

Decriminalisation works, criminalisation doesn't

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The focus on criminalisation was a first for the International AIDS Conference, with presenters repeatedly arguing that the use of the criminal law against people with HIV has had no positive public health impact and has infringed the human rights of positive people.

While lawmakers often see criminal laws as a deterrent to risky behaviour, they are more likely to deter people from testing and treatment, undermine the sense of shared responsibility, and create a false sense of responsibility. At the same time, criminal laws undermine human rights by reinforcing stigma and discrimination, infringing the right to privacy through selective enforcement on vulnerable minority groups. A criminalisation scan undertaken by the Global Network of People Living with HIV/AIDS ([GNP+](#) [1]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.)¹ found that at least 600 people have been convicted worldwide to date, with prosecutions occurring in more than 50 countries. The scan also revealed that sentences tended to be excessively severe, especially in North America, and that a growing number of countries had enacted, or were debating, HIV-specific criminal laws. In Africa alone, 20 countries have passed new HIV-specific laws in the last ten years.

A number of speakers emphasised that not only are laws criminalising HIV transmission unjustified on public health grounds, they are often vague and open to interpretation by courts. In Canada, a precedent has been established that requires [PLHIV](#) [2]Person (or people) Living with HIV. This term is now preferred over the older PLWHA. to disclose their status before engaging in any activity carrying 'significant risk' of transmission – but the meaning of 'significant risk' has never been established.

A study by Eric Mykhalovskiy of York University in Canada² found that PLHIV, healthcare workers and counsellors have no clear understanding of the law, that people are being advised to disclose every time they have sex, regardless of risk, and that disclosure doesn't protect the individual from prosecution anyway.

Despite the negative trend, progress has been made in some countries towards a more rational and compassionate approach. In England and Wales, the number of prosecutions has fallen dramatically following the development of a set of guidelines for the Crown Prosecution Service³, which prevent prosecutions proceeding unless there is strong evidence, and which clearly state the limitations of some kinds of evidence such as phylogenetic analysis.

Robert James of the University of London outlined a trio of strategies that have been successful in different countries.⁴ In the Netherlands, a Supreme Court decision in 2005⁵ found that PLHIV who have unprotected sex cannot be prosecuted unless evidence is produced of intent to transmit HIV. In the UK, a 2006 case⁶ demonstrated that phylogenetic analysis,⁷ widely used in HIV transmission cases, cannot reliably prove that one specific individual infected another, although it can be used to show that they didn't. And in Switzerland, a 2009 ruling by the Geneva Court of Justice found that PLHIV with undetectable [viral load](#) [3]A measurement of the quantity of HIV RNA in the blood. Viral load blood test results are expressed as the number of copies (of HIV) per milliliter of blood plasma. are unlikely to transmit HIV and cannot be prosecuted for HIV exposure (where transmission did not occur).

Despite this, in a disturbing number of cases, courts and prosecutors have ignored scientific evidence in dramatic ways – courts around the world routinely consider HIV infection to be akin to a 'death sentence' despite the improvements in HIV therapy, and activities which carry little or no risk of HIV – including spitting and biting – have led to successful prosecutions and long prison sentences, particularly in the US and Canada.

The focus on criminalisation at AIDS 2010 stimulated an energetic debate about the impacts of criminal laws and the growing movement against them. As Gill Greer, Director-General of the International Planned Parenthood Foundation, told the conference, "**Decriminalisation works. Criminalisation does not.**"

1. <http://www.gnpplus.net/criminalisation/> [4]
2. [2](#). Mykhalovskiy E, HIV non-disclosure and the criminal law: effects of Canada's 'significant risk' test on people living with HIV/AIDS and health and social service providers. XVIII International AIDS Conference, Vienna; 21

July 2010; abstract no THLBF102.

[3.](#) Intentional Or Reckless Sexual Transmission Of Infection. Crown Prosecution Service 2010

http://www.cps.gov.uk/legal/h_to_k/intentional_or_reckless_sexual_transm... [5]

[4.](#) James R, Criminalizing of HIV transmission and exposure. XVIII International AIDS Conference, Vienna; 21 July 2010; session no WESA23.

[5.](#) Criminal Section no. 02659/03 IV/SB, Supreme Court of the Netherlands, 18 Jan 2005. Online at

<http://www.aidslaw.ca/EN/lawyers-kit/documents/8.Netherlands2005judgment...> [6].

[6.](#) R. v Collins (2006). Crown Court, unreported. Summary at <http://www.aidsmap.com/page/1424549/> [7].

[7.](#) Phylogenetic analysis is a complex scientific process used in molecular epidemiology. An individual strain of HIV can be examined in great detail by analysing its genetic code (RNA). By examining very small differences in different parts of HIV's RNA (obtained via gene sequencing), it is possible to estimate how these HIV strains are genetically related. This involves the use of computational tools to create a hypothetical diagram (known as a phylogenetic tree). However, this method is unable to create a definitive 'match'. This is because HIV, unlike human DNA samples or fingerprints, is rapidly evolving.

- [Defeating HIV](#)
- [conference reports](#)
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Links:

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

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

[3] <http://www.napwa.org.au/glossary/term/416>

[4] <http://www.gnpplus.net/criminalisation/>

[5] http://www.cps.gov.uk/legal/h_to_k/intentional_or_reckless_sexual_transmission_of_infection_guidance/

[6] <http://www.aidslaw.ca/EN/lawyers-kit/documents/8.Netherlands2005judgment.pdf>

[7] <http://www.aidsmap.com/page/1424549/>