GLOBAL COMMISSION ON HIV and the LAW

Risks, Rights & Health

FINDINGS & RECOMMENDATIONS:
Criminalisation of HIV Transmission, Exposure and Non-disclosure

Commissioner Barbara Lee

AIDS 2012, Washington DC
FINDINGS (Legal Frameworks)

1. In over 60 countries, it is a crime to expose another person to HIV or to transmit it, especially through sex.

2. Worldwide, countries and jurisdictions have promulgated HIV-specific criminal laws:
   - 34 states & 2 territories in the USA
   - 27 countries in Africa following the N'Djamena Model Law (2005)
   - 13 countries in Asia-Pacific
   - 11 countries in Latin America
   - 9 countries in Europe

Source: Global Criminalisation Scan, GAP – Global Network for People Living with HIV, 2012.
**FINDINGS (Prosecutions)**

1. At least **600 individuals** living with HIV in 24 countries have been convicted under HIV-specific or general criminal law, with the **greatest numbers reported in North America**.

2. **Overly broad criminalisation provisions**: these laws are often **vaguely worded**, and **disproportionately applied to already marginalised persons**, without regard to their ability to minimise transmission risk due to lack of information, gender, age etc.

3. For instance, this has resulted in the criminal prosecution of persons living with HIV for:
   - *Spitting*
   - *Biting*
   - *Urinating*
FINDINGS (Criminal law is not a HIV prevention tool)

1. **No evidence** that criminal prosecutions prevent new HIV infections

2. Such laws **do not increase safer sex practices**

3. Instead, criminalisation of HIV transmission **reinforces stigma and discrimination against PLVIH:**
   - People are **discouraged from getting tested or treated**, in fear of being prosecuted for passing HIV to lovers or children
   - **Undermines the trust** between health professionals, service providers and their patients
   - **Deters people from talking openly about their sexual practices** and seeking advice to minimize risk, for fear that what they say could be used against them in a criminal investigation
FINDINGS (Is criminalisation ever justified?)

1. The rare cases of intentional/deliberate transmission can be addressed by existing criminal or public health laws.

2. Defining specific HIV offences is not warranted and, in fact, violates international human rights standards:

   ➢ 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”
RECOMMENDATIONS

Calls countries to:

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

- 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.

- 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.
RECOMMENDATIONS (CONTINUED)

Calls countries to:

• Countries must amend or repeal any law that explicitly or effectively criminalises vertical transmission of HIV. While the process of review and repeal is under way, governments must place moratoria on enforcement of any such laws.

• 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.

• 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.
Implementation

112TH CONGRESS 1ST SESSION
H.R. 3053
To eliminate discrimination in the law for those who have tested positive for HIV, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
SEPTEMBER 23, 2011
Ms. Lee of California (for herself, Mrs. Christensen, Mr. Hinchey, Mr. Cohen, Ms. Sheehan, Mr. Clarke of Michigan, Ms. Woolsey, Mr. Rangel, Ms. Norton, Mr. Jackson of Florida, Mr. Sarbanes, Mr. Grijalva, and Mr. Quigley) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Commerce and Committee on Armed Services, for a period to be subsequently determined by the Speaker; in each case for consideration of such provisions as fall within the jurisdiction of the committees concerned.

A BILL
To eliminate discrimination in the law for those who have tested positive for HIV, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
2 SECTION 1. SHORT TITLE.
3 This Act may be cited as the “Repeal Existing Policies that Encourage and Allow Legal HIV Discrimination Act”, the “REPEAL HIV Discrimination Act”, or the “REPEAL Act”.

112TH CONGRESS 2ND SESSION
H.R. 6138
To bring an end to the spread of HIV/AIDS in the United States and around the world.

IN THE HOUSE OF REPRESENTATIVES
JULY 18, 2012
Ms. Lee of California (for herself, Mr. Moran, Ms. Clarke of New York, Ms. Schakowsky, Ms. Norton, Mr. Schiff, Ms. Woolsey, Mr. Towns, Mr. Nadler, Mr. Conyers, Mr. Rangel, Mr. Hinchey, Mr. Sheehan, Mr. Johnson of Georgia, Mr. Honda, Ms. McCollum, Mr. English, Mr. Himes, Mr. McDermott, Ms. Chu, Mr. Lewis of Georgia, Ms. Bass of California, Mrs. Christensen, Ms. Linda T. Sánchez of California, Ms. Waterman, Mr. Rush, and Mr. Grijalva) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Foreign Affairs, Education and the Workforce, the Judiciary, Armed Services, Financial Services, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL
To bring an end to the spread of HIV/AIDS in the United States and around the world.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
2 SECTION 1. SHORT TITLE.
3 This Act may be cited as the “Ending the HIV/AIDS Epidemic Act of 2012”.

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Thank You!

Report of the Global Commission on HIV and the Law

“Risks, Rights & Health”

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