

Global trends in HIV criminalisation

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BACKGROUND

HIV criminalisation describes the unjust application of the criminal law to people living with HIV based solely on their HIV status - either via HIV-specific criminal statutes, or by applying general criminal or public health laws.

The Global Commission on HIV and the Law¹, UNAIDS², the UN Special Rapporteur on the Right to Health³ and the World Health Organization⁴, amongst others, have raised concerns regarding the harm inherent in the unjust application of criminal law in the context of HIV on both public health and human rights grounds.

METHODS

As part of the research for our *Advancing HIV Justice 2* report, covering a 30-month period, 1 April 2013 to 30 September 2015, laws and cases were analysed by cross-referencing those recorded on the HIV Justice Network website with those documented by civil society organisations keeping records in their own countries, supplemented with data provided to the HIV Justice Network via private message.⁵

Cases in Russia and Belarus were collated retrospectively in March 2016 by a Russian-speaking consultant, based on data published by the Supreme Court of the Russian Federation and the Investigative Committee of the Republic of Belarus, respectively, supplemented by Russian-language media reports.

RESULTS

Seventy-two countries currently have HIV-specific criminal laws, rising to 101 jurisdictions when individual US states are included. Notably, 30 countries in Africa have such laws, including new overly-broad laws in Uganda (2014) and Nigeria (2015).

At least 61 countries have reported HIV-related criminal cases. This total increases to 105 jurisdictions when individual US states and Australian states/territories are counted separately.

However, not all countries have enforced HIV-specific criminal laws and other countries have applied general laws: 32 applied criminal or public health laws, 26 used HIV-specific laws and 3 (Australia, Denmark⁶ and United States) have applied both.

During the 30-month period: April 2013 to October 2015, we found reports of at least 313 arrests, prosecutions and/or convictions in 28 countries.

The highest number of cases during this period were reported in:

- Russia (at least 115);
- United States of America (at least 104);
- Belarus (at least 20);
- Canada (at least 17);
- France (at least 7);
- United Kingdom (at least 6);
- Italy (at least 6);
- Australia (at least 5); and
- Germany (at least 5).

CONCLUSIONS

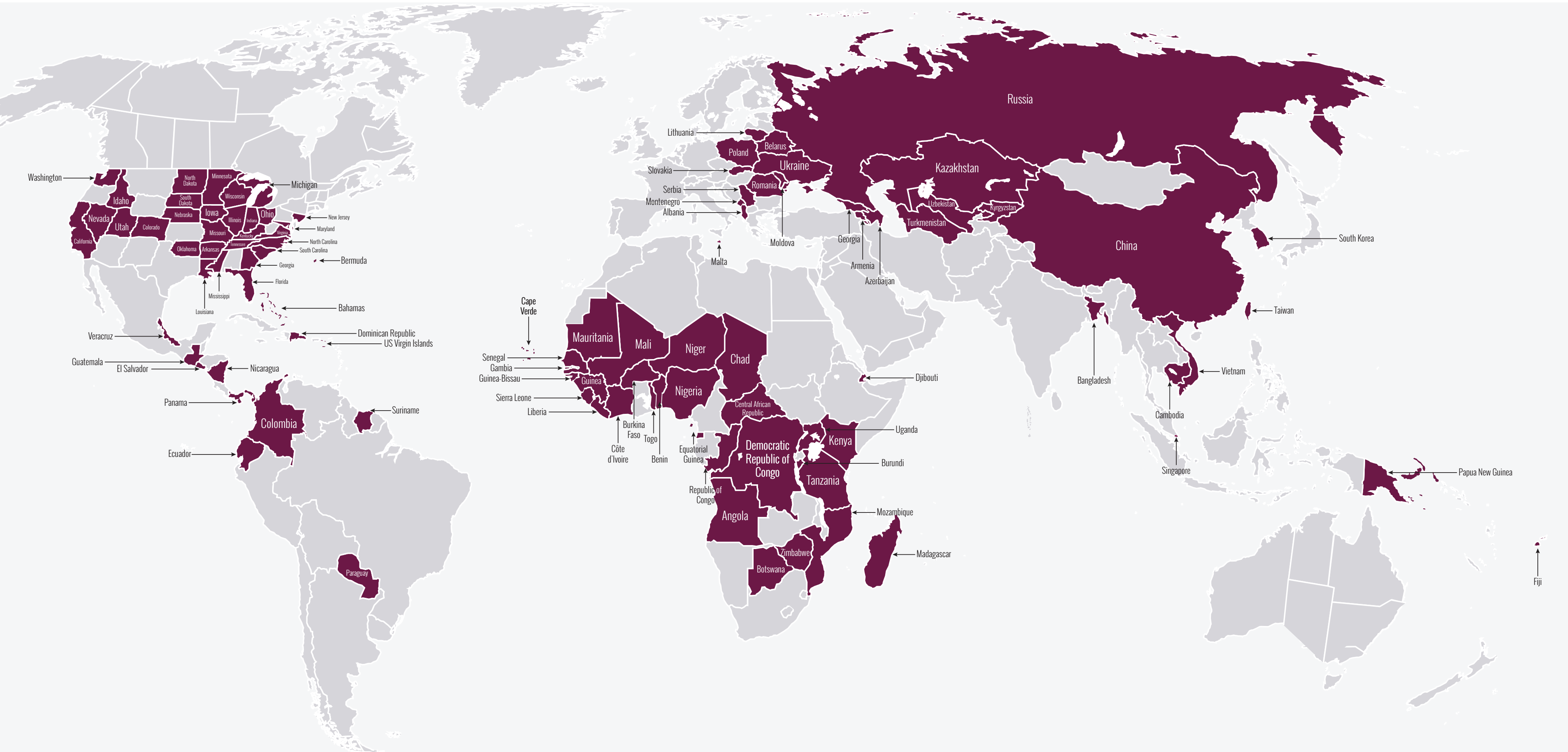
HIV criminalisation is a growing, global phenomenon that is seldom given the attention it deserves considering its impact on both public health and human rights, undermining the HIV response.⁷

In many instances, HIV criminalisation laws are exceedingly broad – either in their explicit wording, or in the way they have been interpreted and applied – making people living with HIV (and those perceived by authorities to be at risk of HIV) extremely vulnerable to a wide range of human rights violations.⁸

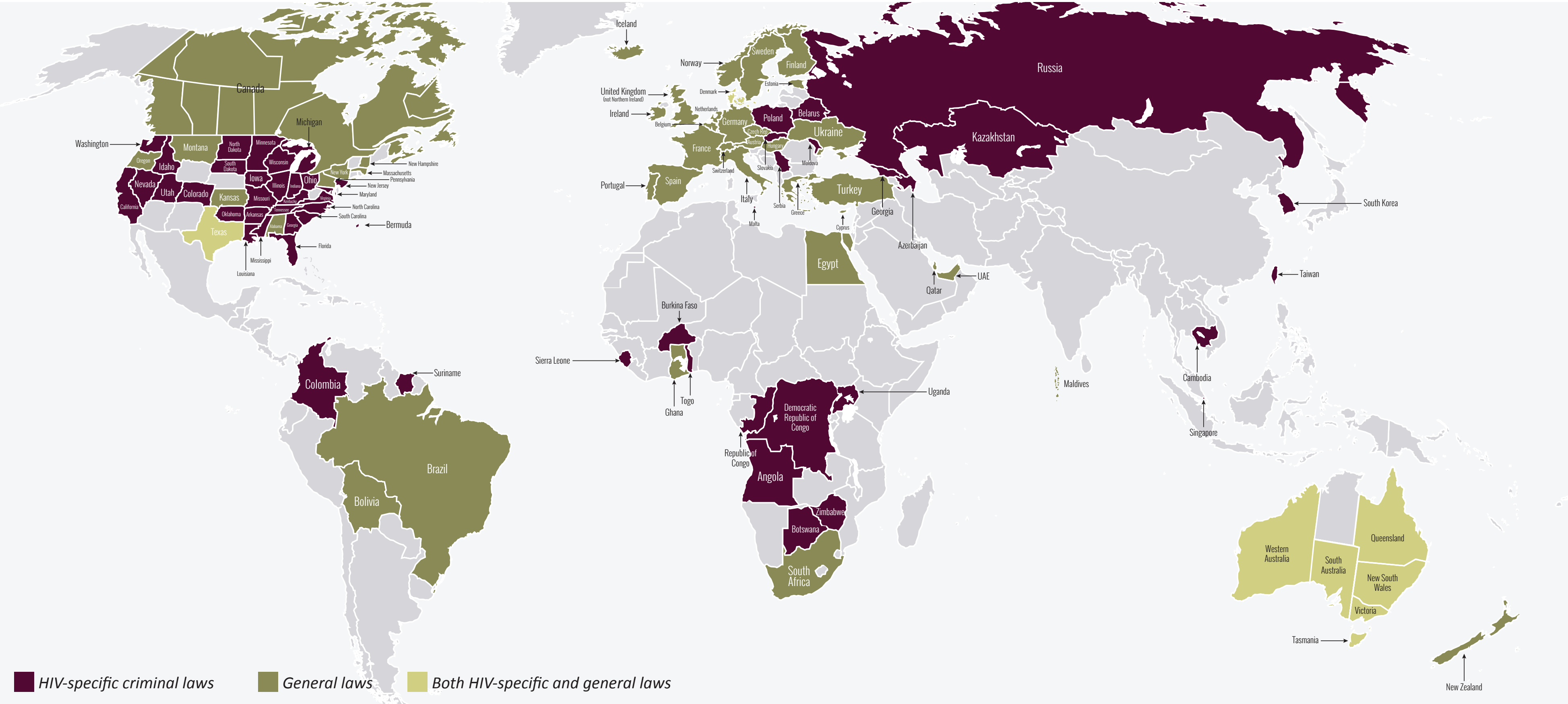
Many allow prosecution for acts that constitute no or very little risk by failing to recognise condom use, low viral load or by criminalising spitting, biting, scratching or oral sex. These laws – and their enforcement – are often based on myths and misconceptions about HIV and its modes of transmission.⁹

Despite increasing advocacy and global normative guidance, more focus and funding is required to end inappropriate laws and prosecutions, involving innovative strategic partnerships amongst multiple stakeholders.

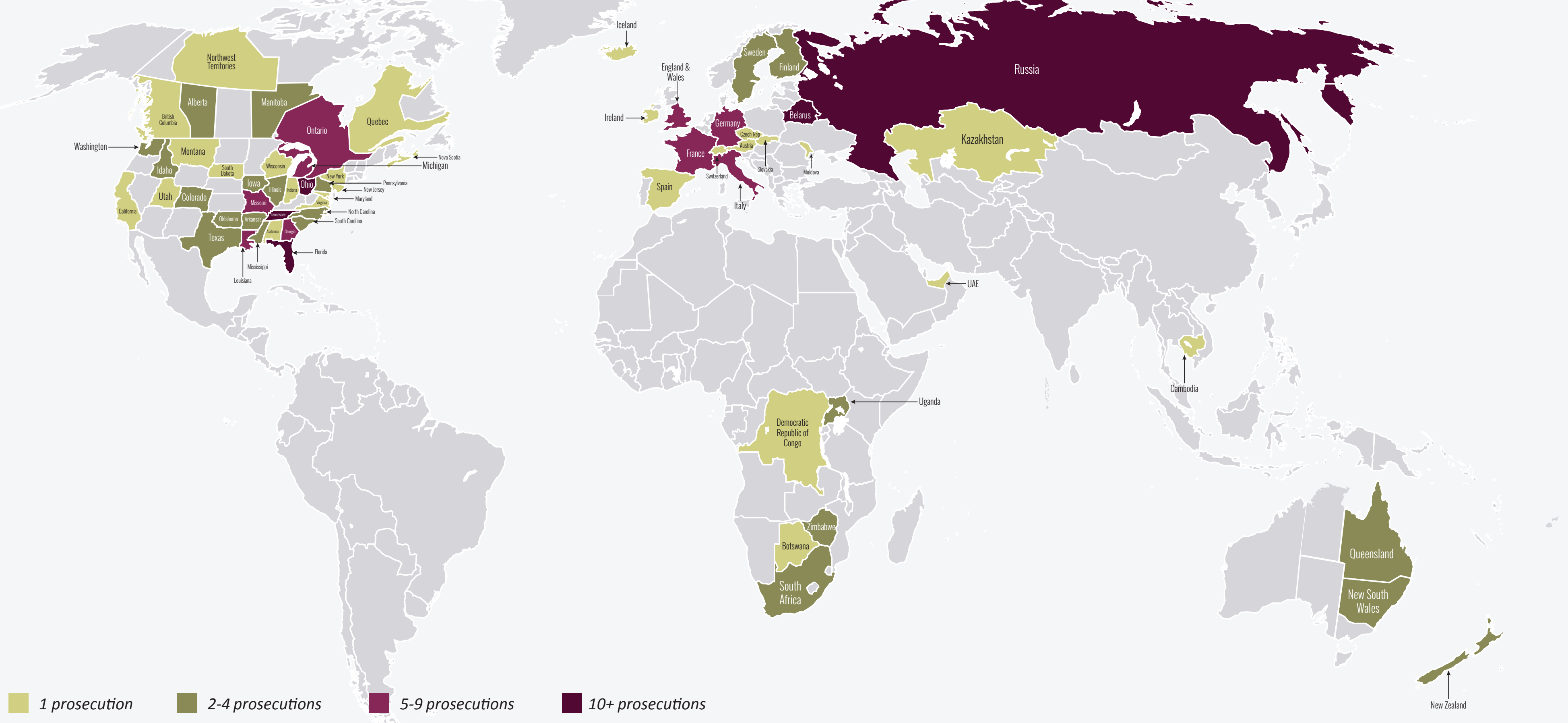
JURISDICTIONS WITH HIV-SPECIFIC CRIMINAL LAWS



WHERE HIV-RELATED PROSECUTIONS HAVE EVER BEEN REPORTED



WHERE HIV-RELATED PROSECUTIONS HAVE RECENTLY TAKEN PLACE



1 Global Commission on HIV and the Law. *HIV and the Law: Risks, Rights & Health*. July 2012. Available at: <http://hivlawcommission.org/index.php/report>

2 UNAIDS. *Policy Brief: Criminalisation of HIV Transmission*, August 2008. Available at: http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/basedocument/2008/20080731_jc1513_policy_criminalization_en.pdf; UNAIDS. *Ending overly-broad criminalisation of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations*, May 2013. Available at: http://www.unaids.org/en/resources/documents/2013/20130530_Guidance_Ending_Criminalisation

3 Anand Grover. *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, June 2010. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

4 WHO. *Sexual health, human rights and the law*. June 2015. Available at: http://www.who.int/reproductivehealth/publications/sexual_health/sexual-health-human-rights-law/en/

5 Obtaining accurate information on HIV-related cases can be challenging – even more so in countries where such information is not freely available. Given the lack, or inadequacy, of systems to track HIV-related criminal cases in most jurisdictions, it is not possible to determine an exact number for every country in the world. Much of what is known about individual cases comes from media reports, and often the outcome of a reported arrest, or the legal disposition of a criminal case remains unknown. Other limitations that may favour case reporting in one jurisdiction, country or region compared with another, include: the role and “effectiveness” of public health offices in pursuing partner notification; whether or not individuals and communities rely on the criminal justice system to manage HIV-related disputes; accessibility to information including through the media and case records; and the existence of civil society organisations working on and/or monitoring the issue. Therefore, our data should be seen as an illustration of what may be a more widespread, but generally undocumented, use of the criminal law against people with HIV.

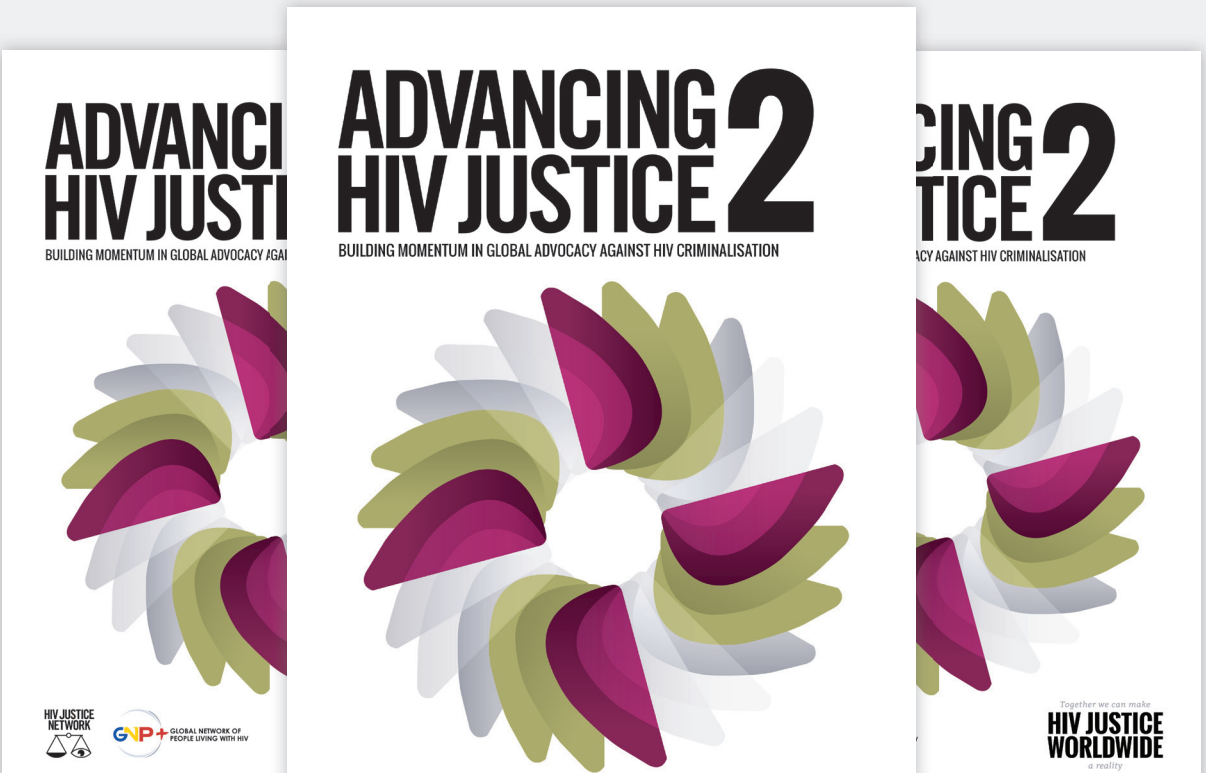
6 Denmark created an HIV-specific criminal law in 2001 when the Supreme Court found that the general law could not be used; this HIV-specific criminal law was suspended in 2011. Between 2001 - 2011, Denmark had been one of the top ten countries in the world for prosecutions *per capita* of people with HIV.

7 UNAIDS. *On the Fast-Track to end AIDS: 2016-2021 Strategy*, Geneva, 2016. Available at: http://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_PCB37_15_18_EN_rev1.pdf; IAPAC Guidelines for Optimizing the HIV Care Continuum for Adults and Adolescents, 2015 <http://jia.sagepub.com/content/early/2015/10/23/2325957415613442.full>.

8 Global Commission on HIV and the Law, op cit; Anand Grover, op cit. WHO (2015), op cit.

9 UNAIDS. *Criminalisation of HIV Non-Disclosure, Exposure and Transmission: Background and Current Landscape*. Geneva, 2012. Available at: http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/BackgroundCurrentLandscapeCriminalisationHIV_Final.pdf

THE FULL *ADVANCING HIV JUSTICE 2*
REPORT IS AVAILABLE AT:
WWW.HIVJUSTICE.NET/ADVANCING2



**HIV JUSTICE
NETWORK**

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21st International AIDS Conference, Durban, July 2016.
Abstract THPED428