



The Oslo Declaration on HIV Criminalisation

Edwin J Bernard

Consultant: EATG, GNP+, UNAIDS
Coordinator: HIV Justice Network

criminalhivtransmission.blogspot.com

www.edwinbernard.com
Copyright © Edwin J Bernard 2010



Global laws and prosecutions: HIV-specific criminal laws



criminalhivtransmission.blogspot.com

www.edwinbernard.com
Copyright © Edwin J Bernard 2010

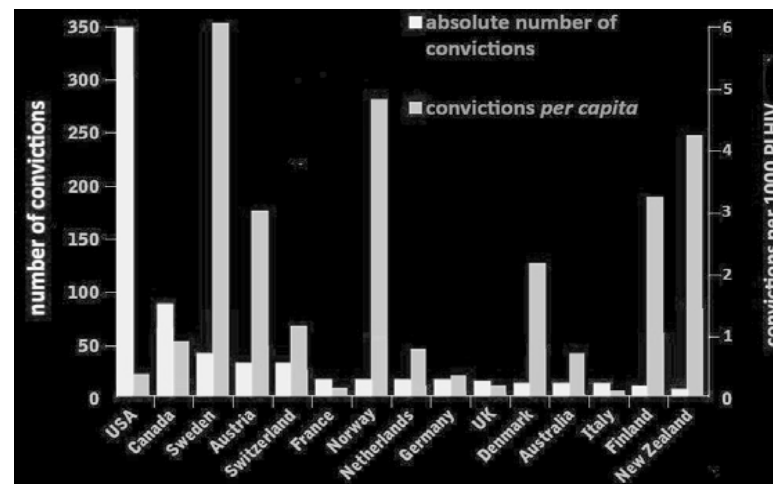
Global laws and prosecutions: HIV-related criminal prosecutions



criminalhivtransmission.blogspot.com

www.edwinbernard.com
Copyright © Edwin J Bernard 2010

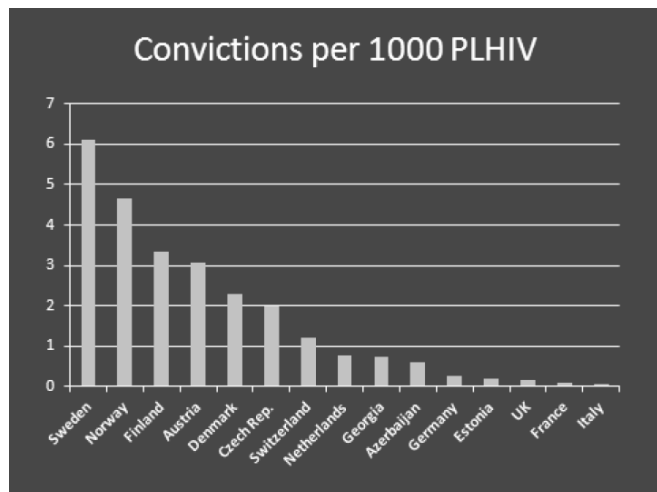
Estimated known total convictions and convictions per 1000 PLHIV



criminalhivtransmission.blogspot.com

www.edwinbernard.com
Copyright © Edwin J Bernard 2010

European overview of prosecutions: *per capita* convictions



Weait M. *Punitive Economies: The Criminalization of HIV Transmission and Exposure in Europe*, FEMP 2011.

criminalhivtransmission.blogspot.com

© 2011 Weait M. All rights reserved.
Unauthorized use is prohibited.

Areas of concern include:



- Enactment of overly-broad and inappropriate HIV-specific laws

criminalhivtransmission.blogspot.com

© 2011 Weait M. All rights reserved.
Unauthorized use is prohibited.

Areas of concern include:



- Enactment of overly-broad and inappropriate HIV-specific laws
- Inappropriate application of general criminal law offences to HIV non-disclosure, exposure or transmission

criminalhivtransmission.blogspot.com

© 2011 Weait M. All rights reserved.
Unauthorized use is prohibited.

Areas of concern include:



- Enactment of overly-broad and inappropriate HIV-specific laws
- Inappropriate application of general criminal law offences to HIV non-disclosure, exposure or transmission
- Selective and arbitrary law enforcement

criminalhivtransmission.blogspot.com

© 2011 Weait M. All rights reserved.
Unauthorized use is prohibited.

Areas of concern include:



- Enactment of overly-broad and inappropriate HIV-specific laws
- Inappropriate application of general criminal law offences to HIV non-disclosure, exposure or transmission
- Selective and arbitrary law enforcement
- Potential miscarriages of justice due to difficulties with proof

criminalhivtransmission.blogspot.com

© 2012-2013
Criminal HIV Transmission

Areas of concern include:



- Enactment of overly-broad and inappropriate HIV-specific laws
- Inappropriate application of general criminal law offences to HIV non-disclosure, exposure or transmission
- Selective and arbitrary law enforcement
- Potential miscarriages of justice due to difficulties with proof
- Disproportionate sentencing compared with similar risks/harms

criminalhivtransmission.blogspot.com

© 2012-2013
Criminal HIV Transmission

Areas of concern include:



- Enactment of overly-broad and inappropriate HIV-specific laws
- Inappropriate application of general criminal law offences to HIV non-disclosure, exposure or transmission
- Selective and arbitrary law enforcement
- Potential miscarriages of justice due to difficulties with proof
- Disproportionate sentencing compared with similar risks/harms
- Inappropriate and stigmatising media reporting

criminalhivtransmission.blogspot.com

© 2012-2013
Criminal HIV Transmission

UNAIDS Recommendations



- Avoid introducing HIV-specific laws and instead apply general criminal law to cases of intentional transmission *only*;
- Issue guidelines to limit police and prosecutorial discretion in the application of the criminal law; and
- Ensure that any application of general criminal law is consistent with international human rights obligations (particularly the rights to privacy; to the highest attainable standard of health; freedom from discrimination; equality before the law; and liberty and security of the person).

criminalhivtransmission.blogspot.com

© 2012-2013
Criminal HIV Transmission

UNAIDS 'Policy Consideration' Document, July 2012



- Harm
 - Treat like harms alike
- Risk
 - Condoms or undetectable viral load = no significant risk
- Intent
 - Non-disclosure alone is not proof of malicious intent
- Disclosure, Consent and Other Defences
 - Is consent to unprotected sex consent to HIV risk?
- Proof
 - Limitations to scientific evidence
- Penalties
 - Proportionate to other risk/harms

criminalhivtransmission.blogspot.com

© 2012 by the author
All rights reserved.

Oslo Declaration on HIV Criminalisation



criminalhivtransmission.blogspot.com

© 2012 by the author
All rights reserved.

Oslo Declaration on HIV Criminalisation



OSLO DECLARATION ON HIV CRIMINALISATION

Prepared by international civil society in Oslo, Norway on 13th February 2012

1. A growing body of evidence suggests that the criminalisation of HIV non-disclosure, potential exposure and non-intentional transmission is doing more harm than good in terms of its impact on public health and human rights.¹
2. A better alternative to the use of the criminal law are measures that create an environment that enables people to seek testing, support and timely treatment, and to safely disclose their HIV status.²
3. Although there may be a limited role for criminal law in rare cases in which people transmit HIV with malicious intent, we prefer to see people living with HIV supported and empowered from the moment of diagnosis, so that even these rare cases may be prevented. This requires a non-punitive, non-criminal HIV prevention approach centred within communities, where expertise about, and understanding of, HIV issues is best found.³
4. Existing HIV-specific criminal laws should be repealed, in accordance with UNAIDS recommendations.⁴ If, following a thorough evidence-informed national review, HIV-related prosecutions are still deemed to be necessary they should be based on principles of proportionality, foreseeability, intent, causality and non-discrimination; informed by the most up-to-date HIV-related science and medical information; harm-based, rather than risk-of-harm based; and be consistent with both public health goals and international human rights obligations.⁵
5. Where the general law can be, or is being, used for HIV-related prosecutions, the exact nature of the rights and responsibilities of people living with HIV under the law should be clarified, ideally through prosecutorial and police guidelines, produced in consultation with civil society. Such guidelines are appropriate and to ensure that

criminalhivtransmission.blogspot.com

© 2012 by the author
All rights reserved.

Oslo Declaration on HIV Criminalisation



- Relying on disclosure = false sense of security
- Singling out HIV stigmatises PLHIV
- Supportive enabling environment achieves more than punitive approaches
- Training for CJS and media
- Ethical approach to privacy

criminalhivtransmission.blogspot.com

© 2012 by the author
All rights reserved.



The Oslo Declaration on HIV Criminalisation

www.hivjustice.net/oslo



www.hivjustice.net

© 2014 HIV Justice
Network. All rights reserved.