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RISKS, RIGHTS & HEALTH

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PUNISHING VULNERABILITY

Criminalisation of HIV Transmission, Exposure and Non-Disclosure



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In much of the world it is a crime to expose another person to HIV or to transmit it, especially through sex. Fundamentally unjust, morally harmful, and virtually impossible to enforce³⁴ with any semblance of fairness, such laws impose regimes of surveillance and punishment on sexually active people living with HIV;³⁵ not only in their intimate relations and reproductive and maternal lives, but also in their attempts to earn a living.

Proponents of criminalisation often claim that they are promoting public health or morality. Some may even harbour good-hearted, if wrongheaded, intentions, of safeguarding the rights and health of women. But criminalisation guarantees no one's well-being. There is no evidence that laws regulating the sexual conduct of people living with HIV change behaviour in a positive way.³⁶ Nor do such laws take into account the success of antiretroviral treatment (ART) in significantly

Despite the description . . . by legislators and prosecutors, in fact, it is not intentional transmission but intentional sex while HIV-positive that is the focus of these state laws. . . . The facts of many of these cases read like what should be relics from a less-informed past. Instead, they describe increasingly frequent current events.

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reducing transmission risk and improving the quality of life and longevity for people with HIV.³⁷ AIDS service organisations report that the threat of prosecution neither empowers people living with HIV to avoid transmission nor motivates them to protect themselves.³⁸ Indeed, the fear of prosecution isolates them and discourages them from getting tested, participating in prevention or treatment programmes or disclosing their status to partners.³⁹ The criminal justice system fights the health care system—one repelling, the other reaching out to people vulnerable to or affected by HIV. By dividing populations into the sick and the healthy or the guilty and the innocent, criminalisation denies the complex social nature of sexual communities and fractures the shared sense of moral responsibility that is crucial to fighting the epidemic.⁴⁰

Some jurisdictions apply existing general offences to criminalise HIV exposure or transmission—from “administration of a noxious substance” (France) to attempted homicide (United States).⁴¹ Others have chosen to target HIV: the first HIV-specific laws were passed in the United States in 1987, with many other nations quickly following



Source: UNAIDS/D. Kim/Korea

suit.⁴² The past decade has seen a new wave of HIV-specific statutes, notably in sub-Saharan Africa and parts of Asia and Latin America.⁴³

Today, countries and jurisdictions in every region of the world have promulgated HIV-specific criminal statutes.⁴⁴ They're on the books in 37 of the 50 United States⁴⁵; in Africa, 27 countries have them; in Asia and the Pacific, 13; Latin America, 11; and Europe, 9.⁴⁶ According to a 2010 report by the Global Network of People Living with HIV (GNP+), at least 600 people living with HIV in 24 countries⁴⁷ have been convicted under HIV-specific or general criminal laws, with the greatest numbers reported in North America.⁴⁸

RIGHTS AND RESPONSIBILITIES

In Africa alone over the last seven years, numerous countries have adopted HIV-specific criminal legislation.⁴⁹ In every case, the irony is glaring: these laws, which purport to be based on human rights principles, in fact trample human rights. This continent-wide contradiction derives largely from the Model Law on STI/HIV/AIDS for West and Central Africa, developed at a workshop held in N'Djamena, Chad, in 2004.⁵⁰ This template, conceived as human rights legislation to combat discrimination and address HIV testing, takes a "rights and responsibilities" approach. For instance, it includes guarantees of pre- and post-testing counseling and anti-discrimination protections in employment and insurance for HIV-positive people. At the same time, it holds HIV-positive people legally responsible for disclosing their HIV status to anyone they have sex with and taking active

measures to prevent transmission. Failure to do so brings criminal sanctions.

Some jurisdictions punish exposure even if there is no transmission of HIV, and some punish transmission even if the person wears a condom; prosecutions proceed in spite of the medical near-impossibility of determining who infected whom. And, because ART significantly reduces the likelihood of transmission, it is access to treatment, not criminalisation, that is effective in reducing infection.⁵¹

WHAT GETS PROSECUTED . . .

The main "criminal activity" for people who are HIV-positive is sex, and the laws can be overly broad and the penalties draconian. For instance, Bermuda makes it a crime for people living with HIV to have any kind of sexual contact in which body fluids might pass to another person.⁵² As a consequence, two people have received ten-year sentences, though HIV was not transmitted in either case.⁵³ In Singapore, those who merely have reason to believe that they may be HIV-positive or might have been exposed to significant risk of contracting the virus face ten years' imprisonment if convicted of having sex without informing their partner of the possible risk or taking reasonable precautions against transmission.⁵⁴

But sex is not the only "crime" for which HIV-positive people may be punished. Spitting and biting have been prosecuted. Advocates worry that simply being pregnant or breastfeeding with HIV could land a woman in prison. In many penal codes these laws are extraordinary for the personal surveillance they represent and the wildly disproportionate sentences they carry.

. . . AND WHO

In 2008 in Texas, United States, an African-American mentally ill homeless man living with HIV spat at a police officer during an arrest for drunk and disorderly conduct. The jury was persuaded that his saliva was a deadly weapon,⁵⁵ and he got a thirty-five-

“The impact of HIV criminalisation on people living with HIV is ultimately destructive and divisive, creating a sense that there are ‘good’ HIV-positive people versus ‘bad’ HIV-positive people. The people who complain to the police, supported by the criminal justice system, believe that they should be warned when their sexual partner is HIV-positive. Never mind the incredible difficulties we might have disclosing this very sensitive information to people who we don’t trust; the deep denial we often face earlier on in our diagnosis; the difficulties we have negotiating or using condoms; or the fact that those of us on effective treatment are going to be far less infectious than people who are undiagnosed and who couldn’t possibly warn their partner”.

Edwin J. Bernard, Germany, High Income Countries Dialogue, 16-17 September 2011

year sentence—despite the fact that HIV cannot be transmitted by spitting. In 1998 an HIV-positive Minnesota prisoner was convicted of biting two prison guards: His mouth and teeth were found to be a “deadly and dangerous weapon.”⁵⁶

In Denmark, Estonia, Finland, Sweden and the United Kingdom, migrants and asylum seekers have been disproportionately represented among those prosecuted for HIV transmission and exposure.⁵⁷ In some jurisdictions, HIV-positive people convicted of a crime, such as rape, can face an exacerbated sentence—positive serostatus is viewed as an aggravating factor, akin to using a weapon in the crime’s commission.⁵⁸

As these last examples suggest, anti-transmission and exposure laws are often arbitrarily and disproportionately applied to those who are already considered inherently criminal⁵⁹—both reflecting and perpetuating existing social inequalities.

Sensational media coverage of HIV-transmission prosecutions exaggerates the alleged evil and dangerousness of HIV “perpetrators.” Sarah Jane Porter, a forty-three-year-old British single mother and hair salon receptionist, was convicted in 2006 and sentenced to thirty months for grievous bodily harm in transmitting HIV to her former boyfriend. The press portrayed her as a wildly promiscuous “AIDS avenger” on a rampage against black men

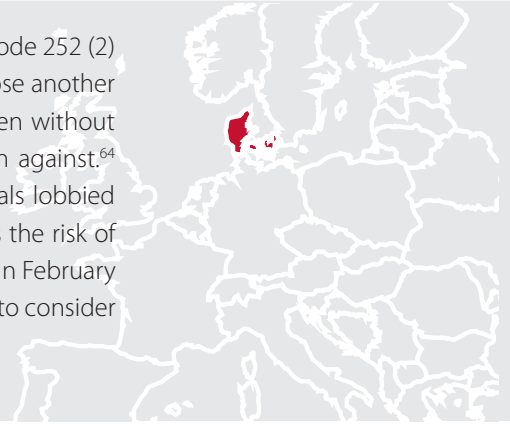
like her son’s father, from whom she had contracted HIV. The police, claiming she had dozens of potential victims, put out a nationwide call for accusers and three of the four they contacted tested negative for HIV. While describing Porter as “callous” and “manipulative,” the prosecution praised her accusers as “very articulate professional decent men who were trying to do their best in life.” Porter’s friends and neighbours, meanwhile, described a quiet, overworked mother whose boyfriend had asked for unprotected sex and whose only “crime” was her denial of her own HIV status—the reason she did not disclose it to others.⁶⁰

Although proponents often argue that criminalisation is needed to protect women, especially monogamous wives, from the risk of HIV infection by male sexual partners, in reality such laws make criminals of the same women they’re intended to protect.⁶¹ HIV-positive mothers are criminals under all of the HIV laws of West and Central Africa, which explicitly or implicitly forbid them from being pregnant or breastfeeding, lest they transmit the virus to foetus or child.⁶² The law does not acknowledge that women are frequently unable to disclose their HIV status or demand the use of a condom because they fear violence, abuse or abandonment by their husbands or partners and/or are worried that information might be used as a tool for revenge or coercion.⁶³ As for alleging the intentional transmission of HIV from a mother to a child, the concept is so unlikely as to approach absurdity.

ON SECOND THOUGHT

Denmark reconsiders its harsh law

Until 2011, Denmark had one of the harshest laws criminalizing HIV. Penal Code 252 (2) made it a crime for anyone with HIV to willfully or negligently infect or expose another to the risk of infection. This meant that a person could be found guilty even without actual transmission—exactly the sort of law that UNAIDS and UNDP warn against.⁶⁴ A coalition of people living with HIV, medical experts and legal professionals lobbied the government intensely, pointing out that ART now significantly reduces the risk of transmission and allows most HIV-positive people to live long, healthy lives. In February 2011, the government suspended the law and established a working group to consider its revision or outright repeal, based on new scientific evidence.⁶⁵



IS CRIMINALISATION EVER JUSTIFIED?

Criminalisation is justified under one condition only: where individuals maliciously and intentionally transmit or expose others with the express purpose of causing harm. But existing laws—against assault, homicide and causing bodily harm, or allowing intervention where a person is spreading communicable diseases⁶⁶—suffice to prosecute people in those exceptional cases. Defining specific HIV offences is not warranted and, in fact, violates international human rights standards. For instance, in the International Guidelines on HIV and Human Rights, Guideline 4 directs States to ensure that their criminal laws “are not misused in the context of HIV/AIDS or targeted against vulnerable groups.”⁶⁷

That said, such laws are virtually impossible to prosecute. Intentional transmission is difficult to prove in the context of consensual sex. Alleging “recklessness” or “negligent” transmission is equally problematic.⁶⁸ It requires proving the defendant’s state of mind—getting testimony from health care professionals, diaries or emails offering insight into a defendant’s thoughts. UNAIDS and UNDP have called on governments to limit criminalisation to cases where a person knows his or her HIV-positive status, acts with intent to

transmit HIV and actually transmits it. However, most Western legal systems allow the defence of consent, thus preventing the punishment of, for example, Roman Catholic husbands with HIV whose wives have consented to the risk of transmission rather than offend against religious proscriptions concerning non-procreative sex.⁶⁹

Myriad other considerations arise. Did the defendant know her HIV status?⁷⁰ Did she know how HIV is transmitted? Did she think her partner already was aware of her status or consented to unsafe sex? Was the defendant under threat of violence from the complainant and thus unable to disclose her status or practice safer sex? Was it actually the defendant who transmitted HIV to the complainant? Phylogenetic analysis^{71,d} which can establish whether the sub-type of HIV in the defendant’s body is the same as in the complainant’s, is far too costly for many low-resource countries. Additionally, it doesn’t offer incontrovertible proof of who infected whom.

DIFFERENT QUESTIONS, DIFFERENT LAWS

International bodies and national governments are starting to recognise the injustice of sprawling HIV criminalisation laws and amend them so as to zero in on intentional, malicious acts.

^d Phylogenetic analysis examines small genetic differences in HIV. Unlike human DNA, which remains stable for a lifetime, HIV’s RNA changes very rapidly, leading to a huge amount of genetic diversity. Phylogenetic analysis can only determine the degree of relatedness of two samples of HIV. It cannot create a definitive ‘match’.

UNAIDS issued recommendations that include alternative ways of phrasing some provisions in the N'Djamena model law to make them more precise.⁷² In the past few years Guinea, Togo and Senegal have revised their HIV-related legislation or adopted new laws that restrict the use of criminal law to the exceptional cases of intentional transmission.⁷³ The Finnish Expert Group on HIV has also recently initiated efforts to change the law to avoid policies that reinforce HIV-related stigma and discrimination.⁷⁴ Denmark and Norway are considering revision or repeal.⁷⁵ In 2011, Guyana's Parliamentary Select Committee rejected a bill calling for the criminalisation of HIV.⁷⁶ And Mauritius revoked criminalisation of HIV transmission.⁷⁷

Arresting HIV-positive people for seeking pleasure and intimacy is a defeatist and cynical response to the failure of nations to confront the epidemic. The sad case of Sarah Jane Porter (see discussion earlier in the chapter) raises many questions not even approached by the criminalisation response to HIV. Was her son's father aware of his HIV status and, if so, why did he persuade her to have unprotected sex and why did she consent? Why did she deny her illness and shy away from treatment? Why was she passive in defending herself in court? How can women—and men—be empowered to take care of themselves and others?

RECOMMENDATIONS

To ensure an effective, sustainable response to HIV that is consistent with human rights obligations:

- 2.1. Countries must not enact laws that explicitly criminalise HIV transmission, HIV exposure or failure to disclose HIV status. Where such laws exist, they are counterproductive and must be repealed. The provisions of model codes that have been advanced to support the enactment of such laws should be withdrawn and amended to conform to these recommendations.**
- 2.2. Law enforcement authorities must not prosecute people in cases of HIV non-disclosure or exposure where no intentional or malicious HIV transmission has been proven to take place. Invoking criminal laws in cases of adult private consensual sexual activity is disproportionate and counterproductive to enhancing public health.**
- 2.3. Countries must amend or repeal any law that explicitly or effectively criminalises vertical transmission of HIV⁷⁸. While the process of review and repeal is under way, governments must place moratoria on enforcement of any such laws.**
- 2.4. Countries may legitimately prosecute HIV transmission that was both actual and intentional, using general criminal law, but such prosecutions should be pursued with care and require a high standard of evidence and proof.**
- 2.5. The convictions of those who have been successfully prosecuted for HIV exposure, non-disclosure and transmission must be reviewed. Such convictions must be set aside or the accused immediately released from prison with pardons or similar actions to ensure that these charges do not remain on criminal or sex offender records.**

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- 30 The Report of the Eminent Persons Group to Commonwealth Heads of Government, (2011), *A Commonwealth of the People: Time for Urgent Reform*, Perth, Australia.
- 31 Submission from SIDA Information Service, France, for the High Income Countries Dialogue, 16-17 September 2011; French Ministry of Finance, *Nouvelle convention AERAS 2011: S'Assurer et Emprunter avec un Risque Aggravé de Santé*. Available at: http://www2.economie.gouv.fr/presse/dossiers_de_presse/110201aeras.pdf. [Accessed on 8 March 2012].
- 32 *Ibid.*
- 33 Specialist submission from the International Labour Organization (ILO), Burkina Faso, October 2011.
- 34 Kazatchkine C. et al., (2010), *Criminalising HIV transmission or exposure: the context of French-speaking West and Central Africa*, HIV/AIDS Policy and Law Review, 14(3).
- 35 Burris S. and Wait M., (2011), *Criminalisation and the Moral Responsibility for Sexual Transmission of HIV*, Working Paper prepared for the Third Meeting of the Technical Advisory Group of the Global Commission on HIV and the Law, 7-9 July 2011. See also Burris S., Cameron E., (2008), *The Case Against Criminalization of HIV Transmission*, Journal of the American Medical Association, 300(5): 578-581; UNDP, UNAIDS, (2007), *International Consultation on the Criminalization of HIV Transmission, Summary of main issues and conclusions*, Joint United Nations Programme on HIV/AIDS, 31 October – 2 November 2007, Geneva, Switzerland.
- 36 Lazzarini Z. et al., (2002), *Evaluating the Impact of Criminal Laws on HIV Risk Behavior*, Journal of Law, Medicine and Ethics, cited in GNP+ (2010), *The Global Criminalisation Scan Report, Documenting trends presenting evidence*, Amsterdam, The Netherlands. See also submission from the Centre for HIV Law and Policy, USA; National Children's Bureau, UK; Swedish Association for sexuality Education, LGBT and HIV, Sweden, for the High Income Countries Dialogue, 16-17 September 2011.
- 37 See recent articles on HPTN 052 study which show a 96% reduction in risk of HIV transmission with the use of ART: Scott M., Hammer MD., (2011) *Antiretroviral Treatment as Prevention*, The New England Journal of Medicine, 11 August 2011, 365: 561-562; Myron S. et al., (2011), *Prevention of HIV-1 Infection with Early Antiretroviral Therapy*, The New England Journal of Medicine, 11 August 2011, 365: 493-505. Denmark's criminalisation statute was repealed in 2011 in part because of this scientific evidence. See generally <http://criminalhivtransmission.blogspot.com/2011/02/denmark-justice-minister-suspends-hiv.html> [Accessed on 8 March 2012].
- 38 See for instance submission from Edwin Bernard, Germany, for the High Income Countries Dialogue, 16-17 September 2011; Open Society Foundations, (2008), *Ten Reasons to Oppose the Criminalization of HIV Exposure or Transmission*, New York, United States; UNAIDS, (2002), *Criminal Law, Public Health and HIV Transmission: A Policy Options Paper*; Burris S. et al., (2007), *Do Criminal Laws Influence HIV Risk Behaviour? An Empirical Trial*, Arizona State Law Journal, 39: 467, available at: <http://ssrn.com/abstract=977274> [Accessed on 8 March 2012].
- 39 Cameron E., (2009), *Criminalization of HIV transmission: Poor Public Health Policy*, Canadian HIV/AIDS Legal Network, HIV/AIDS Policy and Law Review, (14)2; Burris S., et al., (2007), *Do Criminal Laws Influence HIV Risk Behavior? An Empirical Trial*, Arizona State Law Journal; Open Society Institute, (2008), *Ten reasons to oppose the criminalization of HIV exposure or transmission*.
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- 41 Other examples: sexual assault (Canada), reckless infliction of grievous bodily harm (United Kingdom), criminal nuisance (New-Zealand). See Bernard E., (2010), *HIV & the criminal law*, NAM Aidsmap, London. Available at: <http://www.aidsmap.com/law> [Accessed on 7 March 2012]; The Center for HIV Law and Policy, *Prosecutions and arrest*

- for HIV Exposure in the United States, 2008-2012, Positive Justice Project. Available at: www.hivlawandpolicy.org/resources/download/456 [Accessed on 8 March 2012].
- 42 Bernard E., (2010), *HIV & the Criminal Law*, NAM Aidsmap, London.
 - 43 Cameron E., (2009), *Criminalization of HIV transmission: Poor Public Health Policy*, Canadian HIV/AIDS Legal Network, HIV/AIDS Policy and Law Review, (14)2; GNP+, (2010), *The Global Criminalisation Scan Report, Documenting Trends Presenting Evidence*. Available at: http://www.gnpplus.net/criminalisation/index.php?option=com_content&task=view&id=15&Itemid=37 [Accessed on 7 March 2012].
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 - 45 The Center for HIV Law and Policy, *Prosecutions and arrest for HIV Exposure in the United States, 2008-2012*, Positive Justice Project. Available at: www.hivlawandpolicy.org/resources/download/456 [Accessed on 8 March 2012]; The Kaiser Family, (2010), *Criminal Statute on HIV Transmission*. Available at: <http://www.statehealthfacts.org/comparetable.jsp?ind=569&cat=11> [Accessed on 7 March 2012]; GNP+, (2010), *The Global Criminalisation Scan Report, Documenting Trends Presenting Evidence*. Available at: http://www.gnpplus.net/criminalisation/index.php?option=com_content&task=view&id=15&Itemid=37 [Accessed on 7 March 2012]; The Center for HIV Law and Policy, (2010), *Ending and Defending Against HIV Criminalization: State and Federal Laws and Prosecutions*. Available at: <http://www.hivlawandpolicy.org/resources/download/564> [Accessed on 8 March 2012].
 - 46 UNAIDS, (2011), *Working Paper: Criminalisation of HIV Non-Disclosure, Exposure and Transmission. Background and Current Landscape*; GNP+, (2010), *The Global Criminalisation Scan Report, Documenting Trends Presenting Evidence*. Available at: http://www.gnpplus.net/criminalisation/index.php?option=com_content&task=view&id=15&Itemid=37 [Accessed on 7 March 2012]; UNAIDS, (2010), *Making the Law Work for the HIV Response: A snapshot of selected laws that support or block universal access to HIV prevention, treatment, care and support*. Available at: http://www.unaids.org/en/media/unaids/contentassets/documents/priorities/20100728_HR_Poster_en.pdf [Accessed on 8 March 2012]; Bernard E., (2010), *HIV & the Criminal Law*, NAM Aidsmap, London.
 - 47 GNP+, (2010), *The Global Criminalisation Scan Report, Documenting Trends Presenting Evidence*. Available at: http://www.gnpplus.net/criminalisation/index.php?option=com_content&task=view&id=15&Itemid=37 [Accessed on 7 March 2012].
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- titles 1, 26 and 36; Pearshouse R., *Legislation contagion: building resistance*, *HIV/AIDS Policy & Law Review*, 13(2/3): 1-10. In 2008, UNAIDS published a document proposing amendments to certain problematic provisions of the N'Djamena model law and, by implication, national HIV statutes enacted in Sub-Saharan Africa. See UNAIDS, (2008), *Recommendations for alternative language to some problematic articles in the N'Djamena model legislation on HIV (2004)*. Available at: http://data.unaids.org/pub/Manual/2008/20080912_alternativelanguage_nda-jema_legislation_en.pdf [Accessed on 7 March 2012].
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- 55 The Center for HIV Law and Policy, *Prosecutions and arrest for HIV Exposure in the United States, 2008-2012*, Positive Justice Project. Available at: www.hivlawandpolicy.org/resources/download/456 [Accessed on 8 March 2012]. See also <http://www.nytimes.com/2008/05/16/us/16spit.html>.
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- 66 In Sweden the public health statute grants authority to authorities to intervene in the event a person is spreading, or is suspected of spreading, a communicable disease. See: Prosecution of HIV transmission, exposure and failure to disclose the status is based on the Swedish Penal Code 1962. There are further health regulations like the *Swedish Communicable Diseases Act 2004* allows for forced isolation of HIV+ individuals deemed to be a 'threat' to others. See more information on <http://www.sweden.gov.se/sb/d/15661/a/183500>. [Accessed on 8 March 2012]. See also Danziger, R., (1998), *HIV testing and HIV prevention in Sweden*, British Medical Journal, Vol. 316, Issue 7127.
- 67 Norway has a penal provision that in theory applies to all infectious diseases but which in fact has only ever been applied to cases involving HIV, contrary to UNAIDS policy and best practice; OHCHR, UNAIDS, (2006), *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated version*, Switzerland, Guideline 4. Available at: http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf [Accessed on 21 January 2012].
- 68 UNAIDS, UNDP, (2008), *Policy brief on the criminalisation of HIV transmission (recommendations)*. Available at: http://data.unaids.org/pub/basedocument/2008/20080731_jc1513_policy_criminalisation_en.pdf. See also Inter-Parliamentary Union, UNAIDS, UNDP, (2007), *Taking Action Against HIV – A Handbook for Parliamentarians*, No 15.; for the Swiss Statement produced on behalf of the Swiss National AIDS Commission: Garnett G., Gazzard B., (2008), *Risk of HIV Transmission in Discordant Couples*, The Lancet 372(9635) : 270-271. Available at: http://www.natap.org/2008/HIV/072908_04.htm following a quashed conviction for transmission, the Geneva Court of Justice took into account both the honest belief that a defendant had as to his or her risk of onward transmission, and looked at the relevance of viral load, noting that in cases where the viral load is negligible a person should not be treated as infectious. The Court considered whether or not the person may not be considered reckless if they engage in sex with a possibility of transmission.
- 69 Burris S. and Weait M., (2011), *Criminalisation and the moral responsibility for sexual transmission of HIV*, Working paper prepared for the Third Meeting of the Technical Advisory Group of the Global Commission on HIV and the Law, 7-9 July 2011.; Weait, M., (2007), *Intimacy and Responsibility: The Criminalisation of HIV Transmission*, Abingdon, Routledge-Cavendish.
- 70 In Sweden, the policy requires that there shall be no prosecution unless the scientific evidence supporting the allegation is sufficiently robust and the defendant knew he or she was HIV positive. An expansive definition of "knowledge" is used so that "willful blindness" to the fact of infection may be insufficient. Evidence that the defendant used appropriate precautions would normally preclude a charge. See: RFSU, RFSU, (2011), *HIV-Sweden, HIV, Crime and Punishment*, Sweden.
- 71 Phylogenetic analysis examines small differences in HIV's genes using computational methods to calculate the genetic distance between strains. Unlike human DNA, which remains stable for a lifetime, HIV's RNA changes very rapidly, leading to a huge amount of genetic diversity. This diversity means that scientists, using phylogenetic analysis, have been able to ascertain where HIV

- comes from, as well as track the various strains of HIV that exist worldwide. See Bernard, E J., et al., (2007), *HIV Forensics: The use of phylogenetic analysis as evidence in criminal investigation of HIV transmission*, NAM / NAT (National AIDS Trust). <http://www.nat.org.uk/Media%20library/Files/PDF%20Documents/HIV-Forensics.pdf>
- 72 UNAIDS, (2008), *UNAIDS Recommendations for Alternative Language to some Problematic Articles in the N'Djamena Legislation on HIV (2004)*. Available at: http://data.unaids.org/pub/Manual/2008/20080912_alternativelanguage_ndajema_legislation_en.pdf [Accessed on 8 March 2012].
- 73 UNAIDS Feature Story, (2011), *Countries Questioning Laws that Criminalize Transmission and Exposure*, UNAIDS, available at: <http://www.unaids.org/en/resources/presscentre/featurestories/2011/april/20110426criminalization/> [Accessed on 3 April].
- 74 In 2007, the National HIV expert group issued a public statement which concluded that from a public health evidence point of view, the use of criminal prosecution is ineffective and probably counterproductive as a transmission prevention method. Please see National Institute for Health and Welfare, (2012), *UNGASS Country Progress Report 2012, Finland*. Available at: <http://www.unaids.org/fr/dataanalysis/monitoringcountryprogress/progressreports/2012countries/file,68506,fr..pdf> [Accessed on 23 April 2012].
- 75 UNAIDS Feature Story, (2011), *Countries Questioning Laws that Criminalize Transmission and Exposure*, UNAIDS, available at: <http://www.unaids.org/en/resources/presscentre/featurestories/2011/april/20110426criminalization/> [Accessed on 3 April].
- 76 Government Information Agency, (2011), *Spread of HIV/AIDS cannot be resolved by criminalization*, Georgetown, September 2011.
- 77 IPPR, GNP+, ICW, (2008), *Verdict on a Virus: Public Health, Human Rights and Criminal Law*; UNAIDS, UNDP, (2008), *International Consultation on the Criminalisation of HIV Transmission: Summary of main issues and conclusions*, Geneva.
- 78 Vertical transmission or "prevention of mother-to-child transmission of HIV", or PMTCT, provides drugs, counseling and psychological support to help mothers safeguard their infants against the virus. Available at: www.unicef.org/aids/index_preventionyoung.html [Accessed on 21 March 2012]
- 79 The United Nations High Commissioner for Human Rights, Special Rapporteurs on the Right to the Highest Attainable Standard of Health and various regional bodies such as the African Commission on Human and People's Rights and United Nations Economic and Social Commission for Asia and the Pacific. Please see: *Report of the Secretary-General on the protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS): A/HRC/16/69*, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/178/42/PDF/G1017842.pdf?OpenElement> [Accessed on 6 March 2012]; *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (right to health and criminalisation of same-sex conduct and sexual orientation, sex-work and HIV transmission): A/HRC/14/20*, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf> [Accessed on 6 March 2012]; ACHPR/Res.195(L)2011: *Resolution on the Appointment of the Chairperson and Members of the Committee on the Protection of the Rights of People Living With HIV and Those at Risk, Vulnerable to and Affected by HIV*, available at: http://www.achpr.org/english/resolutions/Resolution195_en.htm [Accessed on 6 March 2012]; *UN-ESCAP Resolution 66/10 Regional call for action to achieve universal access to HIV prevention, treatment, care and support in Asia and the Pacific*, available at: http://www.unescap.org/sdd/issues/hiv_aids/Resolution-66-10-on-HIV.pdf [Accessed on 6 March 2012]; Maastricht University and International Commission of Jurists, (2011), *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*, available at: http://oppenheimer.mcgill.ca/IMG/pdf/Maastricht_20ETO_20Principles_20-_20FINAL.pdf [Accessed on 6 March 2012].
- 80 See reservations made by Egypt upon signature and confirmed upon ratification of CEDAW. In respect of article 16: "Reservation to the text of article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic Sharia's provisions whereby women are accorded rights