

# Criminalisation of HIV non disclosure, exposure and transmission

Session 1

**Module 5 /МОДУЛЬ 5**

**Friday, 01 March 2019 / Пятница, 01 Марта 2019**

**Сессия 1**

**13.30 – 15.00**

Judge to Rule if Bite  
from HIV-positive Man  
Counts as Bioterrorism

*The Charge is Murder,  
The Weapon, AIDS*

Positive Woman Charged with Prostitution

**Equestrian Rider Charged with Hiding HIV**

Man Charged  
with Using Spit as  
Deadly Weapon

HIV Predator Served  
Time for Crime but  
May be Confined for Life

*Authorities say Man remains Danger to Society*



## *What is HIV Criminalisation?*

HIV criminalisation describes the ***unjust*** application of criminal law to people living with HIV based solely on their HIV status.

This includes the use of HIV-specific criminal statutes or general criminal laws to prosecute people living with HIV for unintentional HIV transmission, perceived or potential HIV exposure, and/or non-disclosure of known HIV-positive status.

HIV criminalisation is a growing, global phenomenon that undermines both human rights and public health, thereby weakening the HIV response.



## *What behaviours are targeted by these laws?*

In many instances, HIV criminalisation laws are exceedingly broad – either in their explicit wording, or in the way they have been interpreted and applied – making people living with HIV (and those perceived by authorities to be at risk of HIV) extremely vulnerable to a wide range of human rights violations.


HIV criminalisation takes place either using [HIV-specific criminal statutes, or by applying general criminal laws](#) exclusively or disproportionately against people with HIV.

Usually these laws are used to prosecute individuals who

- Are aware they are living with HIV who allegedly did not disclose their HIV status prior to sexual relations (HIV non-disclosure);
- Are perceived to have potentially exposed others to HIV (HIV exposure);
- Have or are thought to have transmitted HIV (HIV transmission)

## *Enhanced sentencing is also an issue in some jurisdictions*

Globally - In many countries a person living with HIV who is found guilty of other 'crimes' – notably, but not exclusively, [sex work](#), as well someone who [spits at](#) or [bites](#) law enforcement personnel during their arrest or whilst incarcerated – often faces enhanced sentencing even when HIV exposure or transmission was not possible or was – at most – [a very small risk](#).



HIV JUSTICE NETWORK

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Alleged exposure Arrests Prosecutions Spitting

### US: INDIANA MAN CHARGED WITH TWO COUNTS OF BATTERY BY BODILY WASTE FOR SPITTING AT MEDICAL STAFF

January 30, 2019

Recommend 0 Tweet Print

Source: Becca Davila in [abc57](#), Published on January 208, 2019

Man with HIV charged with spitting in hospital staff's eyes

ST. JOSEPH COUNTY, Ind. – A man was charged with two counts of battery by bodily waste after allegedly spitting at medical personnel.

On Jan. 24, X, was taken to the emergency department at Memorial Hospital and claimed he was having seizures.

X requested anti-seizure medication and personnel at the hospital learned he was HIV positive while

This is one example – there are many others

As far as we can tell at the moment most of these recorded cases are from the USA and Canada

## What kind of criminal laws apply to potential or actual HIV exposure or transmission?

Most jurisdictions around the world already have existing general criminal laws that could be applied to the intentional transmission of HIV. Some have also enacted HIV-specific laws or have prosecuted individuals under existing laws, it is important to note that there are many other countries and/or jurisdictions that appear to have done neither....

**South Africa.** HIV-specific criminal law not necessary. In 2001, the South African Law Commission undertook a comprehensive review of the need for an HIV-specific criminal law, concluding that such a law was not necessary and that existing laws were sufficient to prosecute intentional or coercive acts that resulted in HIV transmission.

Further examples of the types of laws used ...Discussion ....

# How does HIV criminalisation impact human rights?

## Some examples -1

HIV criminalisation undermines the human rights of people living with HIV, many of whom are also members of marginalised or additionally criminalised communities.

Threatening to go to police with accusations of HIV non-disclosure has been used as a form of abuse or retaliation against current and former HIV-positive partners.

HIV criminalisation places people living with HIV—particularly but not only women—at heightened risk of violence and abuse and ignores the reality that some may not be able to safely disclose their status or in a position to ask their partner to use a condom.

# How does HIV criminalisation impact human rights?

## Some examples -2

- Stigmatising statements from law enforcement or public health agencies, and media coverage, including full names and photographs—even of those merely subject to allegations
- Investigations and prosecutions often have a disproportionate impact on racial and sexual minorities, migrants, and women.
- Poorly-resourced accused may be without access to adequate legal representation.
- In certain cases, some of the most serious offences in a country's criminal law (e.g., aggravated assault, sexual assault and attempted murder) have been used to prosecute alleged non-disclosure in the context of consensual sexual encounters.
- People without citizenship in their country of residence may also be deported upon conviction, which can result in loss of medical care.



## *How does HIV criminalisation impact the HIV response?*

HIV criminalisation undermines [public health](#) objectives, such as [UNAIDS' 90-90-90 goals](#) in myriad ways:

- Prosecutions, and the media they attract are unhelpful .
- Suggesting criminal charges are a primary or appropriate response to any perceived or potential HIV exposure is inappropriate.
- HIV criminalisation can also undermine the therapeutic relationship between people living with HIV and healthcare professionals, reducing their capacity to provide support, including providing frank advice about risk reduction strategies.
- Healthcare providers have been forced to testify in court about communications with their patients, evidence which is used to pursue convictions against their patients

## *How widespread is HIV criminalisation?*

As of July 2018:

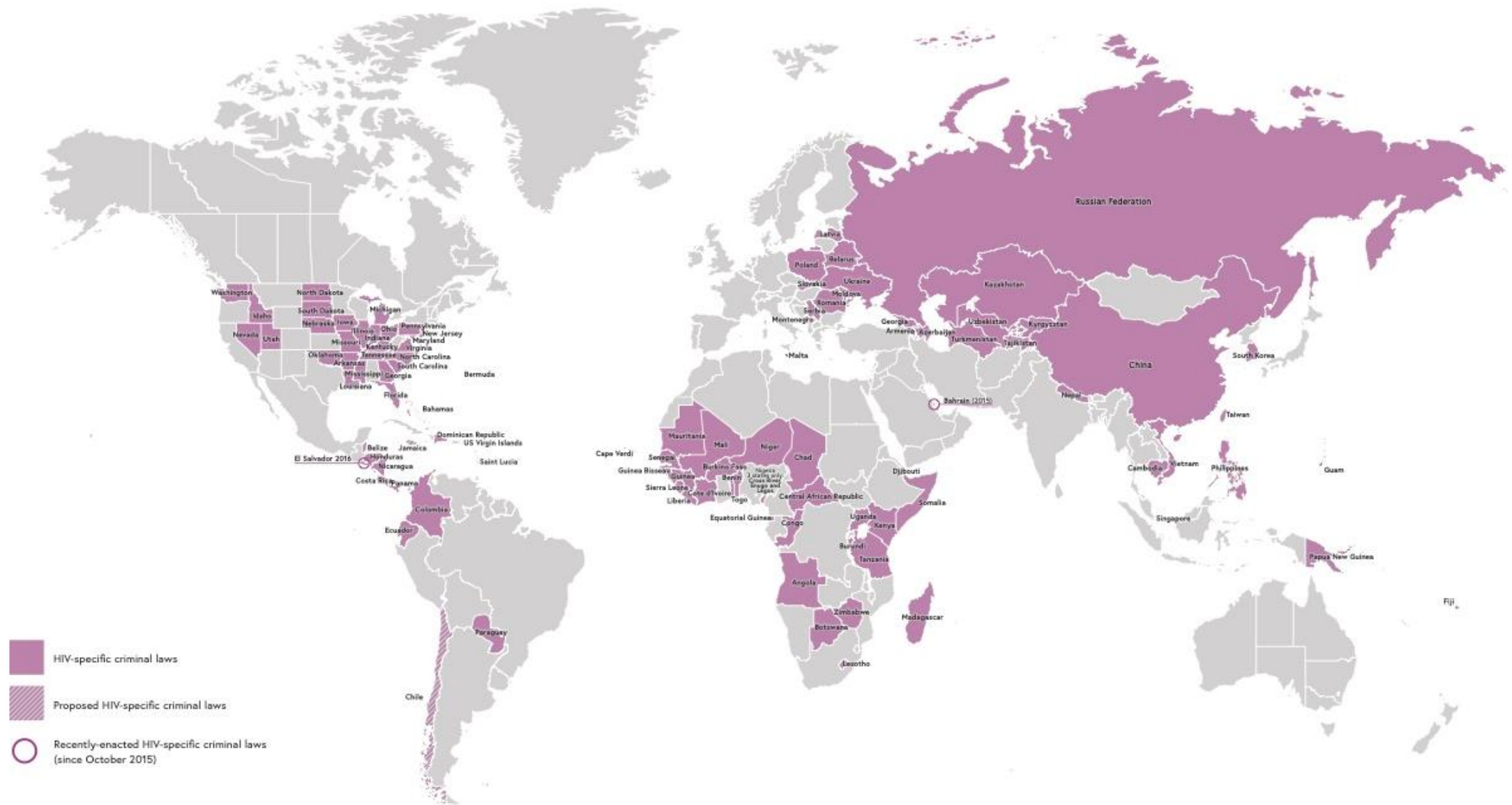
73 countries are known to have HIV-specific criminal laws, and another 39 countries are known to have used general criminal laws to prosecute people living with HIV for alleged HIV non-disclosure, perceived or potential HIV exposure, and/or non-intentional transmission.

In the past two-and-a-half years alone, hundreds of cases have been reported in at least 51 countries.

In the five countries with the highest known number of reported cases (i.e., United States, Belarus, Russia, Ukraine and Canada) at least 600 people have been arrested, prosecuted and/or incarcerated since October 2015.

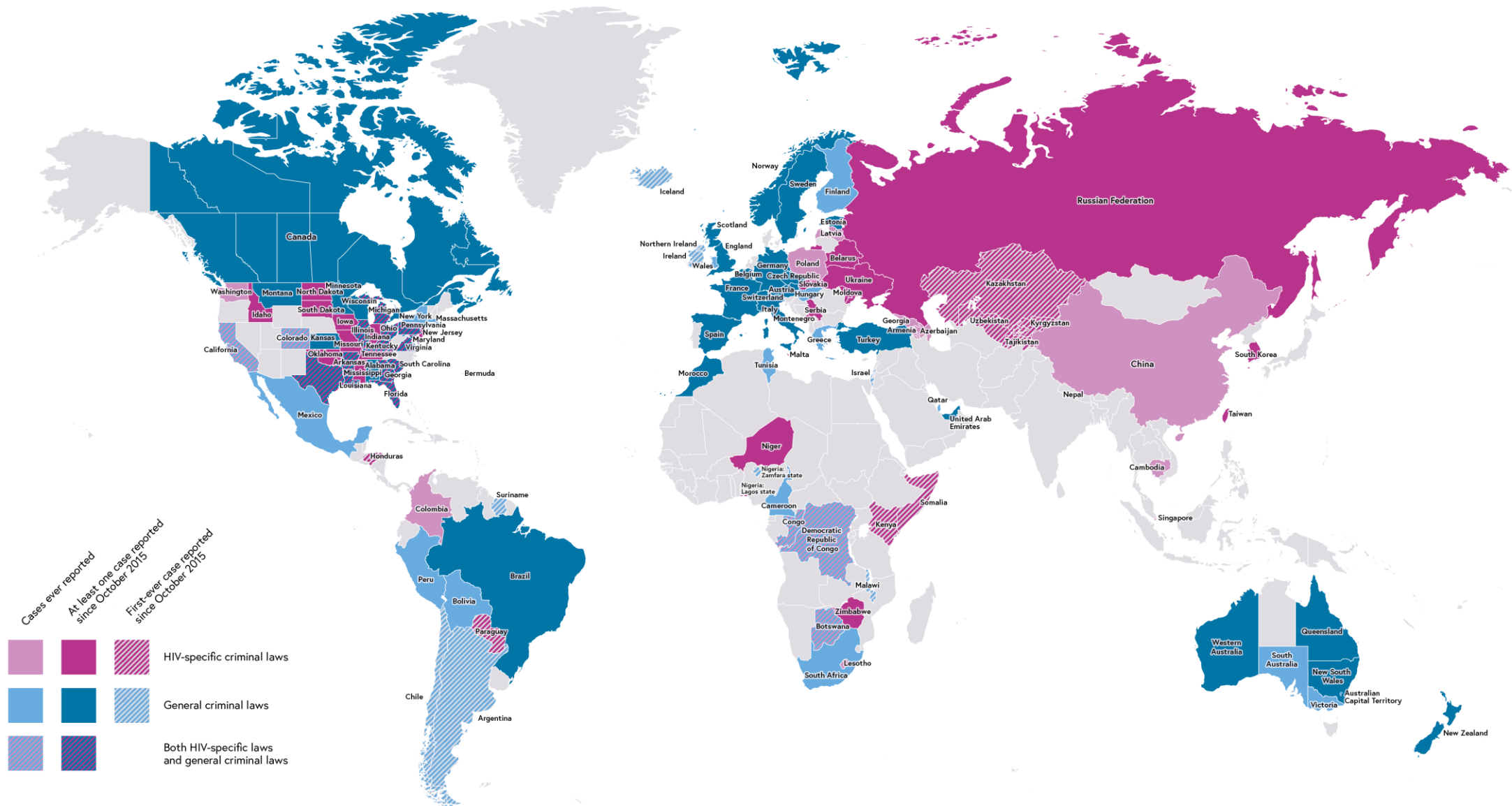
Unknown thousands have been prosecuted since the mid-1980s, with many people still languishing in prison and/or registered as sex offenders—including in cases where transmission did not occur and/or was not even possible.

## WHERE HIV-SPECIFIC LAWS EXIST



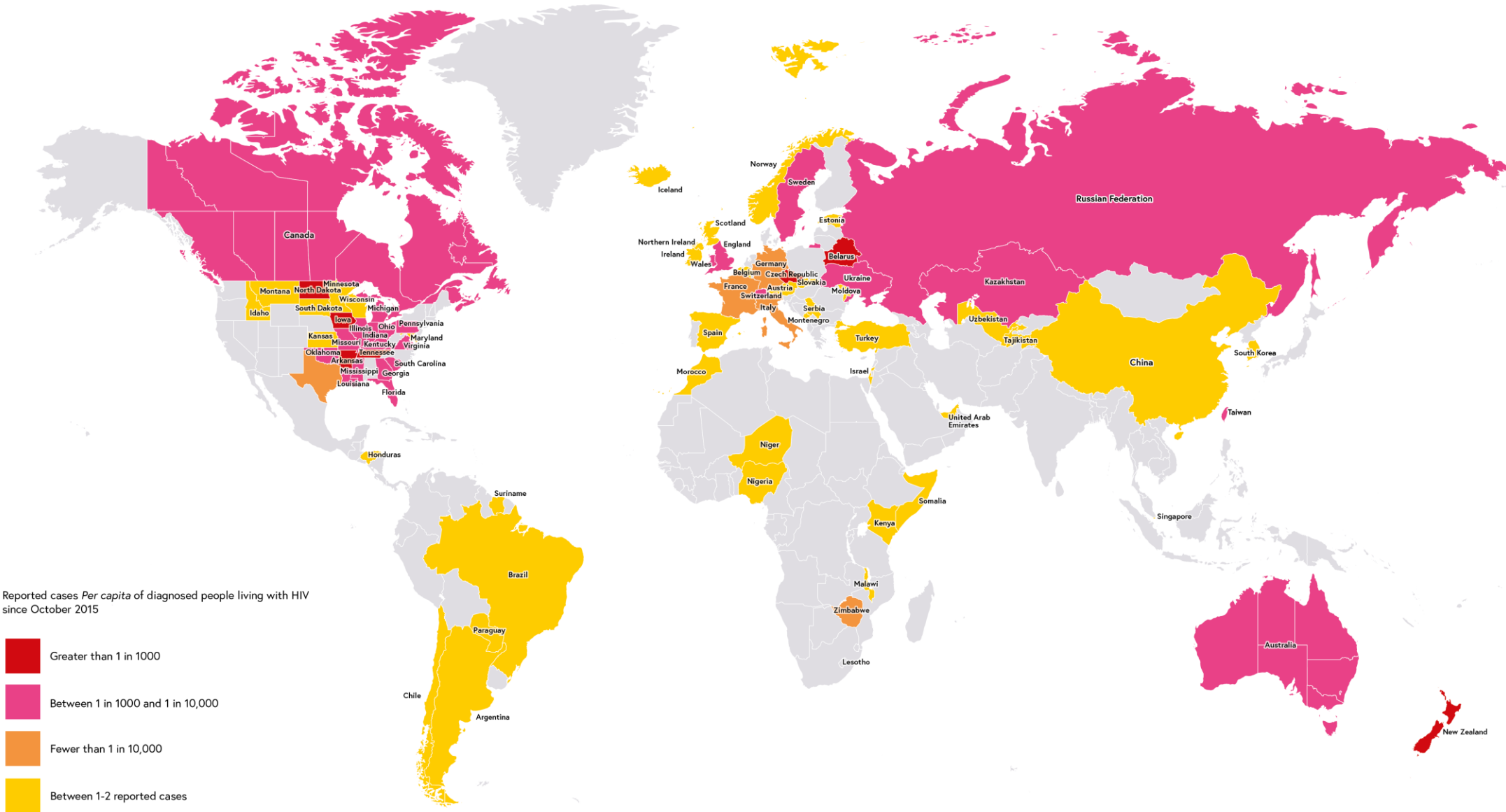


# WHERE HIV-RELATED CRIMINAL CASES HAVE BEEN REPORTED





# HIV CRIMINALISATION HOTSPOTS





## Discussion and Questions

## Introduction to exercise after break

- Find out the situation in your country
- What might be an effective strategy to repeal/get an activist campaign together
- What is your route to change – and what do you want to change ?
- Who might be your targets
  - Judges ?
  - Prosecutors?
  - Police?
  - PLHIV ?
  - Other possible groups for support?
- Think of the current ‘criminalisation’ science ...



<http://www.hivjustice.net/site/countries/>



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## COUNTRIES

Click on the map, or select a country/jurisdiction from the drop-down list, for news and features produced by the HIV Justice Network, as well as news from other sources and relevant links by country and/or jurisdiction.

For individual cases visit the Cases section and filter via country and/or case type.

