

Selective global responses to HIV 'crimes'

Edwin J Bernard, Editor, *HIV Treatment Update*, NAM, London, UK, edwin@nam.org.uk

Issues

There is a growing international trend towards the criminalisation of people living with HIV, focused on criminalising reckless or intentional exposure or transmission. However, the law is not applied equally or fairly, even within a single country.

Whereas some jurisdictions have HIV-specific laws, others re-interpret more general assault laws to include HIV exposure or transmission. Some criminalise any kind of sex without disclosure, whereas others only prosecute when transmission has taken place in the absence of disclosure.

In addition, in some jurisdictions a person's HIV status can serve as an aggravating factor for other 'crimes', such as spitting, and in at least one country (Egypt, where homosexuality is a crime) a person's HIV status is 'proof enough' that they are criminals.

Media reporting of these cases is often inaccurate and inflammatory and may increase HIV-related stigma and perpetuate misinformation regarding HIV transmission risks.

Description

Since July 2007, 174 published reports (primarily in English and online) about criminal HIV exposure and transmission, as well as related articles, information and opinion, have been included in a blog (criminalhivtransmission.blogspot.com) published by the author.

However, these rely on Google news alerts, blog readers' reports and/or other personal communications, and may well miss many that are not in the English language, or go unreported, and so are likely to be the 'tip of the iceberg'.

Between July 14th 2007 and July 18th 2008, criminal HIV exposure or transmission prosecutions were reported in 12 countries (Australia; Azerbaijan; Bermuda; Botswana; Canada; Finland; France; Singapore; Sweden; Switzerland; UK; and USA).

In 3 more countries, HIV status was an aggravating factor in other prosecutions. Reports from a further 15 countries highlight that the issue is a global concern (Fig. 1).

Lessons learned

Jurisdictions in the USA (21 cases); Canada (16); Australia (6); and Sweden (4) have been the most active in applying current laws to HIV exposure or transmission in the past year. Laws criminalising 'unsafe sex' have been passed in Singapore, and Switzerland has recently established criminal liability for HIV transmission in the absence of a positive antibody test.

Reports suggest new laws criminalising HIV exposure or transmission have been passed recently, or are proposed for: Angola; Benin; Botswana; China; Fiji; Guinea; Guinea-Bissau; India; Lesotho; Mali; Niger; Sierra Leone; Swaziland; Togo; Uganda; and Zimbabwe.

The criminal law's capacity to address so-called HIV-related 'crimes' is at best selective and highly inefficient, and at worst discriminatory and counterproductive to public health.

Many journalists, lawmakers, judges, lawyers and police involved in such cases appear to be highly ignorant of even the most basic of HIV issues, such as sexual and nonsexual transmission risks.

Next steps

Some of these laws may have resulted in human rights violations (e.g., in Texas an HIV-positive man was sentenced to 35 years in prison for spitting on a police officer) and potential miscarriages of justice (some cases have over-relied on questionable scientific evidence; others on a guilty plea in the absence of any compelling evidence; yet others rely solely on the complainant's version of events over the defendant's) and require expert and/or high-level intervention.

Existing and proposed HIV-specific laws are contrary to current UNAIDS policy. A systematic global review of the criminal law's response to the HIV pandemic is urgently required to inform policy in this area.

Individuals working in – and with – the criminal justice system, as well as policy- and lawmakers, require educating on all aspects of HIV, including the pros and cons of criminal sanctions versus a human rights approach in order to mitigate the HIV epidemic in their jurisdictions.

HIV-related training for journalists is also required to avoid further stigma and misinformation regarding HIV transmission risks.

