

Advancing HIV Justice: Building momentum in global advocacy against HIV criminalisation

Edwin J Bernard, HIV Justice Network, United Kingdom

Sally Cameron, Policy Analyst / Independent Consultant, Australia

Julian Hows, Global Network of People Living with HIV, The Netherlands

BACKGROUND

HIV criminalisation impacts public health and human rights, undermining efforts to end AIDS. The unjust application of criminal law to people living with HIV based solely on their HIV status, either via HIV-specific criminal statutes, or by applying general criminal laws, is a growing, global phenomenon.

DESCRIPTION

A desk review of criminal proceeding reports and legal texts curated on the HIV Justice Network website, and supplemented with data from GNP's Global Criminalisation Scan, as part of the research for the *Advancing HIV Justice 2* report, covering a 30-month period, 1 April 2013 to 30 September 2015. Data on advocacy against proposed or enacted laws included developments until 1 April 2016.

This was followed by systematically contacting individuals and organisations for further information in countries where developments had taken place but where details were unclear. Finally, we undertook an internal and external review process that included leading organisations working in this area, including the Canadian HIV/AIDS Legal Network, Sero Project, UNAIDS and UNDP.

LESSONS LEARNED

Key developments in case law and law and policy reform have taken place in numerous jurisdictions, most of which came about as a direct result of advocacy from civil society – individuals and organisations working to end the inappropriate use of the criminal law to regulate and punish people living with HIV.

During the report period, advocacy in at least six jurisdictions in at least five countries modernised or repealed HIV criminalisation laws. (See map and detailed text). In addition, although lawmakers in at least 13 jurisdictions in at least nine countries proposed new HIV criminalisation laws, seven of these were not passed, primarily due to swift and effective advocacy against them at an early stage.

However, a complex picture emerges of advocacy successes and proposed or newly enacted laws in some of the same countries/regions of the world suggesting disparate approaches to HIV criminalisation that are sensitive to local social, cultural, epidemiological and political contexts, as well as the capacity of advocates to challenge such laws and prosecutions.

CONCLUSIONS/NEXT STEPS

Although the evidence base against HIV criminalisation is strong, evidence alone is often not enough for policy- and lawmakers who want to be seen to be doing something to impact the HIV epidemic and who may be more swayed by emotive or popular arguments rather than implement a rational, evidence-based response.

HIV criminalisation does not exist in vacuum, and is often linked to punitive laws and policies that impact sexual and reproductive health and rights, especially those aimed at sex workers and/or men who have sex with men and other sexual minorities.

Despite a growing number of advocacy successes leading to improved legal environments for people living with HIV, much more work is required to strengthen advocacy capacity to ensure a more just, rational, evidence-informed criminal justice response to HIV that will benefit both public health and human rights.

COLORADO (UNITED STATES)

Unlike many other US states, Colorado had no law criminalising HIV non-disclosure. However, it treated HIV more seriously in a number of other criminal statutes, including a felony charge for sex workers who are discovered to be living with HIV. A civil society task force, the Colorado Mod Squad, led by the Positive Women's Network-USA Colorado, undertook initial research, garnered grassroots community support and brought in medical experts before approaching Colorado Senator Pat Steadman who sponsored Senate Bill (SB) 146. The bill repealed two HIV criminalisation statutes, reforms another and modernises statutory language addressing sexually transmitted infections (STIs) including HIV. In June 2016, Governor John Hickenlooper signed SB 146 into law.

GREECE

Public Health Decree 39A allowed forced HIV testing of suspected sex workers, drug users and undocumented migrants. The law was a politically expedient way to capitalise on xenophobia and HIV stigma during a politically unstable period. It was primarily used discriminately against the most marginalised people - women who use drugs who may also engage in transactional sex. Following initial repeal in May 2013, the law was reinstated soon after. Advocacy involved local and international condemnation, and screenings worldwide of the documentary, *Ruins: Chronicle of a witch-hunt* to raise awareness and legal defence funds. The law was repealed again in April 2015, but trust in the Greek public health system, and the lives of the women prosecuted, has been irreparably harmed. At least twelve of the women have filed lawsuits before the European Court of Human Rights for inhuman and degrading treatment. Arguments have been filed from both sides but, as of yet, the case has not yet been heard.

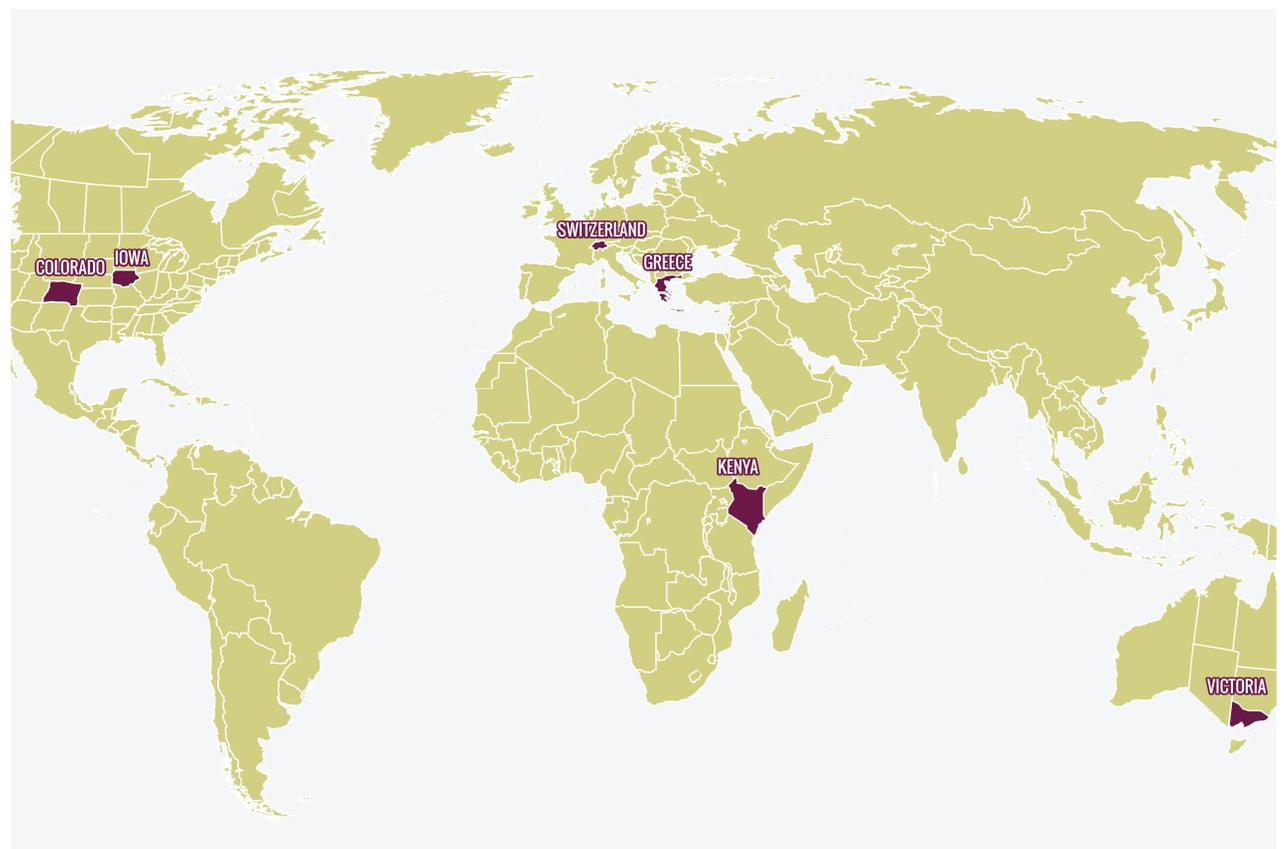
IOWA (UNITED STATES)

Under Iowa's previous HIV-specific law, § 709C (1998) a person committed 'criminal HIV transmission' if they were diagnosed HIV-positive and engaged in 'intimate contact' with another person. The law was vague and overbroad. The only defence was disclosure of known HIV-positive status prior to any 'intimate contact'. Neither actual HIV exposure risk, nor use of risk reduction methods (including condoms and/or low viral load), nor state of mind were taken into consideration, until the Supreme Court ruled in *State v Rhoades* in June 2014, two weeks after the 1998 law had been modernised. Five years of lobbying, initiated by grass roots HIV group, CHAIN, and then supported by national civil society organisations led to a greater sensitisation of the problems of Iowa's law. The unjust prosecution and conviction of Iowan Nick Rhoades also helped garner media and political support for reform. After an initial bill failed in 2013, a groundswell of public, political and media support in 2014 led to Iowa becoming the first US state to substantially reform its HIV-specific statute based on scientific and legal principles.

KENYA

Section 24(1) of the HIV and AIDS Prevention and Control Act (2006) required a person aware they are living with HIV to "take all reasonable measures and precautions to prevent the transmission of HIV to others" and to "inform, in advance, any sexual contact or persons with whom needles are shared" of their HIV-positive status. Subsection (2) prohibited "knowingly and recklessly, placing another person at risk of becoming infected with HIV". Contravention of these provisions was a criminal offence punishable by imprisonment for up to seven years, and/or a fine. Section 24(7) also allowed a medical practitioner who becomes aware of a patient's HIV-positive status to inform anyone who has sexual contact with that patient. In 2010, AIDS Law Project sought a court order to prevent Section 24 from being operationalized. Finally, in March 2015, the Kenyan High Court ruled that Section 24 was unconstitutional, and suspended the law. The High Court ruling focused on the absence of a definition for "sexual contact", holding that it was impossible to determine what acts were prohibited. The Court also found that the law contravened the right to privacy. However, the Sexual Offences Act (2006) still contains a vague and overly broad HIV criminalisation statute.

JURISDICTIONS WHERE HIV-RELATED CRIMINAL LAWS HAVE BEEN MODERNISED OR REPEALED, 2013-16



SWITZERLAND

Until it was revised in January 2016, Article 231 of the Swiss Penal Code, Spreading of human diseases, had been used exclusively to prosecute people living with HIV who had condomless sex, regardless of risk. Disclosure and/or consent by a partner was not a defence. Article 231 was often used together with Article 122 (grievous bodily harm). Sustained efforts between clinicians, HIV NGOs and key parliamentarians since 2007 resulted in a number of significant outcomes, starting with the 'Swiss statement' (2008) which led to courts recognising that suppressive ART could be a defence to condomless sex. Courts also recognised that HIV was no longer necessarily a serious disease. An opportunity to modernise Article 231 came when the new Law on Epidemics revision process took place over a number of years. It finally resulted in a new law, which came into effect in January 2016, that only criminalises malicious, intentional transmission of serious disease.

VICTORIA (AUSTRALIA)

Section 19A of the *Crimes Act 1958* (Vic) was the only HIV-specific criminal offence in Australia. It treated intentional HIV transmission as inherently more serious than other forms of violence, reinforcing stigma, suggesting that people living with HIV were inherently dangerous, and was never used in the circumstances for which it was originally enacted (the deliberate transmission of HIV by a blood-filled syringe). The HIV Legal Working Group was formed in 2010 by the two largest HIV organisations in Victoria. After failing to obtain prosecutorial guidelines, it focused on repealing 19A as a clear advocacy target linked to AIDS 2014. The group developed a policy brief setting out the case for repeal and sought dialogue with ruling and opposition parties in the months before the conference. During the conference whilst the ruling party publicly supported modernisation, repeal finally took place under the former opposition government in May 2015.



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



HIV JUSTICE NETWORK

www.hivjustice.net
info@hivjustice.net

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