

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 Existing HIV-specific criminal laws should be repealed, in accordance with UNAIDS recommendations.⁴ If, following a thorough evidence-informed national review, HIV-related prosecutions are still deemed to be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 all key stakeholders, to ensure that police investigations are appropriate and to ensure that people with HIV have adequate access to justice.

We respectfully ask Ministries of Health and Justice and other relevant policymakers and criminal justice system actors to also take into account the following in any consideration about whether or not to use criminal law in HIV-related cases:

6. HIV epidemics are driven by undiagnosed HIV infections, not by people who know their HIV-positive status.⁶ Unprotected sex includes risking many possible eventualities – positive and negative – including the risk of acquiring sexually transmitted infections such as HIV. Due to the high number of undiagnosed infections, relying on disclosure to protect oneself – and prosecuting people for non-disclosure – can and does lead to a false sense of security.
7. HIV is just one of many sexually transmitted or communicable diseases that can cause long-term harm.⁷ Singling out HIV with specific laws or prosecutions further stigmatises people living with and affected by HIV. HIV-related stigma is the greatest barrier to testing, treatment uptake, disclosure and a country's success in "getting to zero new infections, AIDS-related deaths and zero discrimination".⁸
8. Criminal laws do not change behaviour rooted in complex social issues, especially behaviour that is based on desire and impacted by HIV-related stigma.⁹ Such behaviour is changed by counselling and support for people living with HIV that aims to achieve health, dignity and empowerment.¹⁰
9. Neither the criminal justice system nor the media are currently well-equipped to deal with HIV-related criminal cases.¹¹ Relevant authorities should ensure adequate HIV-related training for police, prosecutors, defence lawyers, judges, juries and the media.
10. Once a person's HIV status has been involuntarily disclosed in the media, it will always be available through an internet search. People accused of HIV-related 'crimes' for which they are not (or should not be found) guilty have a right to privacy. There is no public health benefit in identifying such individuals in the media; if previous partners need to be informed for public health purposes, ethical and confidential partner notification protocols should be followed.¹²

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Q: Who is behind the Oslo declaration?

A: We are a group of individuals and organisations from civil society around the world concerned about the inappropriate and overly-broad use of the criminal law to regulate and punish people living with HIV for behaviour that in any other circumstance would be considered lawful. We are working to end such injustice. We are led by, and include, people living with HIV, and supported by committed HIV advocates. Our expertise covers medical, social, ethical, political, human rights and judicial issues relating to HIV and the criminal law.

Q: Why is it called the Oslo declaration?

A: We came together in Oslo, Norway on the eve of the global High Level Policy Consultation on the Science and Law of the Criminalisation of HIV Non-disclosure, Exposure and Transmission, convened by the Government of Norway and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

The objective of the High Level Policy Consultation was to provide a global forum in which policymakers and other concerned stakeholders could consider their current laws and policies regarding the criminalisation of HIV non-disclosure, exposure or transmission in light of the most recent and relevant scientific, medical, public health and legal data.

Although our declaration is not an official High Level Policy Consultation document, we support the objective of the meeting, and encourage policymakers to review their own laws and policies, and to take any and all steps necessary to achieve the best possible outcomes in terms of justice and protection of public health in order to support effective national responses to HIV and uphold international human rights obligations.

Q: What is the current state of HIV criminalisation?

A: Prosecutions are taking place in many countries around the world either under HIV-specific criminal statutes or under a wide range of often inappropriate general criminal laws.¹³

Most criminal cases have been framed by prosecutors and the media as being cases of 'deliberate' or 'intentional' HIV transmission when, in fact, the vast majority have involved neither malicious intent nor alleged or even proven HIV transmission.¹⁴

In recent years, both the number of prosecutions, and the number of new HIV-specific criminal laws have been increasing¹⁵ even as the public health response to HIV – based on a human rights and evidence-informed approach¹⁶ – has significantly reduced the number of new infections and greatly improved the quality of life of people living with HIV.¹⁷

However, several countries are now rethinking their approach to the use of criminal law due to their awareness of advances in HIV-related science and medicine.¹⁸

Q: How do HIV-related criminal laws and prosecutions harm HIV prevention efforts?

A: Many experts have raised concerns regarding the broad, collateral harm inherent in a regulatory and criminal-based approach to HIV prevention.¹⁹ In particular, there is evidence of a negative public health impact in terms of:

- misrepresenting and overstating HIV-related risks and harms. This contributes to increased myths about HIV, including about transmission risks and how best to protect oneself.
- increasing HIV-related stigma. This has an adverse effect on a person's willingness to learn about, or discuss, HIV.
- undermining the importance of personal knowledge and responsibility as a key component of an HIV prevention package. Preventing HIV within a consensual sexual relationship is – and should be perceived as – a shared responsibility.
- deterring people from wanting to know their HIV status. Undiagnosed (and, therefore, untreated) HIV harms individual and public health.²⁰

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Q: How do HIV-related criminal laws and prosecutions harm human rights?

A: There is a growing body of evidence that such laws and prosecutions are having a negative impact on all people living with HIV²¹, due to:

- Creating confusion and fear over rights and responsibilities under the law.
- Creating and sustaining disincentives to disclose HIV-positive status to sexual partners.
- Creating and sustaining disincentives to disclose HIV-related risk behaviours to healthcare professionals.

In addition, evidence from around the world²² also suggests:

- Selective and/or arbitrary investigations/prosecutions.
- Improper and insensitive police investigations that can result in inappropriate disclosure, loss of employment and high levels of distress.
- Stigmatising media reporting, including names, addresses and photographs of people with HIV not yet found guilty of any crime.
- A limited access to justice for people with HIV.
- Sentencing and penalties that are often vastly disproportionate to any potential or realised harm.²³

Q: Why does HIV criminalisation particularly harm women?

A: Politicians and policymakers may believe that they are protecting women from HIV by proposing and enacting HIV-specific criminal laws. But HIV criminalisation does not protect women from coercion or violence. Laws that empower women by creating societal, legal, and financial equality for women, and criminalising marital rape do. HIV criminalisation does more harm than good for women because:

- Women are more likely to be prosecuted, since they are often the first in a relationship to know their status due to routine HIV testing during pregnancy, and are less likely to be able to safely disclose their HIV-positive status to their partner as a result of inequality in power relations, economic dependency, and high levels of gender-based violence within relationships.²⁴
- Women with HIV face the possibility of being prevented from becoming pregnant, and/or for being prosecuted for passing HIV on to their child in the womb, or during breastfeeding, further constricting their reproductive choices and rights.²⁵

Q: Where can I learn more about HIV criminalisation?

A: All of the supportive evidence to our statements can be found in the references, which link to the original documents. Please also visit the following websites for further information:

- [AIDSLEX/CRIMINALIZATION OF HIV TRANSMISSION LIBRARY \(INTERNATIONAL\)](#)
- [CANADIAN HIV/AIDS LEGAL NETWORK/HIV CRIMINALISATION PUBLICATIONS](#)
- [CENTER FOR HIV LAW & POLICY/POSITIVE JUSTICE PROJECT \(US\)](#)
- [GNP+/GLOBAL CRIMINALISATION SCAN \(INTERNATIONAL\)](#)
- [IPPF/HIV AND THE LAW \(INTERNATIONAL\)](#)
- [NAM/HIV AND THE CRIMINAL LAW \(INTERNATIONAL\)](#)
- [POZ/HIV CRIMINALIZATION \(US\)](#)
- [SERO/SERO PROJECT \(US\)](#)

In addition, the following documentary films provide further insight into the issues:

- [How Could She, Sweden, 2010](#)
- [Legalizing Stigma, US, 2010](#)
- [Verdict on a Virus, UK, 2011](#)
- [HIV Is Not a Crime, US, 2011](#)
- [Perpetuating Stigma, US, 2012](#)

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ENDNOTES:

- 1 UNAIDS. *Report of the Expert Meeting on the Scientific, Medical, Legal and Human Rights Aspects of Criminalisation of HIV Non-disclosure, Exposure and Transmission, 31 August- 2 September 2011*. Geneva, February 2012.
- 2 UNAIDS/UNDP. *Policy Brief: Criminalization of HIV Transmission*. Geneva, July 2008; Open Society Institute. *Ten Reasons to Oppose the Criminalization of HIV Exposure or Transmission*. 2008; IPPF,GNP+ and ICW. *Verdict on a Virus*. 2008. See also: IPPF. *Verdict on a Virus* (documentary) 2011.
- 3 GNP+/UNAIDS. *Positive Health Dignity and Prevention: A Policy Framework*. Amsterdam/Geneva, January 2011.
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- 5 UNAIDS. (2012) Op. cit.
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- 12 UNAIDS. *Opening up the HIV/AIDS epidemic: Guidance on encouraging beneficial disclosure, ethical partner counselling & appropriate use of HIV case-reporting*. Geneva, 2000.
- 13 GNP+. *The Global Criminalisation Scan Report 2010*. Amsterdam, 2010; Bernard EJ. *Criminal HIV Transmission Blog* (2007-12).
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- 16 UNAIDS (2010) Op. cit.
- 17 WHO, UNAIDS, UNICEF. *Global HIV/AIDS Response: Epidemic update and health sector progress towards Universal Access 2011 Progress Report*. Geneva, 2011.
- 18 UNAIDS. *Countries questioning laws that criminalize HIV transmission and exposure*. 26 April 2011; Bernard EJ. *Getting tough on criminalisation*. HIV Treatment Update 210, Winter 2012.
- 19 Weait M. *Intimacy and Responsibility: The criminalisation of HIV transmission*. Abingdon, Oxon: Routledge-Cavendish, 2007; Burris S, Cameron E, Clayton M. *The criminalisation of HIV: time for an unambiguous rejection of the use of criminal law to regulate the sexual behavior of those with and at risk of HIV*. Social Science Research Network, 2008; Open Society Institute. *Ten Reasons to Oppose the Criminalization of HIV Exposure or Transmission*. 2008; IPPF,GNP+ and ICW. *Verdict on a Virus*. 2008. Cameron E. *Criminalization of HIV transmission: poor public health policy*. HIV/AIDS Policy & Law Review 14 (2), 2009; AFAO and NAPWA. *HIV, Criminal Law & Public Health Forum, Canberra*. September 2011; RFSU, RFSL and HIV Sweden. *HIV, Crime and Punishment*. December 2011.
- 20 Cohen MS et al. *Prevention of HIV-1 Infection with Early Antiretroviral Therapy*. N Engl J Med 2011; 365:493-505.
- 21 Mykhalovskiy E. *The problem of "significant risk": Exploring the public health impact of criminalizing HIV non-disclosure*. Social Science & Medicine, 2011; Bourne A, Dodds C, Weait M. *Responses to criminal prosecutions for HIV transmission among gay men with HIV in England and Wales*. Reproductive Health Matters 17(34):135-145, 2009; Menadue D. The impact of the criminalisation issue on HIV-positive people. In: Cameron S and Rule J (eds), *The Criminalisation of HIV Transmission in Australia: Legality, Morality and Reality*. Sydney, NAPWA, 2009.
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