



Responding to the Criminalization of HIV Transmission or Exposure

Resources for lawyers and advocates

Introduction

About this resource

The rise in criminalizing HIV transmission and/or exposure has been evident around the world. While no data indicates that criminal law plays a role in preventing new HIV infections, many people, including people living with HIV (PHAs), PHA organizations, and human rights advocates are concerned that it may in fact undermine HIV prevention efforts as well as human rights of people living with HIV.

Additional concerns relate to the ability of defence lawyers to respond to the increasing use of criminal law in their countries. Cases of HIV transmission and/or exposure are very complex and require knowledge that goes beyond legal skills. The science related to HIV continues to evolve and lawyers need to be well-versed in the latest scientific developments internationally. Defence lawyers also need to understand the social context of living with HIV, including the reasons that may prevent someone from disclosing his/her HIV-positive status to a sexual partner. They need to be aware of the stigmatization that people living with HIV continue to face around the world, now exacerbated by use of the criminal law.

As the science related to HIV evolves, so too must the law. The application of criminal law to HIV transmission and exposure is still a relatively new issue. In many countries the law remains unclear and continues to develop. This makes it particularly challenging for lawyers to be informed of the latest developments in the law, not only in their own countries, but also abroad where new issues might have come up, such as the question of the impact of effective treatments on HIV transmission.

Legal developments in this area go beyond the interests of the individual complainants and defendants because they have an impact on the lives of people living with HIV, on public health and on human rights. However, only a few lawyers have experience handling such complex cases, and fewer still are well-versed in the latest scientific developments and other relevant research.

In response to the increasing use of criminal law internationally, as well as to the great need to develop tools for lawyers representing people living with HIV, a group of organizations from North America and Europe — the Canadian HIV/AIDS Legal Network, AIDES France and Groupe sida Genève, all working with the Global

Network of People Living with HIV (GNP+) — came together to produce this resource kit.

A resource kit for lawyers and advocates

In order to meet lawyers' needs, this kit provides both informative documentation to support lawyers in the preparation of their cases and selected publications that can ultimately be presented in Court.

While the resource kit was primarily designed to equip defence lawyers in cases of HIV transmission or exposure, it can also be used by advocates who look for accurate and comprehensive information to respond to the criminalization of HIV transmission and/or exposure.

This resource kit provides:

- Information on the social aspects of living with HIV, taking into account the differences in accessing treatment in high- and low-income countries;
- An overview of the epidemic's evolution over the last 30 years and some perspectives for the future;
- A detailed and extensively referenced compilation of the latest scientific evidence regarding treatment, per-act risks of HIV transmission and proving HIV transmission;
- Materials on the challenges raised by the criminalization of HIV transmission and/or exposure, including policy considerations;
- International recommendations on the use of the criminal law in cases related to HIV;
- Key decisions internationally in cases related to HIV transmission and/or exposure;
- A compilation of legal materials at the national level, including comprehensive descriptions of the law, key cases on HIV transmission and/or exposure and relevant legal literature; and
- A comprehensive list of references.

This kit can be used by lawyers and advocates from countries with common law systems as well as countries with civil law systems.

At the national level, the initial version of this kit focuses on three countries where the partner organizations have particular expertise — namely Canada, France and Switzerland — but the materials can also be useful for lawyers in other jurisdictions with similar legal systems or facing similar issues. Information on the applicable legislation in other countries can also be found in the list of references at the end of the kit. The resource kit is intended to evolve and may cover a larger range of countries in the future.

How to use this resource kit

This resource kit is divided into seven sections that will be updated periodically (in the on-line version) to reflect evolutions in the law and science related to HIV.

Most of the materials come from external sources and have been selected by the four partner organizations; other materials have been prepared by the partner organizations for the purpose of this kit. Some documents could not be included in full due to the prohibitive costs of obtaining copyright permission, including authorization to post some published studies on-line. In these cases, an abstract and full citation of the document is included, to provide users with the essential information and enable them to locate the full article themselves.

Most of the materials are available in both English and French. When documents could not be translated in full, an abstract or a summary has been translated. Of necessity, translations were prepared by different translators: users should be aware of potential variations in style and terminology.

We hope that lawyers and advocates equipped with the materials in this kit will be better able to challenge the misinformation and stigma that are prevalent in many of the cases related to HIV, and ultimately contribute to a strictly limited, fair and evidence-based use of the criminal law.