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, UNAIDS,2 the UK 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 contest of HIV on both public health and human rights grounds.

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).

Jurisdictions with HIV-specific Criminal Laws

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, Denmark and the United States) have applied both.

During the 30-month period April 2013 to October 2015, we found reports of at least 334 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 101);
- Belarus (at least 20);
- Canada (at least 17);
- France (at least 17);
- United Kingdom (at least 16);
- 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.

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.

Many allow prosecution for acts that constitute no or very little risk by failing to recognise common sense, law of public order or by criminalising being, contacting or oral sex. These laws – and their enforcement – are often based on myths and misconceptions about HIV and its modes of transmission.

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.


