

**HIV JUSTICE
NETWORK**

What is HIV criminalisation? Definitions and global overview

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What is 'HIV criminalisation'?

- Overly-broad HIV-specific criminal laws and/or unjust application of general criminal 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

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 of HIV.**

What are typical 'HIV criminalisation' cases?

Most cases involve an HIV-positive person having sex where it is alleged they have not disclosed 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 planned or wanted to infect another person with HIV are unusual and extremely rare.**

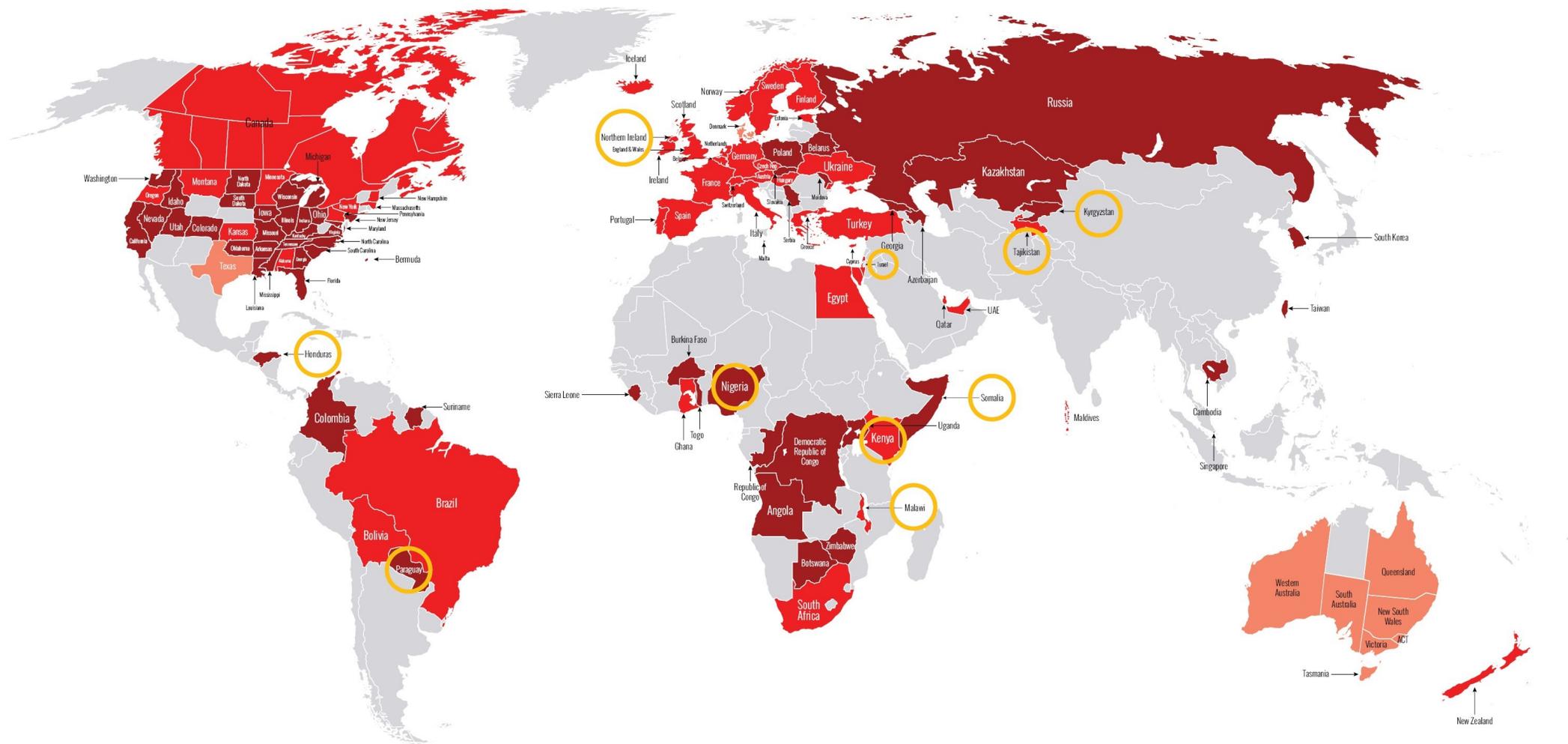
Examples of 'HIV criminalisation' cases

- CANADA: Woman with HIV 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: Two women under police investigation for not preventing HIV transmission to their newborns.
- UGANDA: Female nurse living with HIV vilified in press and prosecuted following needlestick injury.
- UNITED STATES (Idaho): Man with HIV had sex with condom and undetectable viral load but couldn't prove he disclosed his HIV status. No transmission. Sentenced to 30 years.
- UNITED STATES (Texas): Homeless man with HIV prosecuted for spitting at police officer during arrest. Sentenced to 35 years.

Key issue

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.

WHERE HIV CRIMINALISATION PROSECUTIONS HAVE EVER BEEN REPORTED (AS OF SEPTEMBER 2017)



■ HIV-specific criminal laws
 ■ General laws
 ■ Both HIV-specific and general laws
 ● First-ever reported prosecution since October 2015

