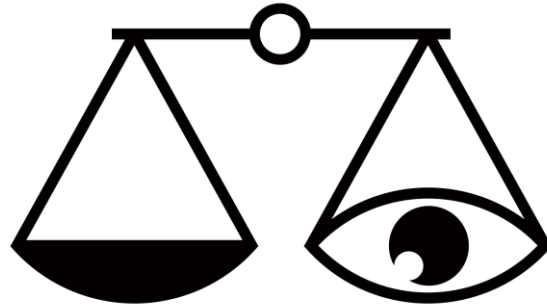


HIV JUSTICE NETWORK



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HIV Criminalisation

- The unjust and inappropriate use of criminal and similar laws (e.g. public health law) against people living with HIV based solely on their known or perceived HIV-positive status.
- Globally, 129 countries have HIV-specific criminal law, or have applied general criminal law to people with HIV for non-disclosure, exposure or transmission through sex. Many also apply enhanced sentencing to soliciting, spitting or biting when HIV-positive.
- HIV criminalisation is discredited as being a proportionate public health response. Most laws and prosecutions:
 - Are often an over-reaction to a zero or negligible risk of transmission.
 - Ignore up-to-date scientific knowledge and medical advances (U=U, phylogenetic analysis).
 - Are being used as a proxy for increased state control and attacks on marginalised populations.
 - Are driven by homophobia, gender inequalities, xenophobia and racism and perpetuate HIV-related stigma.



“By **reinforcing stigma**, HIV criminalisation makes it more difficult for those at risk of HIV to **access testing and prevention**. It also makes it more difficult for those living with the virus to **talk openly about it**, and to be **tested, treated and supported.**”






Justice Edwin Cameron
Beyond Blame 17 July 2016

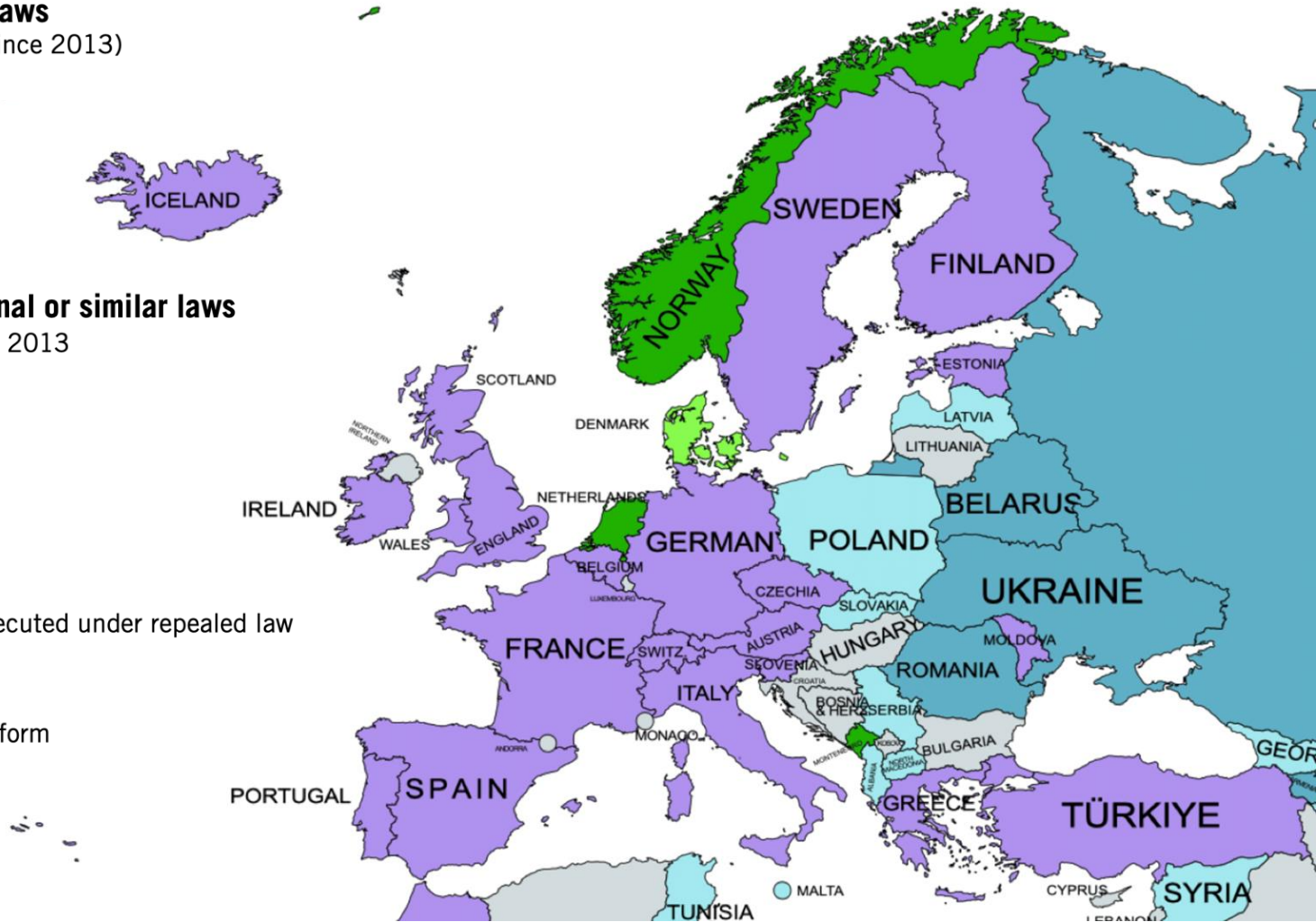
HIV JUSTICE
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**BEYOND
BLAME**
Challenging HIV Criminalisation

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HIV Criminalisation in Europe, March 2023

-  **HIV-specific criminal laws**
WITH reported cases since 2013
-  **HIV-specific criminal laws**
with NO reported cases (since 2013)
-  **Non-HIV-specific criminal or similar laws**
WITH reported cases since 2013
-  **Repealed**
with cases previously prosecuted under repealed law
-  **Reformed**
no reported cases since reform



Good practice examples



- **Courts (strategic litigation)**

- In 2005, the Supreme Court of The Netherlands first in world to limit law based on actual HIV risk. (science-informed)
- Highest courts in Colombia and Kenya found HIV-specific criminal laws unconstitutional (rights to privacy, equality and non-discrimination)

- **Parliament (political will)**

- In 2011, Denmark suspended HIV-specific law, due to reduced harm via changes in life expectancy. (science-informed)
- Three US states (Illinois, New Jersey, Nevada, 2021-2), Victoria in Australia (2016), Zimbabwe (2022) have all repealed HIV-specific criminal laws based on evidence of ineffectiveness and selective and arbitrary prosecutions.

- **Guidance for prosecutors / training for judges**

- Limitations of phylogenetics for proof of timing/direction of transmission, and impact of HIV treatment on transmission risk incorporated into prosecutorial guidance for England & Wales in 2008, and Scotland in 2012.
- UNDP-convened African Judges Forums resulted in positive judgement in Malawi breastfeeding case.

Recommendations for consideration



- **Challenge national laws in courts**
 - Last challenge at the European Court of Human Rights (*Kartashov v Estonia*, 2018) was found inadmissible by the Court.
- **Changing laws in parliament**
 - Belarus, Denmark, Montenegro, Norway, Sweden, Switzerland have suspended, reformed or repealed HIV-specific or communicable disease laws.
 - Are there opportunities for reform or repeal of HIV-specific criminal laws in Albania, Latvia, Malta, Moldova, North Macedonia, Poland, Russia, Romania, Serbia, Slovakia or Ukraine?
- **Issuing directives, guidance and providing training**
 - In 2018, the federal government of Canada issued a directive to prosecutors and in 2020 UNDP issued generic global guidance for prosecutors in HIV-related criminal cases.
 - In 2023, the US Centres for Disease Control published a legal and policy assessment tool.
 - Could the ECDC or WHO Europe, or another EU body, issue similar directives, policy assessment tools or guidance to limit prosecutions in general laws and/or support training for criminal legal system actors?

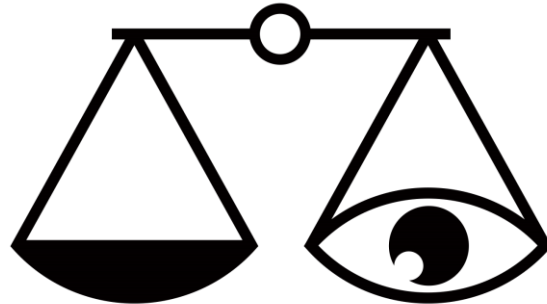
Conclusion

The current UNAIDS Global AIDS Strategy advocates for the creation of enabling legal environments by removing punitive discriminatory laws and practices, including HIV criminalisation.

The European Commission could support this work by:

- Educating EU parliamentarians and policymakers about the harms of punitive approach to HIV (and communicable disease) prevention;
- Ensuring that criminal legal system actors (police, prosecutors, judges) across Europe have adequate guidance and training;
- Ensuring access to justice for people living with HIV, by funding and training public defence lawyers and community paralegals; and
- Listening to, working with – and funding – civil society who are the experts on the impact of punitive laws on their communities.

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