow and complex processes. Adjusting your plans to address new developments, proposals and laws may be necessary. When in doubt, leave yourself a little more time than you think you will need to achieve each of the steps you have outlined.

SAMPLE - ACTIVITY PLANNING CHART	
Campaign and strategic goals to which this activity is linked	
What is the activity to be used?	
How will this activity contribute the achievement of the strategic goal(s)?	
Who is the target for this activity?	
What is your message? Is the message relevant and clear to the target?	
What are your indicators for measuring the impact of this activity?	
Materials needed for the activity	
Team for planning and carrying out the activity	
Date, time and location for activity to be carried out	
Publicity for the activity – How will people learn about it? Will there be sufficient numbers of participants?	
Permits, law enforcement notification, permission from property owner secured?	
Media plan for the activity	

DEVELOPING A MONITORING, EVALUATION AND LEARNING FRAMEWORK

Throughout your advocacy, it is important to keep a record of what has worked, what has not worked, and why. This helps to better inform your future advocacy plans. Monitoring and evaluation allows you to assess the impact of your work against your advocacy plan, and to reflect on the successes and failures.

Monitoring: The overarching aim of monitoring is to track progress and, if necessary, to change action plans to respond to unanticipated issues that emerge during your advocacy. Activists should engage in monitoring throughout their campaign. This can be completed through regular meetings to consider whether particular campaign activities and benchmarks are being achieved. The expect-like-love outcomes you mapped as you developed your Theory of Change will help you monitor your campaign progress, as they simultaneously serve as indicators. Depending on the ambition of your project, the journey to successful achievement of your objectives will include achieving a combination of what you would “like” and “love” to see with different stakeholders.

Evaluation: Evaluation looks at whether the campaigning objectives have been achieved, how they were achieved and what activists can learn from the process to inform advocacy and campaigning moving forward. Evaluation should be carried out at significant points throughout the course of the campaign (i.e. phase change, mid-project, end of project).

There are two primary forms of evaluation: implementation and outcome.²¹ The purpose of implementation evaluation is to understand how well you undertook the action. The following questions can be asked when evaluating “campaign implementation”:

- Are you performing the services or activities as planned?
- Are you reaching the intended target population?
- Are you reaching the intended number of participants?
- Is it leading to the products you expected? How do the participants perceive these services and activities?

The purpose of outcome evaluation is to understand the overall effectiveness of the campaign activities to achieve the overarching aim of the campaign. The following questions can be asked when evaluating “campaign outcomes”:

- Is the knowledge base and understanding of the campaign targets being changed?
- Are the attitudes, behaviours, or awareness of the campaign targets being shifted?
- Has there been a tangible change in the law, policy or practice at issue in the campaign?
- What are the overarching results of the campaign?

In addition to undertaking monitoring and evaluation throughout the campaign, it is useful to hold meetings with your fellow campaigners to discuss the successes and challenges that emerged throughout the campaign. This provides the opportunity for reflection and learning moving forward, as well as potential “next steps” should the campaign continue on in some other form. Some questions the group may consider include:

- What went well?
- How will we celebrate this success and thank those who helped?
- What contacts and connections did we make?
- What can we do better next time?
- What challenges do we face?
- What did we learn that we could use in the future?
- What new resources became available to us because of this action or event?
- Who else could benefit from this information (e.g. new group members or leaders, the regional office, other human rights organizations?)

ADDITIONAL RESOURCES

Amnesty International Resources

Amnesty International, *Respect My Rights, Respect My Amnesty International, Impact and Learning System* (Index: POL 50/6251/2017)

Dignity: Module Three- Sexual and Reproductive Rights are Human Rights (Index: ACT 35/001/2015)

Amnesty International, *Enabling the Active Participation of Rights Holders, Partners and Activists in Campaigning & Activism* (Index: ACT 10/2003/2015)

Amnesty International, *Africa – Speaking Out: Advocacy Experiences and Tools of LGBTI Activists in Sub-Saharan Africa* (Index: AFR 01/001/2014)

Amnesty International, *Partnering for Change, A Guide to Working Effectively with Others in Campaigning* (Index: ACT 10/005/2012)

Amnesty International, University of York and Freedom from Torture, *Active Participation in Human Rights, Conference 4-5 June 2011*, www.amnesty.org/download/Documents/24000/act100232011en.pdf

Amnesty International, *Activist Toolkit: Demand Dignity* (Index: ACT 35/034/2009)

Other Resources

Frontline Defenders, *Protection Handbook for Human Rights Defenders*, 2016, www.protectioninternational.org/en/node/1030

Just Associates, Association for Progressive Communications, Women'sNet, *Information and Communication Technologies' (ICTs') for Feminist Movement Building: Activist Toolkit*, 2015, www.justassociates.org/sites/justassociates.org/files/icts_toolkit_2015.pdf

SWAN, *A Guide for Sex Worker Human Rights Defenders*, 2014, www.nswp.org/resource/guide-sex-worker-human-rights-defenders

Just Advocates, *A Feminist Movement Builder's Dictionary*, 2013, www.justassociates.org/sites/justassociates.org/files/feminist-movement-builders-dictionary-jass.pdf

Protection Desk International, *Protection Manual for LGBTI Defenders, Protection Desk International*, 2010, www.eidhr.eu/files/dmfile/protection-manual-or-lgbti-defenders_en.pdf

ILGA-Europe, *Make it work: Six steps to effective LGBT human rights advocacy*, 2010, www.eidhr.eu/files/dmfile/advocacy_manual_www1.pdf

ENDNOTES

1 Frontline Defenders, an organisation supporting human rights defenders around the world, have created a Protection Manual for Human Rights Defenders, which covers areas such as assessing risks, responding to incidents, and preparing and implementing a security plan. See Frontline Defenders, *Protection Handbook for Human Rights Defenders*, 2016, www.frontlinedefenders.org/en/resource-publication/protection-handbook-human-rights-defenders

2 For more detailed information on digital security, Amnesty International refers activists to a resource produced by the Tactical Technology Collective and Frontline Defenders called *Security in-a-box*. This resource outlines, amongst other things, how to protect your data from physical threats, but also from malicious software (malware) and hackers, how to protect (and destroy, where necessary) sensitive information, how to use a mobile phone securely, and how to keep your internet communications private

3 For more examples specific to care work, see *Compassion Fatigue Awareness Project, Recognizing compassion fatigue*, www.compassionfatigue.org/pages/symptoms.html; see also CREA, *Self-care and self-defence manual for feminist activists, 2008*, www.genderit.org/sites/default/upload/self-care-brochure.pdf

4 Amnesty International, *Campaigning Manual* (Index: ACT 10/002/2001)

5 See, for example, UNDP, UNAIDS, Global Fund to Fight AIDS, Tuberculosis and Malaria, *Analysis of key human rights programmes in Global Fund-supported HIV programmes*, content-ext.undp.org/aplaws_publications/3107370/Analysis%20of%20Key%20HRTS%20Programmes%20in%20GF-Supported%20HIV%20Programmes.pdf; UNDP, UNFPA, Asia Pacific Network of Sex workers, SANGRAM, *The right(s) evidence: Sex work, violence and HIV in Asia – A multi-country qualitative study, 2015*, <https://aidsdatahub.org/sites/default/files/documents/new/Rights-Evidence-Report-2015-final.pdf>; UNAIDS, *HIV- Related stigma, discrimination and human rights violations: Case studies and successful programmes, 2005*, http://data.unaids.org/publications/irc-pub06/jc999-humrightsviol_en.pdf

6 See generally UN Commission on Human Rights, 41st Sess., 28 September 1984, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc. E/ CN.4/1985/4, annex; see also UN Commission on Human Rights, 43rd Sess., 8 January 1987, *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/ CN.4/1987/17, annex

7 See generally N. Jareborg, *Criminalization as Last Resort* (Ultima Ratio), 2 Ohio State Journal of Criminal Law 521 (2005); D. Husak, *The Criminal Law as Last Resort*, 24 OJLS 207 (2004)

8 See S. Lamb 'Nullum Crimen, Nulla Poena Sine Lege in International Criminal Law' in A Cassese & P Gaeta, et al. (eds.) *The Rome Statute of the International Criminal Court* (2002) 19; Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 U.N.T.S. 90 (entered into force 1 July 2002), Art 22(1); Universal Declaration of Human Rights, adopted 10 December 1948, G.A. Res. 217A (III), UN Doc A/810, Art 11; European Convention for the Protection of Human Rights and Fundamental Freedoms, signed 4 November 1950, 213 U.N.T.S. 222 (entered into force 3 September 1953) Art 7; American Convention on Human Rights, 22 November 1969, O.A.S.T.S. No. 6, O.A.S. Off. Rec. OEA/Serv.L/V/II.23, doc. 21, rev. 6 (entered into force July 18 1978) Art 9; African Charter on Human and Peoples' Rights, adopted 27 June 1981, O.A.U. Doc CAB/LEG/67/3, rev.5, 21 I.L.M 58 (1982) (entered into force 21 October 1986) Art 7; League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 International Human Rights Rep. 893 (2005) (entered into force March 15, 2008) Art 15

9 *Del Rio Prada v. Spain*, European Court of Human Rights, Grand Chamber Judgment, 21 October 2013, para 91; *Kafkaris v. Cyprus*, European Court of Human Rights, Grand Chamber Judgment, 12 February 2008, para 150

10 See International Covenant on Civil and Political Rights, adopted 16 December 1966, G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, UN Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) Arts 19, 21 and 22; International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, UN Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) Art 4; Council of Europe, European Social Charter (revised) signed May 3, 1996, E.T.S. No 163 (entered into force 1 July 1999) Art 31.1; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), adopted 17 November 1988, O.A.S.T.S. No 69, O.A.S. Off. Rec. OEA/Ser.L.V/II.82doc.6 rev.1 (1992) (entered into force 16 November 1999) Art 5

11 Human rights law recognizes that states have a legitimate interest in promoting public security, safety or order, public health, morals, or the protection of the rights and freedoms of others. Siracusa Principles, at paras 27-28. The Siracusa Principles affirm, however, that states' 'margin of discretion,' as it relates to morality, does not apply to the rule of non-discrimination as defined under the ICCPR. See also, *Toonen v. Australia*, UN Human Rights Committee (4 April 1994), UN Doc. CCPR/C/50/D/488/1992, para. 8.6 (rejecting Tasmania's argument that 'moral issues' were 'exclusively a matter of domestic concern, as this would open the door to withdrawing from the [Human Rights] Committee's scrutiny a potentially large number of statutes interfering with privacy'); *Naz Foundation (India) Trust v Government of NCT of Delhi and Others*, Writ Petition (Civil) No. 7455/2001, Delhi High Court (2 July 2009), at para 91; *National Coalition for Gay and Lesbian Equality v Minister of Justice*, Constitutional Court of South Africa, CC 11/98, 9 October 1998, paras 79, 86; *Lawrence v Texas*, 539 US 558, 582 (2003) (J. O'Connor, Concurrence); *Ang Ladlad LGBT Party v Commission on Elections*, Republic of the Philippines Supreme Court, 8 April 2010, 13

12 Both the Siracusa Principles and the Limburg principles require that a state's limitation or restriction on human rights be proportionate and no more restrictive than necessary. Read in conjunction with the principle of ultima ratio, states should thus only resort to criminal law if no other less punitive measures suffice. See Siracusa Principles, at paras 10-14; Limburg Principles, at paras 60-61

13 See Siracusa Principles, at paras. 10(d) and 51; UN Human Rights Committee, General Comment 31, UN Doc. CCPR/C/21/Rev.1/Add.13, 2004, para. 6; UN Committee on Economic, Social and Cultural Rights, General Comment 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, UN Doc. E/C.12/GC/20, para 13

14 See Siracusa Principles, at paras. 9, 28; Limburg Principles, at paras 35-41, 49

15 Amnesty International, *El Salvador's total ban on abortion: The facts 2015*, www.amnesty.org/en/press-releases/2015/11/el-salvador-total-abortion-ban/

16 See Human Rights Watch, *Dignity debased: Forced anal examinations in homosexuality prosecutions*, 2016, www.hrw.org/report/2016/07/12/dignity-debased/forced-anal-examinations-homosexuality-prosecutions

17 See Human Rights First, *Court affirms rights of Ugandan gays*, 2011, www.humanrightsfirst.org/2011/01/04/court-affirms-rights-of-ugandan-gays/

18 Amnesty International, *Uganda: Rule by law - Discriminatory legislation and legitimized abuses in Uganda* (Index: AFR 59/006/2014)

19 See Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, UN Doc. A/HRC/14/20, 2010, paras. 46-50; Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, UN Doc. A/HRC/23/41, 2013; UNDP, *Global Commission on HIV and the Law, Risks, rights & health*, 2012

20 Clause 5 of the ruling calls on the Plurinational Legislative Assembly to "institute laws that guarantee the exercise of the sexual and reproductive rights... and that contribute to resolving the problem of clandestine abortions". See also, Amnesty International, *Bolivia: Briefing to the UN Committee on the Elimination of Discrimination against Women*, 2015 (Index: AMR: 18/1669/2015)

21 See ILGA-Europe, *Make it work: Six steps to effective LGBT human rights advocacy*, 2010, p. 126-129, www.eidhr.eu/files/dmfile/advocacy_manual_www1.pdf

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Young activists defending sexual and reproductive rights at a workshop in South America, May 2016.

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