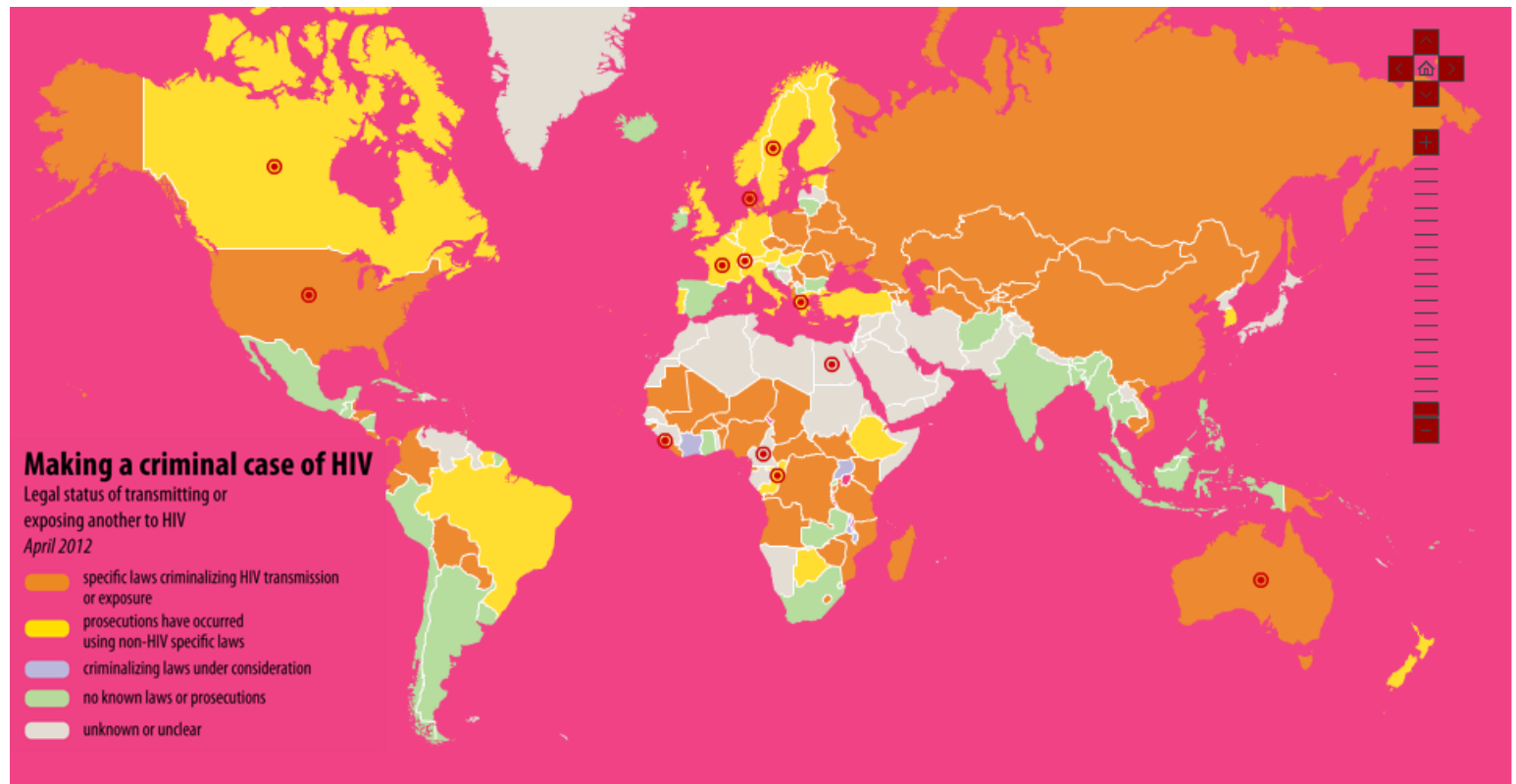


Criminalization of HIV transmission

Before AIDS, criminal law in democratic societies upheld two principles. First, all people had human rights in sickness and in health. Second, the criminal code applied to everyone; different legal boundaries did not regulate the behaviors of people living with various diseases, nor did disease provide exemption from the law.

These fundamental principles must prevail in the era of AIDS. Human rights must remain sacrosanct, and criminal laws apply, regardless of HIV status.



How to use this map: Click on the map to zoom in and click-and-hold to drag the map. The controls in the upper right corner can also be used to zoom in and out or to move the map. To return to the full-map view, click the "home" icon at the center of the directional arrows in the upper right corner. Further information about some countries can be found by clicking the "bulls-eye" icons on the map.

Irrespective of weapons used, courts prosecute all attempted murders according to one set of rules. Logically, any judiciary capable of prosecuting a defendant for attempting to slash or poison someone to death can also try a defendant for transmitting HIV with murderous intent.

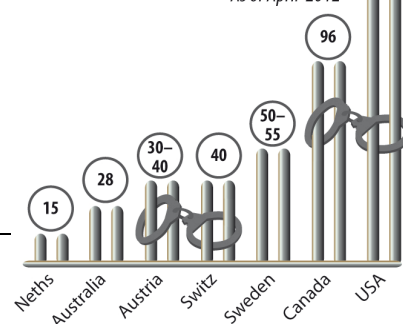
But all too often, fear of HIV feeds discrimination and breeds confusion. In dozens of jurisdictions, rational thinking has been entirely supplanted by frantic efforts to protect the people who feel defenseless by punishing the people who make them feel vulnerable. **Misguided governments have enacted retaliatory, AIDS-specific laws** (<http://www.gnpplus.net/criminalisation/>) and public health regulations that trample on the human rights of people living with HIV, and that give the rest of the population nothing more than a false sense of security.

The result: sweeping legislation allows for the prosecution of individuals whose circumstances are so vastly different as to create infinite gray areas. Laws written ostensibly to deter people living with HIV from intentionally infecting others are over-broadly applied, often along racial lines. HIV-specific regulations defy the rest of a country's jurisprudence. Over 60 countries criminalize the transmission of HIV, or the failure to disclose one's HIV status to sex partners, or both. Such comprehensive pronouncements have made it possible to convict hundreds of HIV-positive people for non-criminal behavior ranging from sexual relations that did not transmit HIV to spitting, which cannot transmit HIV. Even in some countries that uphold the universally agreed goal of providing antiretroviral drugs to all who need them, prison sentences loom for people whose adherence to treatment has all but erased the likelihood that they will infect others.

HIV epidemics are still largely driven by infections that go undiagnosed or untreated. Together, the **Oslo Declaration on HIV Criminalisation** (<http://www.hivjustice.net/oslo/>) and the principle of **Treatment as Prevention** (<http://www.hivjustice.net/media/BAB892A63B384DFC83034CDE75AB08F1.pdf>) point to the most effective and humane deterrents for our times. Laws should entice individuals to test and must compel governments to treat. Transmission will then move from present crisis to past history, and prisons will be reserved once again for criminals.

Lead prosecutors

Cumulative number of known prosecutions for transmitting or exposing another to HIV
As of April 2012



Vertical Transmission

The debate about transmission is most ominous when applied to mothers and their children.

Criminal prosecution for vertical transmission (HIV that is passed from one generation to the next during pregnancy, childbirth, or breastfeeding) belies justice, and yet some jurisdictions have made it explicit.

So far, records exist of only two prosecutions of vertical transmission. **In the US, a woman accused** (<http://www.heraldtribune.com/article/20080111/NEWS/801110356>) of failing to take steps to prevent transmitting HIV to her baby was charged with felony child neglect. **A mother similarly accused in Canada** (<http://www.theglobeandmail.com/news/national/mother-convicted-of-hiding-hiv-status-for-sons-birth/article838047/>) was charged with "failing to provide the necessities of life."

Despite the limited application of such laws to date, their mere existence is an ominous portent. **From Guinea and Guinea-Bissau to Mali and Niger, a mother can be criminally charged for failing to take the antiretrovirals that might block transmission of the virus** (<http://www.ipsnews.net/africa/nota.asp?idnews=47899>). Ironically, those governments fail to provide all women with the high-quality drug regimens that can reduce the risks of transmission during pregnancy, labor and delivery, and breastfeeding to just five percent, and to negligible levels with Cesarean sections. But nowhere is access to and choice of ARVs controlled by poor women on their own authority. Patriarchy, law, and misogyny may collude to ensnare more women in the trap of legal liability as access to drugs improves. Pregnancy makes "suspects" more readily identifiable than the men who infected them.

Sierra Leone is among several countries with prejudicial statutes. There, anyone living with HIV must "... take all reasonable measures and precautions to prevent transmission of HIV to others and in the case of pregnant women, the fetus."

But those "reasonable measures and precautions" are nowhere defined. Reasonable people do not suspect mothers of willfully infecting their children (surely, cases for psychiatry rather than the law). Discrimination and lack of options lead to HIV. Mothers who transmit the virus are victims, not criminals, and if they have not been afforded the highest available standards of care, it could be argued that the state is an accessory to the dreadful outcome.

But in places as starved of resources as Sierra Leone, the woes of the mother put her in triple jeopardy. Her society says she can't refuse her husband's demands for sex, and there are no laws against marital rape. His multiple sex partners, encounters with sex workers, his refusal to use condoms can't be challenged. Her poor access to health services increases the chance of miscarriage, stillbirth, vertical transmission, or her own death. Abortion is illegal. Infant feeding without information, support, or ARVs adds more risk. And at the end of that battle, she is

the distraught HIV-positive mother of an HIV-positive child — and she can be charged with a crime.

One wonders at the depths of malevolence.

[Next map: Travel Restrictions on People Living with HIV \(http://www.aidsfreeworld.org/PlanetAIDS/Travel.aspx\)](http://www.aidsfreeworld.org/PlanetAIDS/Travel.aspx)

[Return to Planet AIDS home \(http://www.aidsfreeworld.org/PlanetAIDS.aspx\)](http://www.aidsfreeworld.org/PlanetAIDS.aspx)

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