

LIVING 2008 Summit themes:

Criminalisation

“I feel now that through this experience I am left feeling like a criminal for being HIV positive and my fear is now that people won’t be tested for fear of prosecution about being positive...”

Sarah, woman convicted and imprisoned for transmitting HIV
(from Positively Women Magazine, fall 2006)



1 What is the issue?

Several countries have recently introduced laws to criminalise HIV transmission, or exposing another person to the virus. Prosecutions are increasing. A number of jurisdictions have used general laws against serious bodily harm in cases where someone is accused of knowingly transmitting HIV or willingly exposing others to HIV transmission. Subject to controversy, these measures are sparking debate and concern among policymakers, legal and public health professionals, international organizations and civil society, on whether criminal law is applicable in such cases and if such application is accomplishing or damaging public health goals such as Universal Access to HIV prevention, treatment, care and support. PLHIV see criminalisation as a violation of their fundamental human, sexual and reproductive rights.

The vast majority of PLHIV does not want to transmit HIV and are concerned about transmission. To penalize the person living with HIV where transmission occurs discriminates against the person that is positive, in favor of the person that is negative when in fact both parties share responsibility.

A combination of evidence and experience compels the conclusion that criminalisation of HIV transmission is counterproductive to sound public health practice because it:

- Sends negative messages about PLHIV as “irresponsible” whereas, in reality, the vast majority of PLHIV deal responsibly with their infections.
- Discourages people from seeking HIV testing due to a climate of fear and shame.
- Promotes fear of having a healthy and safe sex life amongst PLHIV.
- Reduces solidarity for PLHIV.
- Increases stigma and discrimination.

However, how can the challenge of decriminalisation be achieved? Should the focus be on national action or on internationally concerted activities? Should GNP+ take a lead role in advocating for the decriminalisation of HIV transmission? If so, by doing what?

2 What are the key advocacy messages on Criminalisation?

a) It is important to increase the awareness regarding the effects of criminalisation on the lives of PLHIV. Many PLHIV are not even aware of the criminalisation of HIV transmission and under which circumstances exactly they might become legally liable.

b) There is a need to identify existing laws through a systematic research effort and develop appropriate strategies to increase the understanding of the effect these laws have on PLHIV. For this, much greater PLHIV community mobilisation is needed.

c) Complete worldwide decriminalisation – while desirable – might not be realistically achievable in the short or medium term. Instead of focusing on complete decriminalisation, the PLHIV community should focus on working with stakeholders, such as lawmakers, representatives of the criminal justice system, and medical doctors, to achieve constructive attitudes and realistic, practical change.



d) The role of the media play is crucial role in the attitudes towards criminalisation. Often, unfortunately, they do contribute to a negative attitude by reporting in a sensationalistic way about HIV transmission. Hence,

there is a need to work closely with media representatives and to educate and train them regarding issues of HIV criminalisation and to look for allies among NGOs in working with media.

3 What are the envisaged next steps?

- Conduct a systematic review of laws criminalising HIV transmission and the effect of these laws on the well-being and sexual behaviour of PLHIV.
- Increase community mobilisation by providing more information on criminalisation to PLHIV and encourage advocacy for decriminalisation.
- Educate media on balanced and objective ways of communicating issues of criminalisation and HIV transmission in general.
- Educate stakeholders, such as lawmakers, representatives of the criminal justice system and health care providers, including medical doctors on issues of criminalisation and its harmful effect on PLHIV through workshops, seminars or similar awareness building activities.

4 What is needed from the following audiences (in the next 12- 24 months) to address this issue and remove some of the 'barriers'

International Donors

Support PLHIV networks and organizations to develop policy and programmes that advocate for decriminalisation of HIV transmission.

Policy makers

Develop policies and laws that discourage efforts to criminalize HIV transmission and actively work to reverse laws already in place.

National Programme managers

Support the review of laws criminalising HIV transmission and the effect of these laws on the well-being and sexual behaviour of PLHIV.

PLHIV Community

Develop good relationships with stakeholders, such as the media and lawmakers, to achieve more positive attitudes towards decriminalisation and work with other organizations to gather evidence of the negative effect of criminalisation.

Researchers

Conduct a systematic review of laws criminalising HIV transmission and the effect of these laws on the well-being and sexual behaviour of PLHIV.

5 Suggested additional reading/information on this issue

Verdict on a Virus, by IPPF, GNP+ and ICW:

http://www.gnpplus.net/images/stories/2008_verdict_on_a_virus.pdf

The Global Criminalisation Scan:

<http://www.gnpplus.net/criminalisation>

The Criminalisation of HIV, by UNFPA, WAC, IPPF and GYCA:

<http://www.worldaidscampaign.org/en/content/download/30226/352986/file/Crim%20%20English.pdf>

LIVING 2008: The Positive Leadership Summit was supported financially by AIDS2008, Canadian International Development Agency, Ford Foundation, the French Ministry of Foreign Affairs, Bill & Melinda Gates Foundation, GlaxoSmithKline's Positive Action programme, the International HIV/AIDS Alliance, International Planned Parenthood Federation, Irish Aid, Norwegian Royal Ministry of Foreign Affairs, Sidaction, Tibotec, UNAIDS, The William and Flora Hewlett Foundation, and the World Health Organization.

www.LIVING2008.org