

HIV/AIDS in the Caribbean: The Role of Legal Advisory Services

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The HIV/AIDS epidemic is a major health crisis for the Caribbean.¹ According to the latest indicators, the Caribbean is the second most affected area of the world, second only to Sub-Saharan Africa.²

It is clear that in at least several Caribbean countries, HIV/AIDS has spread beyond a concentrated epidemic tied to high-risk groups into a generalized epidemic impacting the greater population. Approximately 440,000 people are currently living with HIV in the Caribbean and, of these, 53,000 acquired the virus in 2004. In the Caribbean Community (CARICOM) countries specifically, 370,000 people are currently living with HIV, with 48,000 of them having acquired the virus in 2004.³

The average adult prevalence rate in the Caribbean is currently 2.3%. Regionally, 3.1% of women and 1.7% of men in the 15 to 24 age cohort are living with HIV.⁴ Haiti has the highest prevalence rate with 5.6% of adults between the ages 15 and 49. The Bahamas follows with a prevalence rate of 3%, while Guyana and Trinidad and Tobago both record prevalence rates of 2.5%.⁵

Caribbean HIV/AIDS Prevalence Rates⁶

¹ The Caribbean region includes the following 29 nations and territories: the CARICOM nations and territories of Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, plus Suriname; Cuba; the Netherlands Antilles (Bonaire, Curacao, Saba, St. Marten, and St. Eustacius and Aruba); the UK territories of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, and the Turks and Caicos Islands; the US Commonwealth of Puerto Rico and the US Virgin Islands; and the Departments of the French Republic including French Guyana, Guadeloupe (including Saint Bartholomew and Saint Martin), and Martinique.

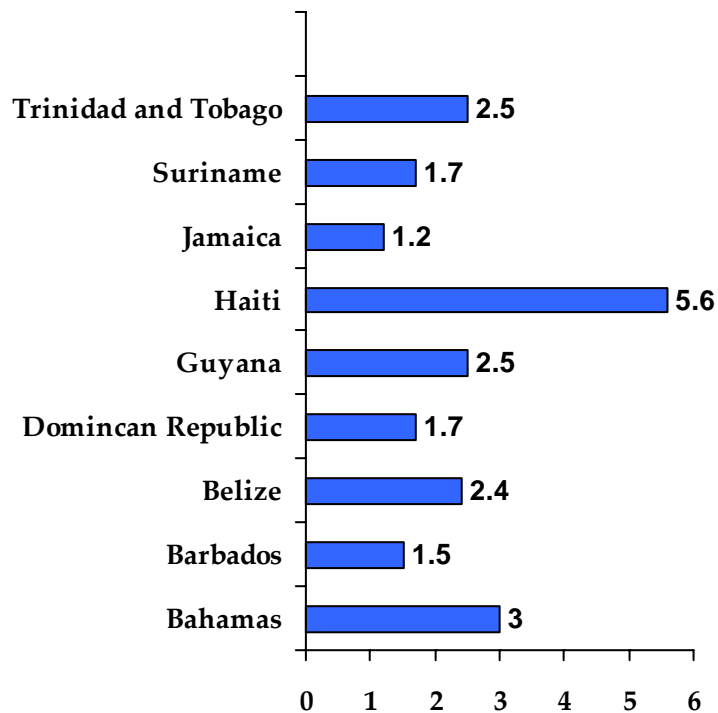
² UNAIDS, <http://www.unaids.org/en/Regions_Countries/Regions/Caribbean.asp> (accessed September 2005).

³ UNAIDS, *Caribbean HIV and AIDS statistics and features*, <http://www.unaids.org/wad2004/EPIupdate2004_html_en/epi04_06_en.htm> (accessed September 2005).

⁴ UNAIDS, *Caribbean HIV and AIDS statistics and features*, available at <http://www.unaids.org/wad2004/EPIupdate2004_html_en/epi04_06_en.htm> (accessed March 2005).

⁵ UNAIDS, *Caribbean HIV and AIDS statistics and features*, available at <http://www.unaids.org/wad2004/EPIupdate2004_html_en/epi04_06_en.htm> (accessed March 2005).

⁶ UNAIDS, *2004 Report on the global AIDS epidemic* (available at <<http://www.unaids.org/en/geographical+area/by+country.asp>>) (accessed March 2005). Figures for the Bahamas found in UNAIDS, *Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections* in the 2004 Bahamas Report.



Source: UNAIDS, 2004 Report on the global AIDS epidemic and UNAIDS, *Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections*, 2004 Bahamas Report

The Bank has good reason to focus on the emerging HIV/AIDS epidemic in the Caribbean. The impact of the epidemic stretches far beyond the health sector, affecting all aspects of development including economic growth, gender parity, and human rights. The significant “feminization” of the epidemic in the Caribbean is particularly worrisome. Women between 15 and 24 years of age have HIV prevalence rates between three and six times higher than men of any age group.⁷ This is attributed in part to women’s relatively low level of status in Caribbean society and their lack of negotiating power pertaining to sexual relations. And with respect to human rights, stigma and discrimination are present in all layers of the Caribbean’s social fabric. They are clearly evidenced in institutional and community contexts including: law enforcement, health care services, employment and the workplace, correctional facilities, religious institutions, leadership positions, public services, the media, familial settings, and legal frameworks.

Of particular interest to us is the fact that many Caribbean countries lack a legislative framework providing legal protection for people living with HIV/AIDS (PLWHA) and other groups especially vulnerable to stigma and discrimination. In many Commonwealth Caribbean nations, laws criminalize homosexual behavior. While recognizing that homosexuality poses complex moral issues for large segments of Caribbean society, such criminalization impedes sound public health policy.⁸ Once a behavior is made criminal, people engaging in such activity are less likely to admit it and are far less likely to seek counseling and testing, two fundamental pillars of a country’s prevention

⁷ UNAIDS, *A study of the Pan Caribbean Partnership Against HIV/AIDS: Common goals, shared responses* (2004).

⁸ The following are some Caribbean nations that have laws criminalizing homosexual activity: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St Vincent and the Grenadines, Trinidad and Tobago.

policy. Within the context of HIV/AIDS, laws that criminalize prostitution⁹ and injecting drug use have this same effect.

Other laws create disincentives to responsible personal behavior and hinder effective public health policy. A prime example is a statute that criminalizes the willful or reckless transmission of, or exposure to, HIV. In addition to citing the deterrent effect of the criminal law, governments justify such a statute by the need for retribution for particularly heinous conduct. However, a willful transmission statute powerfully discourages testing for HIV: one cannot commit the crime if one does not know one's serostatus. In one state in Australia, during the month directly following the passage of such a statute, 12,000 fewer people voluntarily tested for HIV/AIDS than in the previous month. Also, a willful transmission statute makes all people who are HIV positive into a new class of potential criminals, thereby deepening the social stigma associated with the disease. From a criminal law perspective, there are a host of difficult problems in exactly defining the elements of the offense and then in proving them. In light of the demonstrated adverse policy effects and the often insuperable technical difficulties that would be faced by the prosecution, the wiser course of action lies in not creating a new criminal statute specifically aimed at HIV/AIDS, facilitating and promoting testing and counseling, and using existing sexual or other criminal statutes to prosecute the relatively rare cases of provable egregious conduct.

While a number of Caribbean countries have entered into multilateral conventions that prohibit discrimination, many countries still need to bring their national legislation into line with their international obligations. They also need to update their public health legislation, criminal laws, statutes, and institutions regulating access to medicines and information; strengthen civil rights (e.g. freedom of expression and association); and promote supportive and protective legislation for vulnerable groups.

In 2001 the Bank's Executive Directors approved the US\$155 million Multi-Country HIV/AIDS Prevention and Control Program for the Caribbean. It currently provides financial support to nine countries and CARICOM for a wide range of activities, including advocacy and legal reform around stigma and discrimination.

Bank-funded HIV/AIDS prevention and control efforts are thus underway in Barbados (2001), Dominican Republic (2001), Jamaica (2002), Grenada (2002), Guyana (2004), St. Kitts and Nevis (2003), St. Lucia (2004), St. Vincent and the Grenadines (2004), and Trinidad and Tobago (2003).

Eight of the country projects support advocacy and legal reform to address stigma and discrimination, particularly with respect to the workplace. Regionally, the CARICOM project (Pan Caribbean Partnership against HIV/AIDS) was established to provide a coordinated response to HIV/AIDS and has raised the political profile of HIV/AIDS in the region. The regional project includes a component for assessment of the countries' patent system for medicines and for drug regulation from the standpoint of access to medicines and a component for the development of regional model legislation. We are providing assistance in a number of these projects.

We have also assisted CARICOM in preparing detailed terms of reference for the design and production of anti-stigma toolkits for the following specific target groups: the private sector and tourism, health workers, educators, legislators and policy makers, religious leaders, and people living

⁹ Such laws exist in a number of Caribbean countries including the Bahamas, Dominica, and Trinidad and Tobago.

with HIV/AIDS. The terms of reference are currently under discussion and it is envisaged that work on the anti-stigma toolkits will be underway by the end of the calendar year.

Leaders in the Caribbean are clearly aware of the potential impact of the HIV/AIDS problem and they are actively working to implement positive change around this reality. However, disbursements under all or most projects have been slow and the performance of the HIV/AIDS portfolio in the Caribbean is currently under review. Both factors internal to the Bank (such as low supervision budgets) and external factors (such as the multiplicity of donors and projects) play a role in the slower than expected progress. However, the deeply ingrained cultural factors that characterize the nations of the Caribbean, coupled with the very nature of the illness, have resulted in truly extraordinary levels of stigma and discrimination that may yet prove the most difficult obstacles to overcome.