

THE CRIMINALISATION OF HIV



UNDERSTANDING THE ARGUMENTS FOR AND AGAINST CRIMINALISATION:

The move towards criminalising HIV transmission has often been prompted by governments' attempts to respond to the rising numbers of HIV infections in their countries. However, human rights campaigners have expressed concerns that these laws lead to a violation of the rights of people living with HIV, exacerbating their marginalisation. Further, they argue the criminalisation laws may be counterproductive to the objective for which they were created, that of curbing the rate of infection. Some of the arguments for and against criminalisation can be understood as follows:

WHAT IS CRIMINALISATION OF HIV?

In many countries the transmission of HIV can be a criminal offence—and in some countries even exposing someone to HIV can be prosecutable. Charges can be brought under a variety of laws, either specific HIV laws relating to transmission or exposure of HIV or other laws such as: murder, manslaughter, attempted murder, assault, and grievous bodily harm (GBH). In some countries a distinction is made between “reckless” and intentional transmission of HIV.

- **Promotes public health outcomes, but could deter people from VCT:** While some people believe that criminalisation can promote public health outcomes and HIV prevention, it may also deter people from accessing voluntary counselling and testing services, and discourage them from knowing their HIV status and seeking appropriate care and support.
- **Holds people living with HIV responsible for prevention, rather than promoting individual responsibility irrespective of HIV status:** Some proponents of criminalisation contend that it will encourage people living with HIV to take responsibility for protecting their sexual partners, but this undermines the fact that sexual health is the responsibility of each individual and both partners in a sexual relationship.
- **Punishes people who knowingly expose and/or infect someone with HIV, but undermines the human rights of people living with HIV:** Many laws seek to “punish” people for not disclosing their status to sexual partners, but this undermines the human rights of people living with HIV by ‘forcing’ them to disclose their status. These laws do not take into account the lack of a supportive environment to promote disclosure nor the effects of HIV related stigma and discrimination.
- **Controls unsafe behaviours:** Some argue that criminalisation will deter people from behaviours frequently negatively associated with the transmission of HIV such as injecting drug use and sex work. However, it may also contribute to the stigma surrounding groups engaging in such behaviours, and drive these behaviours further underground for fear of criminal persecution.
- **Protects vulnerable groups but could also lead to increased stigma:** Others argue that criminalisation will help ‘protect’ certain groups at risk of HIV infection, such as girls and young women, migrants, and prisoners. However, this could also contribute to the stigma surrounding these same groups, by labelling them as “victims,” sensationalising the epidemic.

Bermuda (June 2008):

A 32 year-old HIV-positive man who had unprotected sex with his former girlfriend and then disclosed his HIV status in a break-up note, has pleaded guilty, and a Bermuda court has sentenced him to ten years in prison.

<http://criminalhivtransmission.blogspot.com/search/label/Bermuda>

ALTERNATIVES TO CRIMINALISATION

1. Protect public health by focusing on the UN target of achieving "Universal Access to prevention, treatment, care and support," instead of punitive measures. This will involve scaling-up and improving existing prevention, treatment, care and support programs. Some groups of people, for example, men who have sex with men, IDUs, sex workers, migrants, and young people still find it very difficult to access such services. Addressing these groups as a priority could have a dramatic impact on prevalence rates, most notably in countries with localised epidemics.

2. Promote prevention among people living with HIV — 'positive prevention' by ensuring that this strategy features more prominently in the HIV responses of national governments', including in their comprehensive HIV prevention strategies.

3. Tackle stigma and enable people living with HIV to be open about their status and to practice safer sex. The more comfortable people living with HIV feel about their status, the more likely they may be to engage in safer sex and discuss their status with their sexual partner(s).

4. Address the underlying causes of vulnerability that relate to increasing HIV prevalence rates among women and girls. Governments should focus on addressing issues such as gender-based violence, economic empowerment and early marriage. Such measures would give women and girls the means to control their futures more effectively and thus reduce their vulnerability to HIV.

WHAT CAN I DO?

- **Take responsibility for your own sexual and reproductive health:** One of the most effective ways of safeguarding public health is to take responsibility at the individual level.
- **Know the policy situation in your country:** Find out about policies regarding the criminalisation of HIV. Understand how the law is being applied in your country.
- **Engage with the media to reduce discriminatory and sensationalistic language:** Encourage your local and national network of people living with HIV to engage with the press and media to reduce the discriminatory language that is used towards people living with HIV when reporting about instances of criminalisation.
- **Advocate for more effective and comprehensive approaches to prevention:** Work with advocacy groups and human rights organisations in your

country to campaign and lobby HIV and sexual and reproductive health programme managers for more effective prevention responses that involve and are aimed at people living with HIV.

- **Ensure that all people living with HIV are aware of where they can access expert legal advice:** Lobby legal service providers to make sure that all people have access to accurate legal advice, and ensure that all networks are able to refer people accordingly.

USA (June 2008)

A 42 year-old HIV-positive man from Texas who spat at a police officer during his 2006 arrest for being drunk and disorderly has been sentenced to 35 years in prison by a Dallas court. He must serve at least half of his sentence before being eligible for parole because the jury found that he used his saliva as a deadly weapon. Yet according to the US Center Disease Control and Prevention, HIV cannot be transmitted this way.

<http://criminalhivtransmission.blogspot.com/search/label/Texas>

This factsheet was developed in partnership by the International Planned Parenthood Federation (IPPF), the World AIDS Campaign (WAC), the United Nations Population Fund (UNFPA), and Living Positively, a project of the Global Youth Coalition on HIV/AIDS (GYCA).



Sub-Saharan Africa (August 2007)

Apart from stigmatising the disease more than it already is, critics warn, the laws [criminalising infection and exposure to HIV] ignore the fact that [sub-Saharan African] countries may not have the resources to perform the careful genetic analysis required to distinguish the innocent from the guilty. "In the absence of really clear scientific evidence as to who infected whom, there will too often be an assumption that those categorised as undesirable by society are guilty of infecting other people," says Yusef Azad, Director of Policy and Campaigns at the National AIDS Trust, a UK-based advocacy group.

<http://criminalhivtransmission.blogspot.com/search/label/HIV%20forensics>

¹ Positive prevention can be defined as a set of actions that help people living with HIV to:

- Protect their sexual health;
- Avoid other sexually transmitted infections;
- Delay disease progression; and
- Avoid transmitting HIV to others

Kevin Osborne, Positive Prevention, Contact, No.182 August 2006

Organisations working on the issue include:

AIDS Legal Network (South Africa) www.aln.org.za
AIDS Rights Alliance for Southern Africa (ARASA) www.arasa.info
Asia Pacific Network of People Living with HIV APN+ www.apnplus.org
Canadian HIV/AIDS Legal Network www.aidslaw.ca
Global Network of People Living with HIV/AIDS (GNP+) www.gnpplus.org
Human Rights Watch (HRW) www.hrw.org
Interagency Coalition on AIDS and Development (ICAD) www.icad-cisd.com
International Community of Women Living with HIV/AIDS (ICW) www.icw.org
International Planned Parenthood Federation (IPPF) www.ippf.org
Joint United Nations Programme on HIV/AIDS (UNAIDS) www.unaids.org
Lawyers Collective (India) www.lawyerscollective.org
Open Society Institute (OSI) www.soros.org
The ATHENA Network www.athenanetwork.org
United Nations Development Programme (UNDP) www.undp.org
United Nations Population Fund (UNFPA) www.unfpa.org

Further Information

For further information on criminalisation, please follow the links below:

1. ARASA/OSISA Civil Society, June 2007, Report on the ARASA/OSISA Civil Society Consultative Meeting on the Criminalisation of the Willful Transmission of HIV, http://www.arasa.info/files/pub_Meeting%20report%20final.doc
2. Bernard, Edwin. Criminal HIV Transmission - Blog <http://criminalhivtransmission.blogspot.com/International> Guidelines on HIV/AIDS and Human Rights
3. UNAIDS, 2006, International Guidelines on HIV/AIDS and Human Rights. http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf
4. UNAIDS, 2002, Criminal Law, Public Health and HIV Transmission: A Policy Options Paper http://data.unaids.org/Publications/IRC-pub02/jc733-criminal-law_en.pdf
5. Weait, Matthew, 2007, London and New York: Routledge-Cavendish, Glasshouse, Intimacy and Responsibility: The Criminalisation of HIV Transmission
6. Galletly, CL; Pinkerton, SD, June 2006, Conflicting messages: how criminal HIV disclosure laws undermine public health efforts to control the spread of HIV. <http://www.aidsmap.com/en/news/396EE68A-588B-4271-9E8F-6828895AFF12.asp>
7. GNP+ Europe, Terrence Higgins Trust, 2005, Criminalisation of HIV transmission in Europe <http://www.gnpplus.net/criminalisation/rapidscan.pdf>
8. Chalmers, J, 2002, British Medical Journal, <http://sti.bmj.com/cgi/reprint/78/6/448>