HIV JUSTICE NETWORK

Decriminalising HIV - A Human Rights and Public Health Priority

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HIV Justice Network / HIV JUSTICE WORLDWIDE

90-90-90
Targets Workshop

July 21-22, 2018 • Amsterdam

GLOBAL COMMISSION ON HIV and the LAW

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"In much of the world it is a crime to expose another person to HIV or to transmit it, especially through sex. Fundamentally unjust, morally harmful, and virtually impossible to enforce with any semblance of fairness, such laws impose regimes of surveillance and punishment on sexually active people living with HIV, not only in their intimate relations and reproductive and maternal lives, but also in their attempts to earn a living."

HIV and the Law: Rights, Risks and Health, July 2012

What is 'HIV criminalisation'?

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- Overly-broad HIV-specific criminal laws and/or unjust application of general criminal or similar laws to people living with HIV based solely on HIV-positive status
- Growing global phenomenon
  - Increasingly recognised as an important public health and human rights issue
  - Selective and arbitrary prosecutions
  - Disproportionate impact on women and key populations
  - Can be used for threats, abuse and retaliation
  - Improper and insensitive police investigations
  - Limited access to competent defence lawyers
  - Disproportionate sentencing
  - Stigmatising media reporting
  - A barrier to HIV prevention, treatment and care

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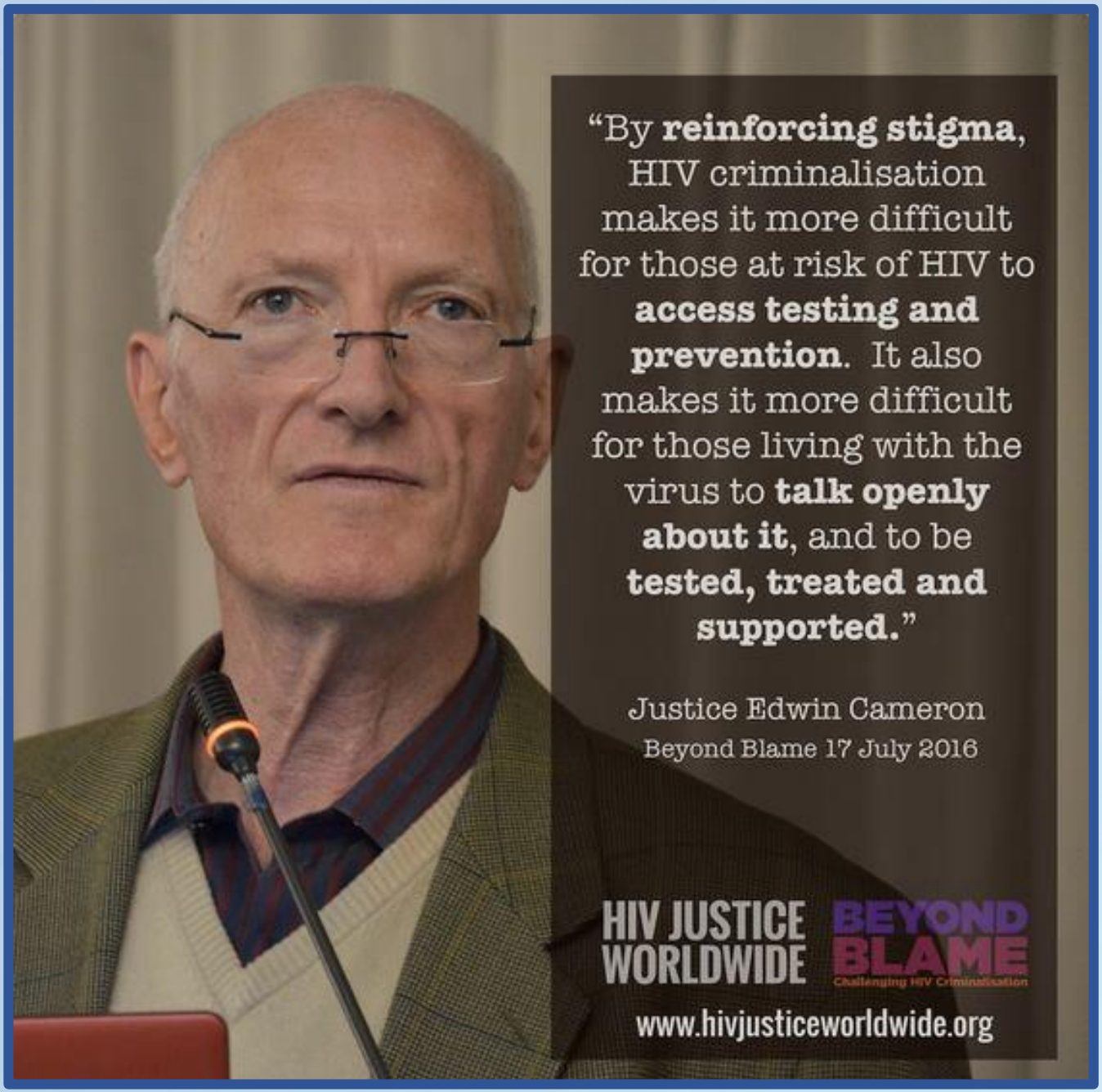

What are typical 'HIV criminalisation' laws?

Most HIV-specific criminal laws are overly-broad, too vague and do not reflect up-to-date understanding of HIV science.

These laws :

- Usually single out HIV, which is inherently stigmatising
- Can criminalise behaviour that is not an HIV risk
- Do not adequately define *mens rea* (e.g. what exactly is 'wilful transmission'?)
- Often lead to disproportionately long sentencing (up to life imprisonment)

International Guidelines on HIV/AIDS and Human Rights, UNAIDS and the Global Commission on HIV and the Law do not recommend HIV-specific criminal laws, but instead recommend the use of general laws for only the most egregious behaviour – malicious (intentional) transmission.

WHERE HIV-SPECIFIC LAWS EXIST

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Data correct as of 1st July 2018

Source: Bernard EJ and Cameron S. *Global trends in HIV criminalisation: Overview, analysis and country ranking.* TUPED512

WHERE HIV-RELATED CRIMINAL CASES HAVE BEEN REPORTED

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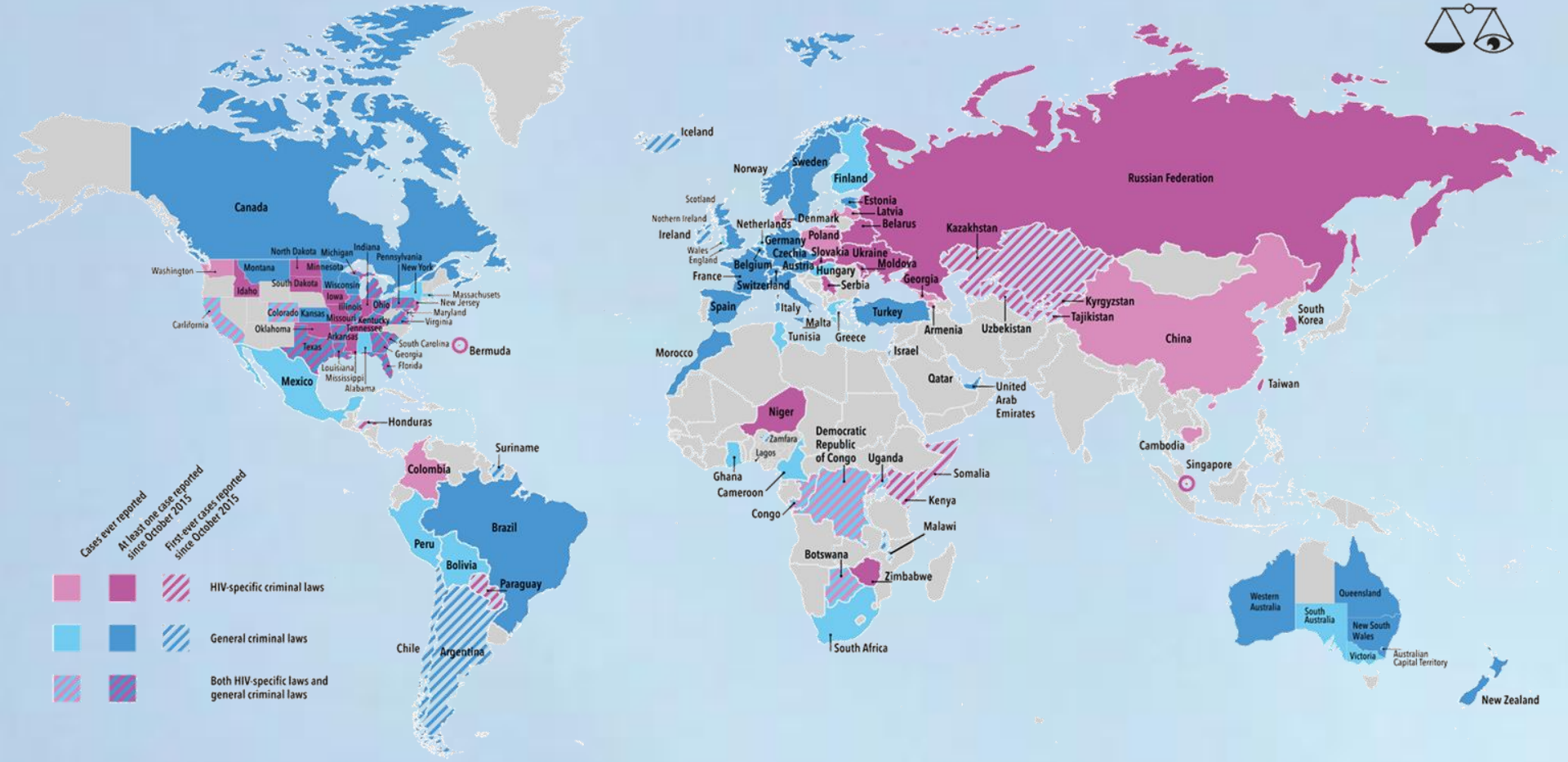

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What are typical 'HIV criminalisation' cases?

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Most cases involve an HIV-positive person having sex where it is alleged they did not disclose their HIV status.

Many cases involve:

- Potential or perceived exposure only (no HIV transmission alleged)
- No or negligible risk, e.g. condom, low viral load, oral sex, and also *spitting, biting, scratching*.
- Faulty assumptions of guilt where transmission is alleged (e.g. first diagnosed in a couple is often considered first infected, phylogenetics rarely used and results can be misinterpreted)
- **Among the thousands of known prosecutions, cases where it was *proven beyond reasonable doubt* that an individual wanted to infect another person with HIV are unusual and extremely rare.**

LLEGAL MIGRANT ARRESTED
SUSPICION OF INFECTING ISR

Conflicting statements as couple's H
infection squabble spills into court

Hiv-smittad kvinna döms

Suspect charged with possi
passing HIV on to victim

ondon courts: HIV-infected spitter dr
entence

Trial for inmate who allegedly didn't
tell HIV status before prison sex

ержана азербайджанская проституп
разившая 200 мужчин СП

Police arrest foreigner for deliberately having
sex, infecting girls with HIV in Lagos

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заражавший женщи

Woman nabbed for infecting partner with
IIV

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В БЕЛАРУСИ РАССЛЕДУЮТ ПЯТЬ УГОЛО
ФАКТУ УМЫШЛЕННОГО ЗАРАЖЕНИЯ ВИ

Woman sentenced for prostitution while HIV positive

Фото: взят под стражу мужчина,
подозреваемый в распространении
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HIV

‘HIV criminalisation’ case examples

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- CANADA: Woman with undetectable viral load prosecuted for aggravated sexual assault for allowing a man to perform oral sex on her.
- MALAWI: Woman on ARVs prosecuted for breastfeeding.
- RUSSIA: Women investigated by police for not preventing HIV transmission to their newborns.
- UGANDA: Female nurse living with HIV vilified in press and initially prosecuted for attempted murder following needlestick injury.
- UNITED STATES (Texas): Homeless man with HIV prosecuted for spitting at police officer during arrest. Sentenced to 35 years.
- UNITED STATES (Idaho): Man had sex with condom and undetectable viral load but couldn’t prove he disclosed to his female partner. No transmission. Sentenced to 30 years.

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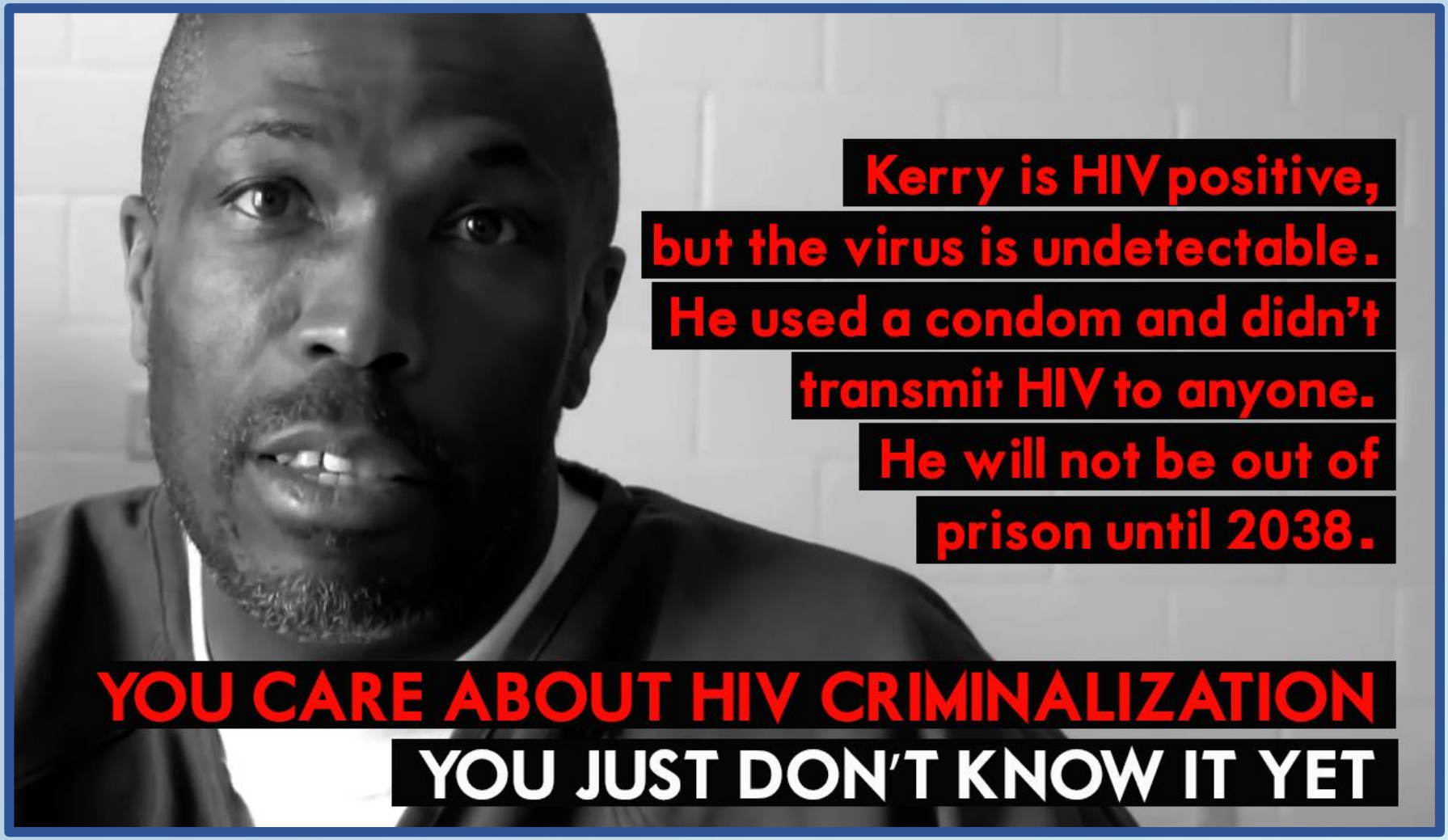

What is ‘HIV criminalisation’?

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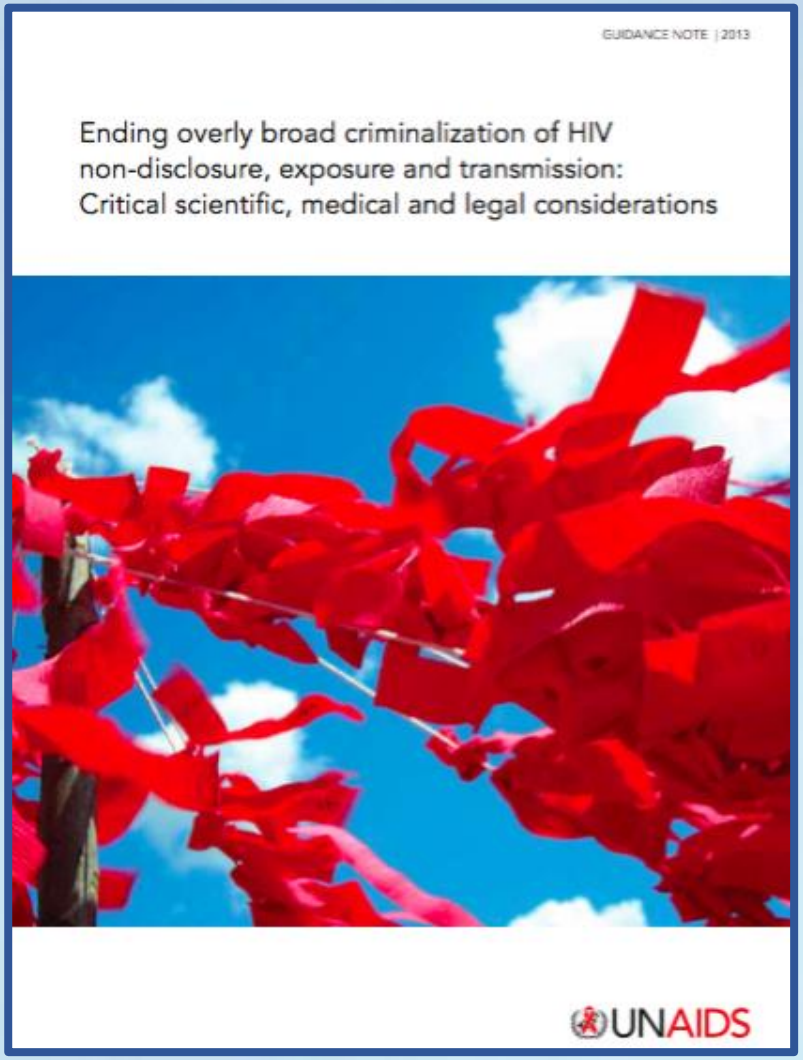
Too many people living with HIV are being convicted of ‘crimes’ contrary to international guidelines on HIV and human rights as well as contrary to scientific evidence, medical evidence and best public health advice.

UNAIDS Recommendations

- Restrict the use, if any, of criminal law in the context of HIV, *ideally to intentional transmission only*.
- Where it is used, criminal justice principles (including key criminal law principles of legality, foreseeability, intent, causality, proportionality and proof) should be upheld.
- Best available scientific and medical evidence should guide any use of criminal law.
- Treat like harms alike, with proportionate penalties.
- Condoms **or** low viral load = no significant risk; shows no intent to harm.
- Non-disclosure alone is not proof of malicious intent.
- Limitations of scientific tests for use in HIV forensics (e.g. phylogenetic analysis).



Building the global movement

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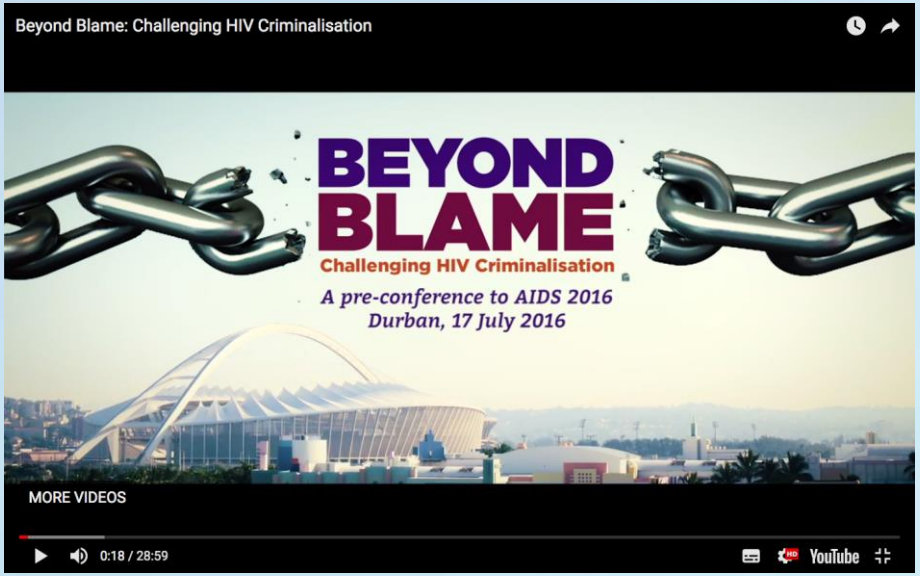

Growing the global movement

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STEERING COMMITTEE

- AIDS Action Europe
- AIDS-Free World
- AIDS and Rights Alliance for Southern Africa (ARASA)
- Canadian HIV/AIDS Legal Network
- Global Network of People Living with HIV (GNP+)
- HIV Justice Network
- International Community of Women Living with HIV (ICW)
- Positive Women's Network - USA (PWN-USA)
- Sero Project (SERO)
- Southern Africa Litigation Centre (SALC)

HIV JUSTICE WORLDWIDE

www.hivjusticeworldwide.org

CONSENSUS STATEMENT

Expert consensus statement on the science of HIV in the context of criminal law

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- Global panel of leading scientists
- Supported by IAPAC, IAS and UNAIDS in consultation with HIV JUSTICE WORLDWIDE
- A key reference for clarifying important issues of HIV science in the context of criminal law
- Aimed at expert witnesses, but helpful for police, prosecutors, lawyers, judges, lawmakers and advocates
- To be published on Wednesday 25 July 2018 at 3.15pm in the Journal of the International AIDS Society (JIAS).

JIAS JOURNAL OF THE INTERNATIONAL AIDS SOCIETY

Examples of the application of science to justice

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- 2005: Supreme Court of The Netherlands first to limit law based on actual HIV **risk**.
- 2009: Geneva Court of Justice quashed an HIV 'exposure' conviction following 'Swiss statement' on HIV **risk**.
- 2011: Denmark suspended HIV-specific law, due to reduced **harm** via changes in life expectancy.
- 2008-12: Limitations of phylogenetics for **proof** of timing/direction of transmission, and impact of ART on transmission **risk** incorporated into English & Scottish prosecutorial guidelines.
- 2013: 'Swedish statement' on sexual HIV **risk** positively impacted clinician practice and resulted in 2018 Supreme Court ruling that UVL means no legal liability.
- 2015: 'Canadian statement' on sexual HIV risk impacting lower court rulings; 2017 WAD announcement - Ontario will no longer prosecute people with UVL.
- 2017-18: General laws in Norway and North Carolina (US) now also exclude prosecutions for those with UVL.

Concluding thoughts

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- We will not end the HIV epidemic by singling out people living with HIV as criminals.
- HIV prevention is a public health issue, not a criminal justice issue. Having a health condition should never be a crime.
- HIV criminalisation hinders HIV prevention and care efforts (including 90-90-90 targets), increasing everyone's vulnerability to HIV.
- Our efforts and resources must focus on greater access to prevention, testing, treatment and care for all, not criminalisation.
- Scientists, clinicians and other healthcare providers can help combat stigma and discrimination against people living with HIV by challenging misconceptions around living with the virus, and how it is actually transmitted.
- What about those vulnerable populations left behind (the 10-10-10) who experience marginalisation, discrimination and criminalisation?
- **Science alone is not sufficient to end HIV criminalisation. The criminal justice system and law- and policymakers must also consider the impact of prosecutions on the human rights of people living with HIV and public health efforts to end the epidemic.**

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BEYOND BLAME

Challenging HIV Criminalisation

De Balie, Amsterdam, 23 July 2018