



TB Criminalization

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Application of Criminal Laws against People with TB

- Criminal laws specifically targeting people with TB or criminal laws of general applicability used against people with TB, such as “offence against the person” laws, like assault, battery, or even attempted murder, etc.
- **Criminalization of TB transmission or exposure**
- **Criminalization of behavior or identities of TB key populations**
- ***De Facto* Criminalization of TB**
- **Impact of TB Criminalization**
- **The Way Forward**



Criminalization of TB transmission or exposure

- ▶ TB-specific laws—do any exist? Not as far as we know based on a 2016 global legislation survey (see China TB Law Reform and Global Legislation Survey Memo 8.8.16)
- ▶ General criminal laws applied to TB transmission—has this happened? Not as far as we know; the TB Case Compendium does not include any, as none were found during research for the volume.
 - ▶ UK *Offences Against the Person Act, 1861*, §§ 20 and 47 may criminalize TB transmission (see Karl Laird, in *Criminalising Contagion*, p. 201)
 - ▶ TB transmission may be construed as inflicting “grievous bodily harm” under § 20, which is applied in HIV transmission cases (see *R v. Dica* and subsequent cases); or
 - ▶ “Occasioning actual bodily harm” under § 47 (subject to courts allowing for an “indirect battery,” i.e., indirectly causing actual bodily harm, because a battery (i.e., unlawful touching) must be proved to constitute actual bodily harm under § 47).



Criminalization of TB transmission or exposure

- Causality—how would causality be proven, given the both nature of TB transmission (i.e., it's an airborne disease) and the fact that infection may be latent for days, weeks, months or years before the disease becomes active, if ever?
 - Cannot prove person to person to transmission.
- *Mens rea* (literally “guilty mind” in Latin, is the mental element required for many crimes)—what standard would be used: intentionality, recklessness, knowledge, strict liability?



Criminalization of behavior or identities of TB key populations

- ▶ People who use drugs—criminal laws prohibiting drug use
 - ▶ People with TB who use drugs may be prohibited from receiving treatment, happens in Russia and Central Asia.
- ▶ Mobile populations—criminal laws applied to immigrants, undocumented immigrants, etc.
- ▶ Rural and Urban Poor—criminal laws used against the poor
 - ▶ Criminal laws around debt, and what else?
- ▶ PLHIV—criminalization of HIV as it impacts people with HIV/TB coinfection.
- ▶ Health care workers—lack of infection control measures, including masks, clinic infrastructure

De Facto Criminalization of TB

- ▶ Civil or administrative laws or regulations that are punitive, discriminatory, arbitrary or abusive as written or as applied to people with TB, that include sanctions and penalties used under criminal law, such as imprisonment and fines, and that generate or perpetuate TB-related stigma.
- ▶ Involuntary confinement of people with TB under civil or administrative law or regulation—both as written and as applied.
 - ▶ For stopping TB treatment—in Kenya, but where else?
 - ▶ Example: Kenya *Public Health Act* (see Section 27: as written it is not punitive, discriminatory, abusive or arbitrary, but it was punitive, discriminatory, abusive and arbitrary as applied to the petitioners in *Daniel Ng'etich v. Attorney General* and other people with TB in Kenya).
 - ▶ Compare this to the *Lagos State Public Health Act*
 - ▶ To prevent transmission, but implemented in a punitive, discriminatory, arbitrary or abusive manner—where does this happen?
 - ▶ Under inappropriate conditions, in prisons or other non-medical settings—in Kenya, but where else?



De Facto Criminalization of TB

- ▶ Involvement of law enforcement officers, institutions or mechanisms used in enforcing civil or administrative laws or policies—such as police arresting or detaining people with TB pursuant to civil or administrative laws or policies.
- ▶ Civil or administrative law or regulation that, as written, establishes and authorizes use of coercive, discriminatory, arbitrary or abusive measures against people with TB.
 - ▶ Example: *Lagos State Public Health Law* (see Nigeria TB LEA and sections 20 – 39, section 43 (as applied to sections 20 – 39) and section 69 of the law).



De Facto Criminalization of TB

- ▶ Application of civil or administrative law or policy that generates or perpetuates stigma—reference UN Special Rapporteur Anand Grover statements stigma generated by use of criminal law in area of health (HIV, SRH, etc.)
 - ▶ What practices involving application of civil or administrative law or policy generate or perpetuate TB-related stigma? These may be considered *de facto* criminalization because they share a key aspect with the use of criminal law—i.e., they generate and perpetuate stigma.



De Facto Criminalization of TB

- ▶ An absence of procedural rights, guarantees and protections provided criminally accused persons is also a characteristic of *de facto* criminalization. That is, in *de facto* criminalization, the kind of penalties and the nature of enforcement is the same as under criminal law, but people subject to *de facto* criminalization are not provided the procedural rights, guarantees or protections provided to the criminally accused—it's the worst of both worlds, so to speak.



Impact of TB Criminalization

- ▶ Stigmatization
 - ▶ Deters health seeking behavior, including delays or avoidance of diagnosis or treatment interruptions leading to death, drug resistance, unnecessary pain and suffering and/or further disease transmission.
 - ▶ Leads to discrimination in employment, health care settings, education, housing, etc.
 - ▶ Poor treatment or expulsion from family or community.
- ▶ Self-stigma and poor mental health



Impact of TB Criminalization

- ▶ Deterrent of health-seeking behavior leading to poor individual and public health outcomes
 - ▶ Delays or avoidance of diagnosis leading to further spread of disease
 - ▶ Poor treatment outcomes leading to death, drug resistance, unnecessary pain and suffering and/or further disease transmission.
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Impact of TB Criminalization

- ▶ Negative impact on health worker – patient relationship
 - ▶ Divided loyalties, lack of trust
 - ▶ Health workers and health care institutions become mechanisms of enforcement for criminal or other laws or regulations.
- ▶ Creates, perpetuates or exacerbates stigma among health workers toward people with TB, resulting in poor treatment of patients.



Impact of TB Criminalization

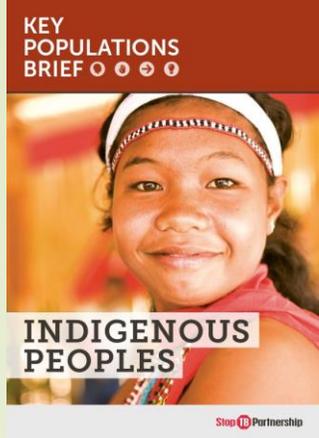
- ▶ Disproportionate (discriminatory) impact on vulnerable or marginalized groups, including TB key populations
 - ▶ Members of these groups are subject to law enforcement and prosecution at higher rates than individuals from wealthier, more politically powerful, often majority groups.
 - ▶ For example, migrants and undocumented immigrants, people who use drugs, former prisoners, the poor, people living with HIV, people living in informal or illegal settlements in urban areas, etc.
- ▶ Evidence shows people living with HIV perceived as “others” have been disproportionately prosecuted under HIV-specific or general criminal laws (*Criminalising Contagion*, p. 4)



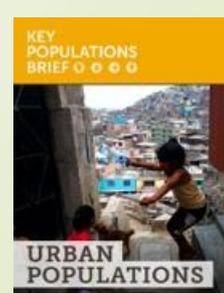
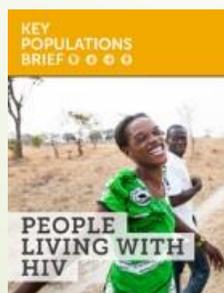
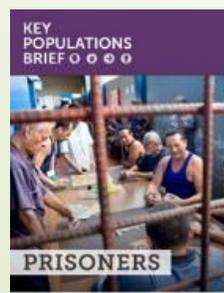
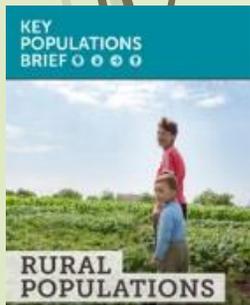
The Way Forward

- ▶ Research and data is lacking and is urgently needed on these issues.
 - ▶ Need more legal environment assessments (LEAs) to address this gap.
- ▶ Need to be proactive—cannot wait until criminal laws and de facto criminalization are used more frequently against people with TB, like we have with HIV.

Key, Vulnerable, Underserved Populations



- Focus on **person-centered, rights based approach to TB**
- Vulnerable and underserved populations
 - Defined vulnerable & underserved groups in technical briefs to address specific programming needs
 - Developed a framework and tool to determine vulnerable groups, & size & burden of TB





Why do a TB legal environment assessment?

- Identify populations that are particularly impacted by TB;
- Review laws, policies and practices that serve as barriers to access for these populations;
- Analyze where human right violations might occur and hamper access;
- Move response from gender-blind to gender-sensitive to gender-transformative;
- Engage country stakeholders in addressing alignment of laws, policy, and practices with human rights and gender equality frameworks;
- Planning for allocation of resources to implement changes



Why do a TB legal environment assessment?

- Ultimately – incorporation of a rights- and gender-based approach to TB;
- TB affects those already vulnerable or marginalized – PLHIV, people who use drugs, mobile populations, rural and urban poor, miners, prisoners, women and children – face challenges when accessing TB care
- Challenges rooted in social and economic disparities – exacerbated by policies and practices that violate human rights, hinder achievement of gender equality, restrict access to essential medications, and generally discourage health seeking behaviors.
- On the other hand, protective laws not fully implemented.

TB Case Compendium

- Joint partnership of Stop TB and UNDP, with substantive inputs from University of Chicago Law colleagues
- Developed and adopted from and based on ‘Legal Environment Assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV’ produced by UNDP in January 2014
- Guidance includes:
 - Background info on TB and human rights
 - Suggested process steps for conducting a TB LEA
 - Examples, case studies, templates for e.g. TORs, Steering Committees etc
 - Tools and Links to resources

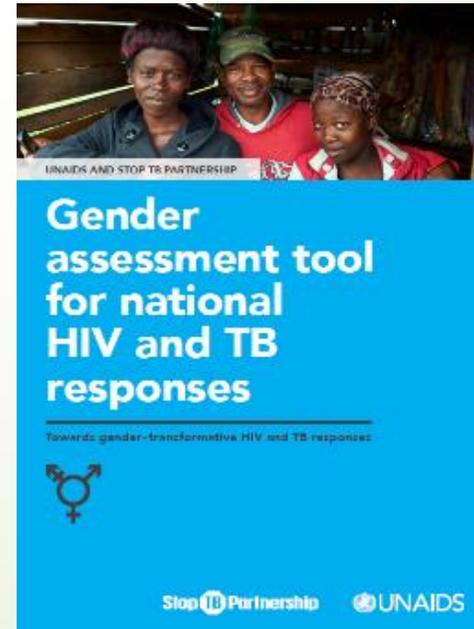
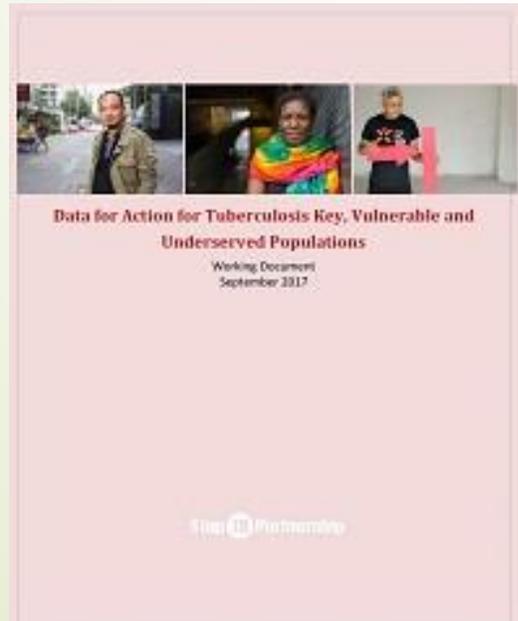


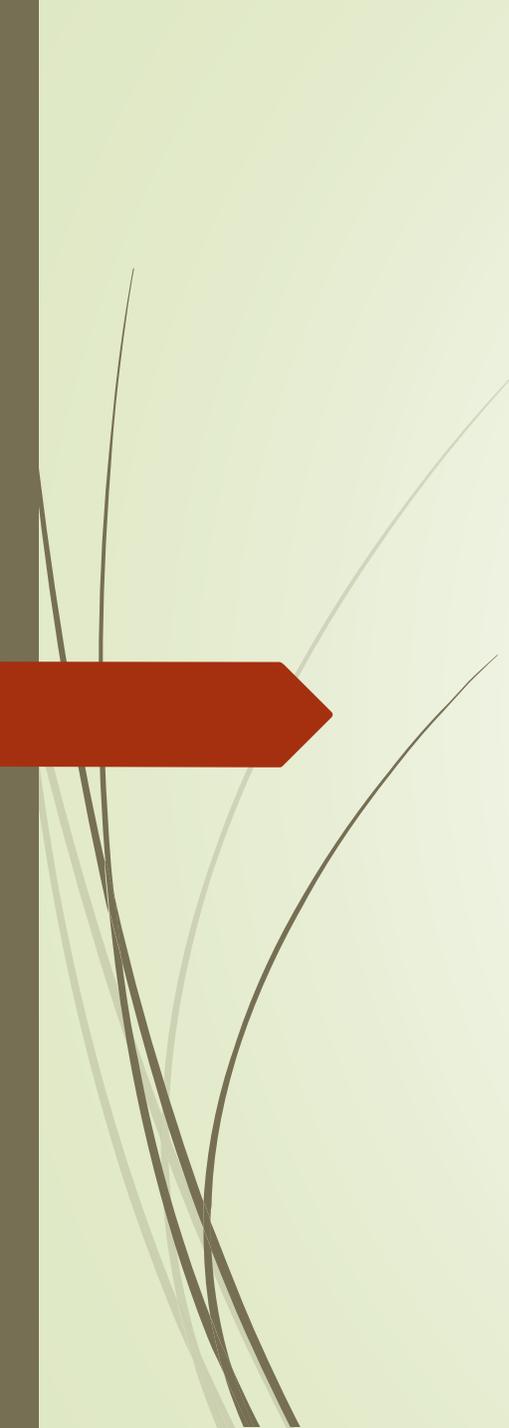
Legal
Environment
Assessments for
Tuberculosis
An Operational Guide
July 2017



Useful Tools

- ▶ TB/HIV Gender Assessment Tool
- ▶ Data for Key, Vulnerable and Underserved Populations

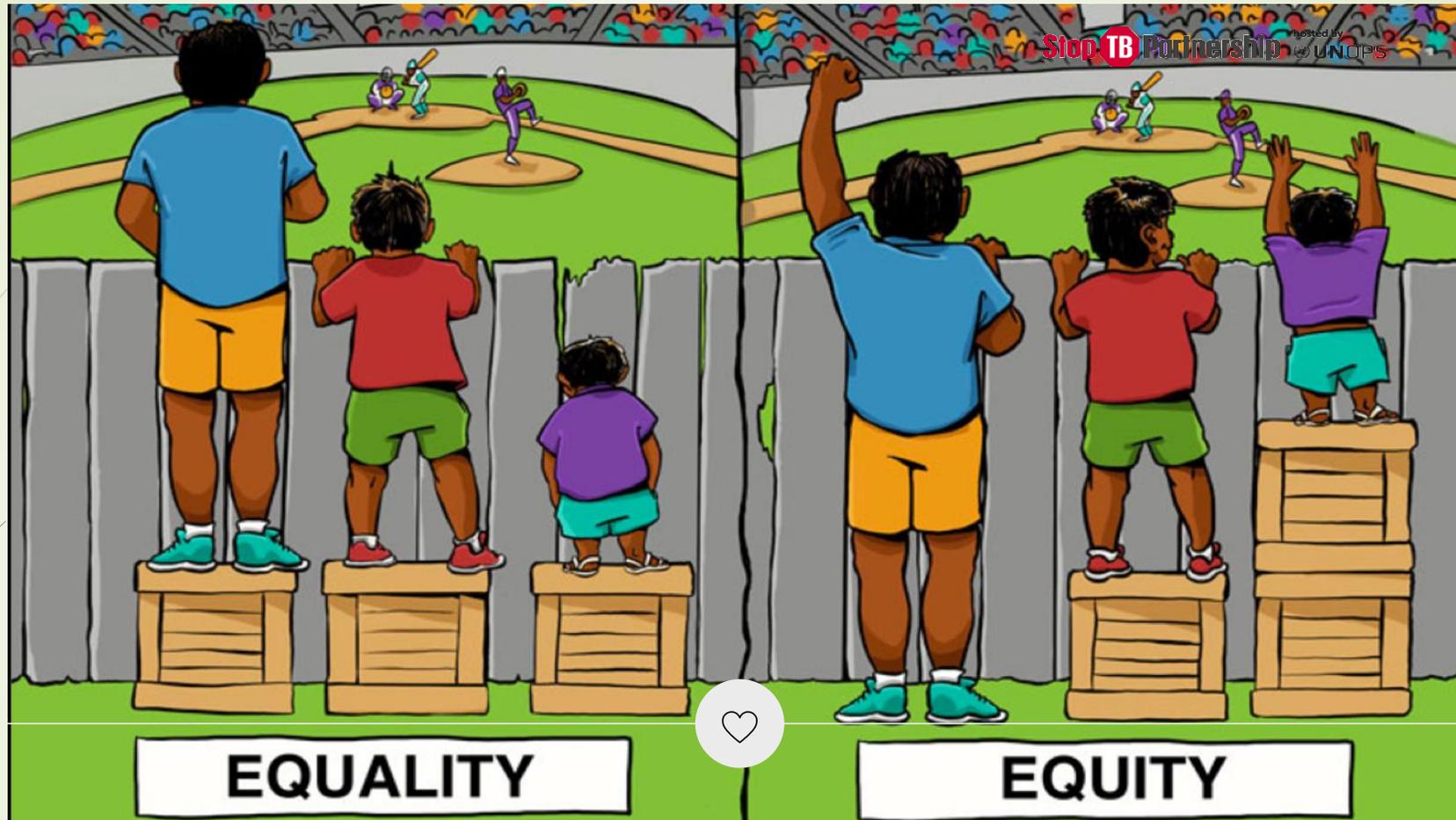




If you are neutral in situations of injustice, you have chosen the side of the oppressor

... If an elephant has its foot on the tail of a mouse, and you say you are neutral, the mouse will not appreciate your neutrality."

Desmond Tutu



Thank you

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