

ORIGINAL RESEARCH ARTICLE

## Criminal prosecutions for HIV transmission: people living with HIV respond

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**Summary:** This paper presents an analysis of responses to the first criminal convictions for HIV transmission in England and Wales within a sample of people living with HIV. These findings represent an important contribution to the development of well-informed prosecution policy. The responses were collected during 20 focused group discussions with a community and web-recruited sample of heterosexual African men and women, and gay and bisexual men ( $n = 125$ ) living with diagnosed HIV in London, Manchester and Brighton.

The vast majority (90%) of comments made were critical of the implementation and impact of criminalization. In particular, respondents expressed concern about the way in which criminal convictions conflict with messages about shared responsibility for 'safer sex', and the extent to which such cases will exacerbate existing stigma and discrimination related to HIV. Most felt that the successes achieved by human rights approaches to HIV prevention, treatment, and care were placed under threat by the growing culture of blame encouraged by criminal prosecutions.

**Keywords:** HIV, criminal law, stigma, social responsibility

### Introduction

Evidence suggests that national and international responses to HIV that are grounded in the rights and dignity of those living with HIV are most likely to achieve the aims of prevention, treatment and care.<sup>1–3</sup> Thus, human rights approaches have become an integral part of most international policy responses to HIV.<sup>4,5</sup> In spite of evidence supporting such approaches,<sup>6–8</sup> there has been a recent trend – across a range of different countries – towards more punitive and restrictive responses to the HIV epidemic. An example of this is the use of criminal laws to convict individuals for HIV transmission with no requirement to prove intention.<sup>9</sup> UNAIDS discourages the use of criminal proceedings relating to HIV transmission in all but the most extreme cases stating that

Any legal or policy response must take into account the fact that preventing the spread of HIV is the single most important objective... Criminal law policy must not sacrifice HIV prevention in pursuit of other goals.<sup>10</sup>

There is a broad base of international support for this position provided by organizations working in the HIV field and within various governmental

reviews.<sup>11–16</sup> Despite this, six people in England and Wales have been criminally convicted of grievous bodily harm in relation to HIV transmission with more cases pending. One case has also been successfully prosecuted in Scotland, which is governed by a separate legal system. Detailed reviews and commentaries on these cases are available elsewhere.<sup>17–20</sup> This paper examines the extent to which people living with HIV regard the issue of criminalization as one that affects them personally, as well as how they assess the broader impact of such prosecutions. The analysis demonstrates that there are core issues of concern among this population that have direct relevance to public health outcomes and, in turn, the longer-term development of prosecution policy.

### Methods

The data presented here come from a study of the impact of HIV-related stigma and discrimination on people with diagnosed HIV.<sup>21</sup> A panel of 125 participants was recruited from two sources. Banners were placed at various commercial and non-commercial websites aimed at our target group. Recruitment also took place at AIDS service and community organizations (through posters, recruitment cards and newsletters). As this sample was recruited from non-clinical community sources, NHS ethics committee approval was not necessary. Fieldwork took place in London, Brighton and Manchester and consisted of 20 focus group interviews, consisting of 5–12 participants. Participants

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were paid £20 expenses per attendance. With the permission of participants, all groups were audio-tape-recorded and annotated by research facilitators. Criminalization of reckless HIV transmission was discussed in 16 of the 20 groups (the subject was raised by participants in eight groups and prompted by the facilitator in eight groups).

A detailed review of all annotations and transcripts revealed 188 separate comments or exchanges on this subject. A reflexive thematic content analysis of this sub-sample yielded 12 thematic categories into which comments were then coded (Table 1). This result was achieved by first reviewing all of those comments about criminalization that took place within focus groups where the issue was raised by the facilitator. This approach was taken because the directed questioning routes on criminalization followed a similar pattern across different groups. In these instances, facilitators distributed and read aloud from a press article about the conviction of Mohammed Dica (the first English case), and asked: *What are the implications of such press coverage?* and *Do you think that this case has direct implications for you?* Opinions were also elicited about this use of the criminal law, and what effects it had on the general population of people living with HIV. In eight subsequent focus groups, respondents themselves introduced the issue of criminalization of transmission as it related to broader notions of HIV-related stigma and discrimination, despite the fact that this was not formally raised by the facilitators. In these instances, further discussion was then encouraged by the facilitators following the same general format as in the facilitator-initiated discussions. Respondent comments from the facilitator-initiated discussions on criminalization were examined first in order to elicit contrasting thematic approaches. Once a core set of themes emerged from this process, it was then possible to code all comments with the use of the core thematic list. Next, the non-facilitator-initiated comments about criminalization were cross-checked with this set of themes. This process did not elicit any new thematic categories, and all remaining comments were coded with the use of the original core list of themes. Exchanges between participants were analysed holistically in order to maintain expressions of opposing views. A full demographic description of the sample and a detailed methodology can be found in the report on the wider research project.<sup>21</sup>

## Results

The thematic categories and the numbers of comments ascribed to each are presented in Table 1.

This analysis demonstrates that 90% ( $n = 169$ ) of the comments were broadly critical of criminalizing reckless transmission of HIV. Most of these referred to the broader negative impact that criminal cases will have on the goals of HIV prevention, treatment and care.

The majority of these negative comments fell into the first two categories listed in Table 1 (shared responsibility and stigma and discrimination). Comments assigned to the thematic category of shared responsibility tended to reject the idea that all responsibility for infection resides with the person who is diagnosed. The following quote typifies this perspective:

There is something called collective responsibility. I think they [the complainants] should be responsible for their lives in the first place. (female African respondent)

Comments assigned to the thematic category of increased stigma were related to the notion that prosecutions counteract the ability of people with HIV to be open about their HIV status within their own and other communities. One man spoke about his involvement at a local hospital as an openly HIV-positive volunteer being curtailed because of the media coverage of the Mohammed Dica case (first English prosecution).

So I don't want to go back to that hospital. I even fear to go back there because of the Dica case. (male African respondent)

Others were concerned that approaches to HIV prevention, treatment and care grounded in human dignity had been seriously weakened by the interference of the criminal courts.

Once you talk about this, you fear everybody! You can't do this or that. (male African respondent)

The remaining 10% of comments ( $n = 19$ ) were equivocal or non-critical about the impact of criminalization. These comments were linked to a notion that criminalization of HIV transmission under particular circumstances might have an impact on broader behaviour change (see thematic category 4), and may ultimately operate as a prevention mechanism (see thematic category 7).

People have to learn some lessons. I am sure people are saying now they won't do it. It is teaching people to take collective responsibility, for positive people as well. It is an important wake up call. (female African respondent)

In other comments, a small number of respondents stated that their immediate response to criminalization had been supportive, but that over time they had come to question some of the broader implications.

## Discussion

The majority of respondents were critical of, and opposed to, the criminalization of reckless HIV transmission. Many felt that limiting responsibility for HIV transmission to the persons who know that

**Table 1** Thematic categorization of respondents' positions on criminalization

Thematic category (and number of comments)	Description of typical positions expressed within this categorical framework
Highest response categories:	<i>(just under half of all comments fell into one of the following two categories)</i>
1. Shared responsibility (49)	Responsibility for HIV transmission is shared, it is not the sole duty of the person with diagnosed HIV to ensure that consensual sex is protected
2. Increased stigma (34)	Criminalization exacerbates the stigma that is already associated with HIV by strengthening the culture of blame surrounding infection
Moderate response categories:	<i>(the following five categories each had between 10 and 20 comments ascribed to them)</i>
3. Questionable veracity of evidence and reliability of witnesses (17)	The veracity of the evidence in such cases is questioned due to a lack of detail in press coverage (i.e. was it determined who was infected first, or if the complainants might have been infected by a different partner?)
4. Behaviour change implications (16)	Sexual practice will need to change – untested people need to exercise more caution, and those diagnosed with HIV will need to disclose. Those making such comments were sometimes, but not always in support of criminalization
5. Perception of racial bias in the judiciary (14)	These cases are seen to be indicative of a racist judicial system
6. Negative press impact (13)	The press has perpetuated inaccuracies and misinformation about HIV in relation to these cases (i.e. HIV as an immediate death sentence)
7. Criminalization may be the best way forward (11)	There are valid occasions when people should be convicted for not disclosing their HIV status, this might encourage some people to think twice before they act
Least common response categories:	<i>(less than 10 comments each were ascribed to the following five categories)</i>
8. Renewed imperative to resist stigma (8)	There now exists an even greater imperative to actively resist stigma as a result of criminal cases
9. Invisibility of large HIV organizations on this issue (8)	HIV organizations have not made an effective response on this issue – does this reflect their lack of support for migrant Black African men with HIV?
10. Negative public health outcomes (6)	Criminalization will ultimately result in worsening public health outcomes (i.e. fewer people will come forward for testing)
11. Most people living with HIV have safer sex (7)	Most people living with diagnosed HIV are responsible when it comes to sexual risk-taking, and as such, those being prosecuted are not representative of the HIV-positive population as a whole
12. Gender disharmony (5)	This issue pits women against men in a way that is unproductive and disempowering

they are infected runs counter to the goals of 'safer sex' interventions that target populations at highest risk. The issue raised most often by respondents was their concern that criminalization had weakened the message that sexual health should be the responsibility of both consenting partners during sex. In addition to this, the experiences and opinions of respondents make it clear that criminalization has a broader social impact that ultimately increases stigma related to HIV. That is, fear of persecution inhibits people's ability to live openly with HIV infection.<sup>21,22</sup> This can significantly reduce the quality of life of those living with HIV.<sup>22,23</sup> There is also evidence that stigma detracts from the aims of HIV prevention work because it increases the difficulty of disclosing an HIV-positive status in sexual settings,<sup>21,24</sup>

and provides a disincentive for those at risk of exposure to reflect on their behaviour and come forward for testing<sup>25,26</sup> (also confirmed in personal communication with Ford Hickson, Sigma Research based on unpublished data from 2003 Gay Men's Sex Survey).

A minority of respondents did hold that criminalization may be justified if it operates to change the behaviour of people with diagnosed HIV who participate in unprotected sex without disclosing to their partners. Initial indications from more detailed analyses on this data appear to reveal contrasting patterns of response from different groups taking part in this research (heterosexual African men, heterosexual African women and British gay men). Once complete, these findings will be incorporated into a detailed research paper

that will also elaborate more fully on the thematic categories briefly discussed above.

The potential impact of prosecutorial process and policy on the daily functioning of genitourinary (GU) medicine and HIV clinical practice has already been raised.<sup>27</sup> As a result, the British HIV Association and the British Association for Sexual Health and HIV have begun the process of establishing guidelines for clinical practice as it relates to criminal prosecutions for HIV transmission. While HIV clinicians and health-care providers will have special issues to consider about their own role in such cases (regarding confidentiality, personal liability, etc.), it makes sense for those working with people living with HIV to be informed of their client groups' attitudes on the matter.

The findings of this initial exploratory piece of research make it clear that there are significant social and public health concerns raised by people living with HIV, in relation to the criminalization of HIV transmission. Further research will be required to determine the extent to which such views can be generalized across larger samples of people living with HIV in England. Where possible, it would also be desirable to determine the specific impact that criminalization has on sexual risk behaviour, disclosure of HIV status, and willingness to discuss HIV with health professionals.

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