

AIDS 2010: Science and the law in HIV criminalisation

Created 19 Jul 2010 - 4:22pm

The role of science and scientific evidence in HIV criminalisation was highlighted in a pre-conference session at the International AIDS Conference in Vienna, Austria on 18 July.

The satellite session featured a panel of international experts working on HIV criminalisation issues, which feature strongly in the conference program, echoing the theme of this year's conference, 'Rights Here, Right Now'.

Glenn Betteridge of the Ontario Working Group in Criminal Law and HIV Exposure told the meeting that a lack of understanding of the science of HIV risk and HIV disease has led to a proliferation of problematic laws and prosecutions worldwide. "Science has played an inordinate role in this miscarriage of justice," he said.

Betteridge outlined three major problems with the legal system's engagement with HIV science. Firstly, he said there was a lack of understanding of the meaning of an HIV diagnosis, with courts around the world continuing to treat HIV as a 'death sentence' despite scientific evidence around improved treatment outcomes. "In place of science, we find AIDS-phobia, prejudice, hysteria even, and this increases stigma against [PLHIV](#) [1]Person (or people) Living with HIV. This term is now preferred over the older PLWHA.."

A second problem is a misunderstanding of the role of science in linking an individual case of transmission to a specified individual. "Science, in itself, cannot prove that one person infected another person," Betteridge said. Phylogenetic analysis, which seeks to confirm the source of an HIV infection by comparing viral gene sequences taken from both the accused person and the complainant, continues to be used in prosecutions and is often treated as "being as accurate as a fingerprint" despite clear scientific evidence of its limitations.

Betteridge argued that this was in part due to the failure of expert scientific witnesses to adequately convey the meaning and limitations of scientific evidence, a point also taken up by another speaker at the meeting, Lisa Power of the UK Terrence Higgins Trust (THT). "Scientific evidence is important, but there are problems with getting juries to understand the science," she said. "Often it comes down to the demeanour of the person giving the evidence."

The third problem addressed by Betteridge is the failure of courts and prosecutors to properly understand the risk of HIV transmission, in the context of HIV exposure cases. "The risk of HIV transmission is overestimated and poorly understood," Betteridge said, and this has led to criminal charges and convictions in cases where the risk of transmission was very low or negligible.

Globally, there has been a trend towards increasing criminalisation of HIV transmission, and increasing concern from HIV advocates and civil society organisations over the issue. Moono Nyambe of the Global Network of People Living with HIV/AIDS ([GNP+](#) [2]Global Network of People Living with HIV/AIDS. Based in Amsterdam, The Netherlands, GNP+ is a global network of and by positive people, working to improve the quality of life of people living with HIV/AIDS.) provided an overview of the Global Criminalisation Scan conducted by that organisation. This project seeks to monitor and track national and state-level laws used in prosecutions for HIV transmission or exposure, as well as rates or prosecution of positive people.

To date, more than 600 people worldwide have been convicted, a number that Nyambe said was likely to be an underestimate due to the difficulty of obtaining information. Prosecutions have occurred in more than 50 countries, with the United States, Canada, Australia and New Zealand having had significant numbers of prosecutions, as well as a number of European countries. In many cases, convicted people have received excessively severe sentences, especially in North America, and a growing number of countries have introduced HIV-specific laws, notably in Africa where more than 20 countries have enacted new HIV transmission/exposure laws in the last decade.

Several speakers outlined efforts that had been undertaken in their own countries as well as internationally to respond to the trend towards criminalisation. Lisa Power outlined a series of steps that THT has taken in the UK, working with the Crown Prosecution Service to develop new guidelines for prosecutors and police. These guidelines acknowledge the necessity for, and limitations of scientific evidence, and the need for prosecutors to demonstrate that accused persons had an understanding of their infectiousness and the risk of transmission.

Susan Timberlake from the Joint United Nations Programme on HIV/AIDS outlined steps being taken by that agency to respond to the issue. While acknowledging that [UNAIDS](#) [3] Joint United Nations Programme on HIV/AIDS. UNAIDS is the main advocate for accelerated, comprehensive and coordinated global action on the epidemic. had been slow to respond to HIV criminalisation, she said the agency had now made it a priority to work for the removal of criminal laws, policies and practices that impede progress on HIV. Timberlake set out a multi-stage process being adopted to build high-level consensus on the issue, engage with lawmakers, support better law enforcement, improve access to justice for PLHIV and reinforce the protective role of the law.

The meeting focused heavily on the impact of laws criminalising HIV transmission and exposure on public health and human rights, but also the importance of acknowledging the fundamental right to justice and to equal treatment before the law. "It [the criminalisation of HIV transmission] is simply unjust," said audience member Yusuf Khan of the UK National AIDS Trust. "It is selecting a small group of people to be the scapegoats for a collective failure of action."

- A [video recording of the meeting](#) [4] can be viewed online.

- [HIV and the law](#)
- [conference reports](#)
- [Criminalisation of HIV transmission](#)
- [International AIDS Conference](#)

Links:

[1] <http://www.napwa.org.au/glossary/term/689>

[2] <http://www.napwa.org.au/glossary/term/389>

[3] <http://www.napwa.org.au/glossary/term/396>

[4] <http://vimeo.com/album/264885>