COVID-19 Criminalization: Seven Lessons From the HIV Response

Plus: Any restriction of civil and political rights must meet these five specific criteria.

March 30, 2020 By Trent Straube

As the COVID-19 pandemic spreads across the globe and authorities try to slow transmissions, two HIV groups offer insights about the use of repressive measures and laws that limit human rights, including those that punish people who have COVID-19, the lung disease caused by the novel coronavirus.

> Today the HIV JUSTICE WORLDWIDE Steering Committee issued the following Statement on #COVID2019 criminalisation available in English, French and Spanish now, and in Russian soon at: https://t.co/oTcn3WjYdm pic.twitter.com/QrbFmTgG05
>
> — HIV Justice Network (@HIVJusticeNet) March 25, 2020

"Communicable diseases are public health issues, not criminal issues," writes the HIV Justice Worldwide steering committee in its statement on COVID-19 criminalization. "Measures that are respectful of human rights and the empowering of communities are more effective than punishment and imprisonment."

The global coalition HIV Justice Worldwide works to abolish laws that control and punish people living with HIV based solely on their HIV status. Their efforts on that front offer insights relevant to today's COVID-19 pandemic, notably that criminalizing a disease negatively impacts public health and human rights—especially those of marginalized communities.

An effective response to #COVID□19 is one based in #humanrights principles: Confront #stigma, remove barriers to care, empower #communities, and above all #bekind - new guidance from @UNAIDS (with thanks to all the experts who provided amazing input) https://t.co/f05cTSkVVJ pic.twitter.com/4tMTLYROeG

— Emily Christie (@emilyjc) March 23, 2020

Meanwhile, UNAIDS—the Joint United Nations Programme on HIV/AIDS—published a 20-page report titled Rights in the time of COVID-19: Lessons from HIV for an effective, community-level response.

The guidance from UNAIDS summarizes seven takeaways from successful, community-led HIV efforts to battle stigma and criminalization of HIV. The lessons include:

- Communities are central; engage all affected groups in the response
- No stigma and discrimination, including those that prevent marginalized groups from accessing care
- Support the most vulnerable; offer easy access to testing and care
- Remove barriers to action, such as health care costs and fake news
- No criminal sanctions; blanket bans aren't effective, and those who violate restrictions should not be criminalized
- International cooperation on all fronts, including knowledge, to ensure no country is left behind

- Support health care workers and be kind to each other.

Is it ever acceptable to curtail human rights in order to slow the spread of a contagion? HIV Justice Worldwide offers guidance.

“We remind law and policy makers that each and every limitation of rights should satisfy the five criteria of the Siracusa Principles, as well as be of a limited duration and subject to review and appeal,” writes the steering committee, referencing a nonbinding international treaty adopted in 1984 in Siracusa, Italy, that spelled out when civil and political rights could be justifiably limited. Those principles include:

- The restriction is provided for and carried out in accordance with the law;
- The restriction is in the interest of a legitimate objective of general interest;
- The restriction is strictly necessary in a democratic society to achieve the objective;
- There are no less intrusive and restrictive means available to reach the same objective;
- The restriction is based on scientific evidence and not drafted or imposed arbitrarily, that is in an unreasonable or otherwise discriminatory manner.

What else I’ve learned from working in HIV and human rights: punitive approaches stigmatise, disproportionately impact the marginalised, and send people underground, impacting public health and access to healthcare. #COVID19 is a not a criminal justice issue. #COVID19isnotacrime https://t.co/Lsd7Tj2QOC

— Edwin Bernard (@edwinjbernard) March 27, 2020

In related news, keep in mind that novel coronavirus guidance and concerns for unique populations may vary. For example, see "3 Reasons COVID-19 Poses a Higher Risk for the LGBTQ Population," "UPDATED: What People With HIV Need to Know About the New Coronavirus" and the similar article for people with cancer.

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