



HIV Criminalisation in the WHO European region and around the world

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What is 'HIV criminalisation'?

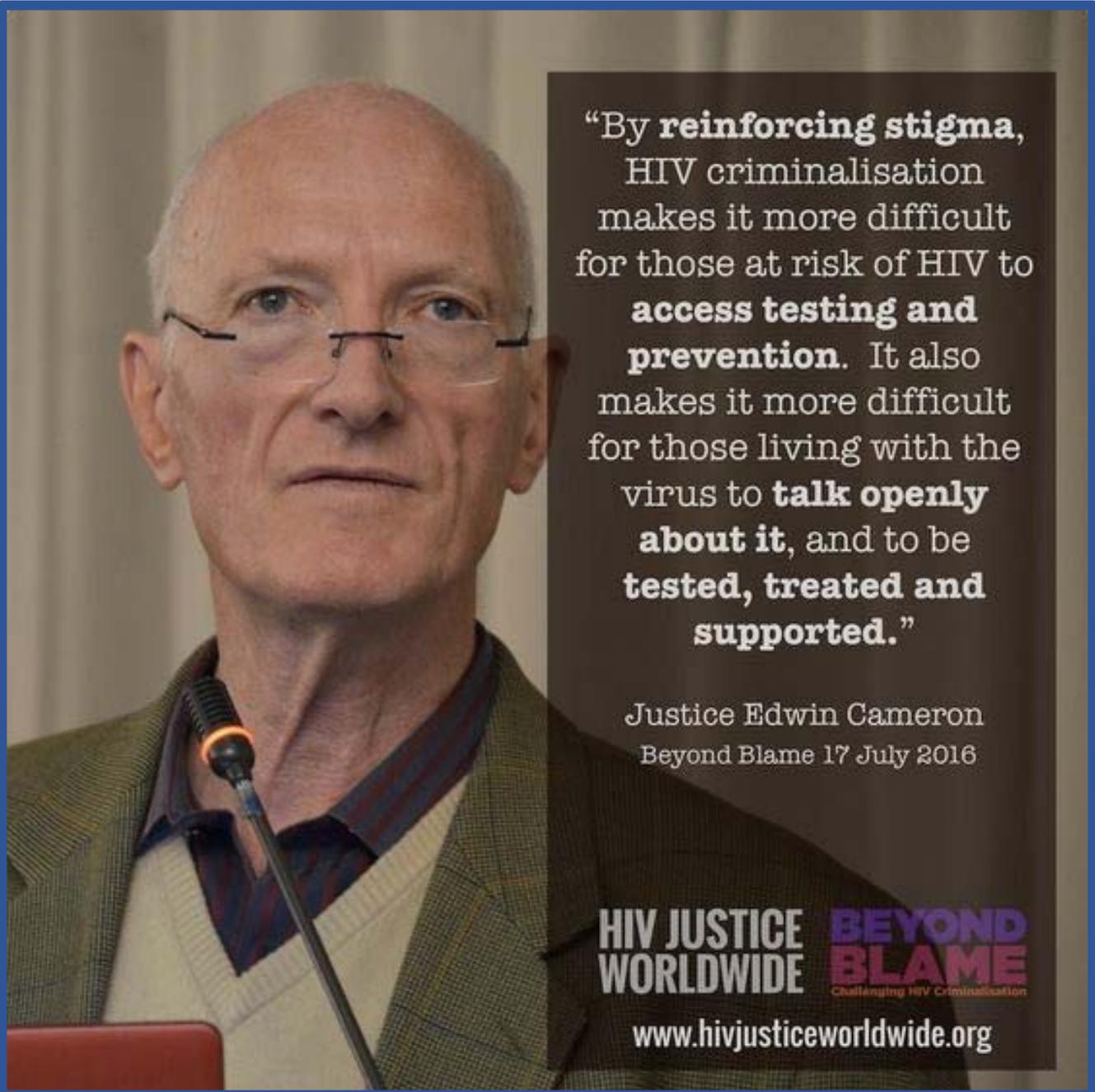


- Overly-broad HIV-specific criminal laws and/or unjust application of general criminal laws to people living with HIV based solely on HIV-positive status.
- Too many people living with HIV are being convicted of 'crimes' contrary to international guidelines on HIV and human rights as well as contrary to scientific evidence, medical evidence and best public health advice.

Why is HIV criminalisation a problem for WHO Europe region?



- Growing phenomenon regionally and globally
- 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
- Insensitive and stigmatising media reporting
- A barrier to HIV prevention, treatment and care.



“By **reinforcing stigma**, HIV criminalisation makes it more difficult for those at risk of HIV to **access testing and prevention**. It also makes it more difficult for those living with the virus to **talk openly about it**, and to be **tested, treated and supported.**”

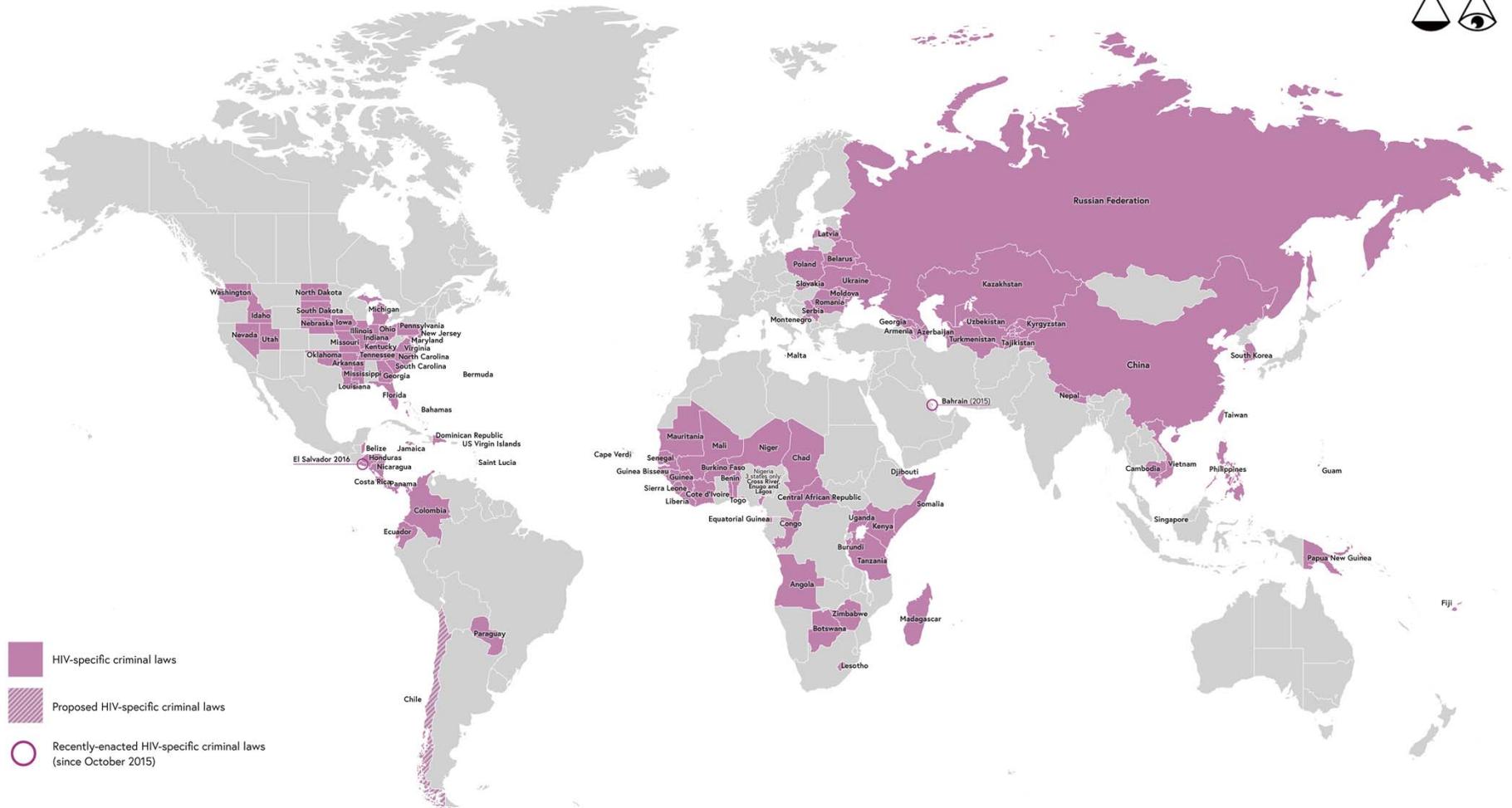
Justice Edwin Cameron
Beyond Blame 17 July 2016

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**BEYOND
BLAME**
Challenging HIV Criminalisation

www.hivjusticeworldwide.org

WHERE HIV-SPECIFIC LAWS EXIST



Source: Sally Cameron and Edwin J Bernard *Advancing HIV Justice 3: Growing the global movement against HIV criminalisation*. HIV Justice Network, Amsterdam, May 2019



Source: Sally Cameron and Edwin J Bernard *Advancing HIV Justice 3: Growing the global movement against HIV criminalisation*. HIV Justice Network, Amsterdam, May 2019

What are typical 'HIV criminalisation' laws?

No 'typical' law in WHO European region

Most HIV-specific criminal laws are in EECA. They are often overly-broad, and/or too vague, and do not allow defences that reflect up-to-date understanding of HIV science.

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.

Many prosecutions in other parts of Europe happen under general criminal or similar laws (e.g. bodily harm, endangerment, public health):

- Usually single out HIV, which is inherently stigmatising
- Can be applied to behaviours that do not lead to an HIV risk
- Conflate desire to have sex with desire to infect.
- Often allege transmission even when this cannot be proven beyond reasonable doubt.
- Can lead to disproportionately long sentencing compared to other harms prosecuted under the same laws.

Tell us about the law(s) in your country: info@hivjustice.net

What are typical 'HIV criminalisation' cases?

Most cases involve an HIV-positive person having sex where it is alleged they did not disclose their HIV status.

Some cases involve people with HIV even when they disclose and their partner(s) consents to the risk.

Some cases involve spitting or biting, vertical transmission and/or breastfeeding, medical/dental exposures.

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 or biting.
- 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 wanted to infect another person with HIV are unusual and extremely rare.**