

POLICY BRIEF ON HIV-CRIMINALIZATION



INTRODUCTION

Despite the progress of scientific evidence and recent positive developments in practice of investigations and prosecutions in some European countries, HIV-criminalization remains a key issue both for PLHIV and prevention measures across Europe. According to data from HIV Justice Network¹, 18 countries in the WHO European region have HIV specific criminalisation laws, and 31 countries have prosecuted PLHIV.

“HIV criminalization” refers to the use of criminal law to penalize alleged, perceived or potential HIV exposure; alleged nondisclosure of a known HIV-positive status prior to sexual contact (including acts that do not risk HIV transmission); or non-intentional HIV transmission.

THE PROBLEM WITH THE USE OF CRIMINAL LAW AS A PUBLIC HEALTH RESPONSE

Punitive laws and policies though widely used in responding to challenges of public health, most recently in the SARS-CoV-2/COVID-19 pandemic, have not been proved to be suitable to prevent, reduce or stop epidemics. On the contrary, they have been known for increasing stigma and discrimination and for being applied disproportionately against members and communities of vulnerable social groups.

HIV-criminalization has not been able to support reaching any of the public health goals in the HIV/AIDS response. However, it has increased stigma against people living with HIV/AIDS and affected mostly people of colour and ethnic minorities; members of key populations, such as sex workers, people who use drugs; women; and people with migration background.

Almost 40 years into the epidemic, we have gathered enough knowledge and scientific² evidence on the possibility and risk of HIV-transmission through sex and other contacts. With the progress of science and the introduction of antiretroviral therapy, the life expectancy and quality of life of people living with HIV have significantly improved, and, although currently HIV-infection requires a continuous life-long antiretroviral treatment, people living with HIV can have a similar life-expectancy and can have a productive life, including family, career and free time activities similar to their peers in society.

POLICY OPTIONS BASED ON HUMAN RIGHTS

Given the scientific evidence, it is high time that policy and decision makers focus on evidence and human rights-based approaches in their HIV/AIDS responses that will not only bring us closer to the global target of ending AIDS as a public health threat but will bring justice for all that have been harmed by punitive laws and policies in the HIV/AIDS responses and beyond.

¹ HIV Justice Network – Global HIV-Criminalization Database <https://www.hivjustice.net/global-hiv-criminalisation-database/>

² Françoise Barré-Sinoussi Salim S Abdool Karim Jan Albert Linda-Gail Bekker Chris Beyrer Pedro Cahn Alexandra Calmy Beatriz Grinsztejn Andrew Grulich Adeeba Kamarulzaman Nagalingeswaran Kumarasamy Mona R Loutfy Kamal M El Filali Souleymane Mboup Julio SG Montaner Paula Munderi Vadim Pokrovsky Anne-Mieke Vandamme Benjamin Young Peter Godfrey-Faussett 2018 Expert Consensus Statement on the Science of HIV in the Context of Criminal Law <https://onlinelibrary.wiley.com/doi/full/10.1002/jia2.25161>

Respecting and advancing the human rights, especially the right to health of people living with and affected by HIV/AIDS, human rights-based public health policies should create and sustain enabling legal and policy environments where comprehensive HIV-prevention, treatment and care services are accessible and affordable for all regardless of their legal and social status on a non-discriminatory basis.

Sensitization trainings and continuous education of the general public, health care providers, actors of the criminal justice system (the police, prosecutors, judges), legislators and policy makers, and the media should also be in the centre of the response to HIV/AIDS, changing the current patterns of stigma and discrimination against people living with and affected by HIV/AIDS that lack evidence but are based on prejudice, misinformation, and fear.

SPECIFIC POLICY RECOMMENDATIONS

In the context of HIV-criminalization, the following policy recommendations should be adopted and implemented in all countries:

1 abolish any HIV-specific criminal laws and any laws or policies that mandate disclosure of HIV-status or partner notification;

2 in cooperation with the police, prosecutors, judges, HIV-specialists and organizations representing people living with HIV and other key populations review and revise the application of general criminal laws in the context of HIV and limit prosecutions to cases intentional transmission only;

3 ensure that any laws applicable to HIV are informed by state of the art scientific and medical evidence concerning modes of HIV transmission, prevention and treatment;

4 with the involvement of people living with HIV, medical professionals, the police, prosecutors, judges, HIV specialist organizations and legal experts, develop (or adapt already existing), regularly review, and implement national guidelines for police and prosecutors;

5 conduct HIV-specific sensitization training for members of law enforcement and the criminal justice system, health care providers, and the media;

6 provide access to affordable comprehensive prevention, treatment and care services for all regardless of their legal, social or health insurance status.