

CHANGING LAWS THAT DISCRIMINATE

CHANGING LAWS THAT DISCRIMINATE

In many countries, laws result in people being treated differently, excluded from essential services or being subject to undue restrictions on how they live their lives, simply because of who they are. Such laws are discriminatory—they deny human rights and fundamental freedoms.

People may experience more than one form of discrimination. A person may experience discrimination because of his or her health status and because of his or her race, gender identity or sexual orientation, compounding the effects on the individual and the wider community.

Laws—such as laws on sex work, same-sex sexual relations, the use or possession of drugs for personal use and the non-disclosure, exposure or transmission of HIV—may discriminate by criminalizing conduct or identity.

Other laws may prevent people from accessing benefits or services. Girls may not be allowed to go to school if they are pregnant or women may not be able to access financial services without their husband's permission. Laws may also impose parental consent for adolescents to access health services or restrict the entry, stay and residence of people living with HIV.

States have a moral and legal obligation—under the Universal Declaration of Human Rights, human rights treaties, the 2030 Agenda for Sustainable Development and other international obligations—to remove discriminatory laws and to enact laws that protect people from discrimination.



CHANGING LAWS IS POSSIBLE

The Preamble of the Charter of the United Nations has human rights at its core. In its opening sentence it states, “We the peoples of the United Nations ... reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ...”

The law can be a powerful force for good, but it can also be a powerful force for bad—to stop discrimination, the law must be on the side of good. For example, gender equality is still a long way off, but we know that progress is possible—only 60 years ago, the majority of women globally could not vote or even have a bank account in their own name.

THERE ARE DIFFERENT WAYS OF CHANGING DISCRIMINATORY LEGISLATION

- 1.** Parliamentary process. Laws that discriminate can be abolished through the leadership of governments and the votes of parliamentarians. Awareness-raising among the legislature is therefore essential. Law reform can take time, but building coalitions, working with parliamentarians, building up the evidence base for reform or using international human rights mechanisms are all actions that people can take.
- 2.** Strategic litigation. In many countries, the courts have the power to strike down laws that are barriers to constitutionally enshrined human rights principles. This can be realized through litigation brought by an individual or an organization affected by the law.
- 3.** Public consultation and a referendum. In some countries, citizens can propose law reform through a petition and request a national vote or referendum.



RECOGNIZE DISCRIMINATION

Identifying conditions or requirements that criminalize acts or discriminate against a specific group of people is the first step.

Laws can affect people in different ways. It is not always obvious whether a law will contain discriminatory provisions, and it is not always obvious from the name of the law. Examples of laws that can contain discriminatory provisions include the following:

- ▶ Marriage and civil union laws.
- ▶ Parental consent laws that affect access by young people to services.
- ▶ Workplace legislation.
- ▶ Laws that govern the education or health sector.
- ▶ Laws that limit access to services and that exclude certain people based on, among other things, their gender identity, race, nationality or socioeconomic status.
- ▶ Banking and insurance laws.
- ▶ Migration and citizenship laws.
- ▶ Public order and security laws.
- ▶ Property laws.
- ▶ Inheritance laws.
- ▶ Laws that regulate sexual conduct.
- ▶ Laws that regulate access to reproductive health services.
- ▶ Laws that punish people owing to their health status, such as HIV or pregnancy.
- ▶ Laws that punish people who use drugs.



KNOW YOUR RIGHTS

Everyone has rights, either guaranteed by national constitutions and charters or by international treaties and conventions. Every Member State of the United Nations is obliged to respect, protect and fulfil the rights outlined in the Universal Declaration of Human Rights. Use those rights to challenge discriminatory laws.

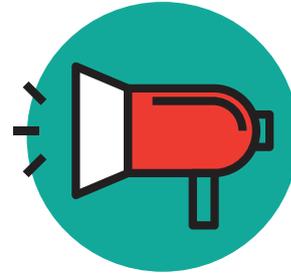
Rights that people can use to contest discriminatory laws include the following:

- ▶ The right to equal treatment before the law.
- ▶ The right to an education.
- ▶ The right to economic opportunities.
- ▶ The right to privacy.
- ▶ The right to dignity.
- ▶ The right to health.
- ▶ The right to association.
- ▶ The right to a fair trial.

Everyone has a responsibility to hold states accountable, call for change and contribute to efforts to remove discriminatory laws. The first steps to making a change are to know the law, recognize that laws can discriminate and highlight discriminatory laws to others.

TAKE ACTION

Actions that individuals, civil society or governments can take to change laws that discriminate.



FIVE ACTIONS FOR INDIVIDUALS

1. **Highlight discriminatory laws**, so we can all advocate for change—post your initiatives for zero discrimination on social media.
2. **Be an ally**, call out discrimination when you see it.
3. **Demand change** from your parliamentarian, ombudsperson or human rights organization.
4. **Start a petition** to change the law.
5. **Donate** time, money or expertise to an organization that is working for law reform, or start one yourself.

FIVE ACTIONS FOR CIVIL SOCIETY ORGANIZATIONS

1. **Start a campaign** to change a law. Highlight discriminatory laws, so we can collectively advocate for change.
2. **Provide support** and a safe space, including legal support and pastoral care for people who experience discrimination.
3. **Conduct awareness-raising sessions** on human rights in a workplace, school, clinic or peer network.
4. **Convey a request** to remove discriminatory laws to your representative in parliament or local government, United Nations office or national body responsible for monitoring human rights in the country.
5. **Adopt and promote** a policy that prevents and protects against discrimination in the civil society organization workplace.



FIVE ACTIONS FOR PARLIAMENTARIANS AND GOVERNMENTS

1. **Inform yourself** about discrimination and its impact on the people affected.
2. **Raise awareness** among other public servants, members of the judiciary and law enforcement officers.
3. **Facilitate platforms** of parliamentarians, nationally and internationally, to commit to promote good laws that advance the well-being and fundamental dignity of everyone, based on evidence and guided by human rights standards.
4. **Be an ally** and act on civil society requests to remove discriminatory laws and give civil society a platform so that their voices can be heard.
5. **Table amendments to laws** or call for a review of the legislation.

FIVE ACTIONS FOR PARTNERS AND DONOR ORGANIZATIONS

1. **Inform yourself** about discrimination and its impact on the people affected.
2. **Adopt and promote** a policy that prevents and protects against discrimination in the donor organization workplace.
3. **Commit to prioritizing** the reform of discriminatory laws in health and development programmes.
4. **Ensure that funding goes towards human rights**, law reform, legal aid and legal education.
5. **Work with local organizations** that are affected by discriminatory laws or that are working on law reform.

FACTS ABOUT DISCRIMINATION



WOMEN

- ▶ In 11 reporting countries there is no specific law against domestic violence.
- ▶ In 45 countries there is no legislation to address sexual harassment.
- ▶ A total of 150 countries have at least one law that treats women and men differently, and 63 countries have five or more.



PEOPLE WHO USE DRUGS

- ▶ There are at least 11 countries and territories that prescribe the death penalty for drug offences in law.
- ▶ At least 67 countries have laws that criminalize drug use or the possession of drugs for personal use.



SEX WORKERS

- ▶ At least 98 countries criminalize some aspect of sex work.
- ▶ At least four countries report that people can be prosecuted or punished for carrying condoms.



SAME-SEX SEXUAL RELATIONS

- ▶ Sixty-six countries criminalize same-sex sexual relations.
- ▶ In at least 10 countries, the death penalty is still implemented for same-sex sexual relations.



TRANSGENDER PEOPLE

- ▶ Nine countries criminalize transgender people. This can take various forms, including criminalizing the impersonation of another gender.
- ▶ Only nine countries provide legal recognition for non-binary gender and give citizens who don't fit in the male or female categories a legal status.



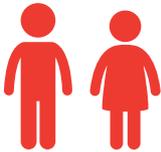
PEOPLE LIVING WITH HIV

- ▶ At least 48 countries worldwide still impose travel restrictions of some form against people living with HIV.
- ▶ At least 82 countries have laws that specifically criminalize HIV non-disclosure, exposure or transmission. Sixteen countries are known to have applied other criminal law provisions in similar cases.
- ▶ Across 19 countries with available data, approximately one in five people living with HIV reported having been denied health care (including dental care, family planning services or sexual and reproductive health services).



MANDATORY HIV TESTING

- ▶ In 2018, 51 countries reported maintaining mandatory HIV testing for marriage, work or residence permits or for certain groups of people.



YOUNG PEOPLE

- ▶ In 2019, 40 countries reported having laws that impose the need for parental consent for adolescents and young people below 18 years to access HIV testing services.
- ▶ An additional 16 countries require parental consent for adolescents below 16 years to access HIV testing services, and 26 countries require parental consent for adolescents younger than 14 years to access HIV testing.

